



# Civil Resolution Tribunal

Date Issued: December 21, 2023

File: AR-2023-001056

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Rathod v. ICBC*, 2023 BCCRT 1126

BETWEEN:

JAYESH RATHOD and NOOPUR RATHOD

**APPLICANTS**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Alison Wake

## INTRODUCTION

1. This dispute is about accident responsibility.
2. The applicant, Noopur Rathod, was in a motor vehicle accident on November 22, 2022, in a vehicle owned by their parent, the applicant, Jayesh Rathod. Because the

applicants share the same last name, I will refer to them by their first names where required, without intending any disrespect. Jayesh represents both applicants.

3. The applicants say the respondent insurer, Insurance Corporation of British Columbia (ICBC), incorrectly determined responsibility for the accident. ICBC held Noopur 100% responsible, but the applicants say Noopur should be found 50% responsible instead.
4. ICBC says it acted reasonably in determining Noopur was 100% responsible for the accident, and says this dispute should be dismissed. An employee represents ICBC.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over accident claims brought under section 133 of the *Civil Resolution Tribunal Act* (CRTA). Section 133(1)(d) of the CRTA and Part 2 of the *Accident Claims Regulation* (ACR) give the CRT jurisdiction over accident responsibility determinations.
6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
7. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law.

## **ISSUES**

8. The issues in this dispute are:
  - a. Whether ICBC acted improperly or unreasonably in assigning responsibility for the accident, and

- b. If so, to what extent, if any, is Noopur responsible for the accident?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning more likely than not). Under the ACR, to succeed in their claim against ICBC, the applicants must first prove that ICBC acted improperly or unreasonably in assigning responsibility for the accident to Noopur. Second, the applicants must prove Noopur is less responsible for the accident than ICBC assessed.
10. Further to section 10 of the ACR, **both** parts of the test described above must be proven. This means that even if the applicants can prove Noopur is less responsible for the accident than ICBC assessed, they will not be successful if they cannot prove ICBC acted improperly or unreasonably. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. On November 22, 2022, Noopur was leaving a mall parking area in Prince George, BC. They stopped at a traffic light at the intersection of 13<sup>th</sup> Avenue and Winnipeg Street, but their vehicle was past the stop line, so they reversed to allow pedestrians to cross. While they were reversing, they collided with a third party's vehicle behind them. The third party's front bumper struck Noopur's rear bumper.
12. There were no witnesses to the accident, and no dash camera or other video footage. Neither driver provided photographs of their vehicles or the scene to ICBC.
13. Jayesh and the third party both reported the accident to ICBC on the same day it happened. The third party reported that they were on 13<sup>th</sup> Avenue behind Noopur's vehicle. They said that there was a pedestrian crossing the street ahead of Noopur's vehicle, and that Noopur reversed into their vehicle.
14. Jayesh's initial report said that Noopur had reversed from a parking stall and backed into the third party's vehicle. However, the applicants emailed Noopur's statement to

ICBC later that day in which Noopur confirmed they were reversing at the intersection. This later statement is generally consistent with the third party's report and with the applicants' submissions in this dispute, so I accept that Jayesh's initial report was incorrect.

15. In their emailed statement, Noopur said that conditions were slippery at the intersection and they could not stop fully behind the stop line. They said there were children crossing the street, so they checked their mirrors and then reversed "merely a few inches". They say that the third party came up behind them and hit their vehicle. Noopur alleged that the third party was speeding and was unable to stop due to the slippery conditions.
16. ICBC held Noopur 100% responsible for the accident based on sections 169 and 193 of the *Motor Vehicle Act* (MVA). These sections prohibit a driver from moving a stopped vehicle or reversing a vehicle unless they can do so safely.
17. The applicants disagree with ICBC's decision, and say that Noopur should only have been held 50% responsible for the accident.

***Did ICBC act improperly or unreasonably in assigning responsibility for the accident?***

18. As noted above, section 10(a) of the ACR says that to succeed in their claim, the applicants must prove that ICBC acted improperly or unreasonably in finding Noopur was 100% responsible for the accident.
19. The applicants argue that ICBC acted improperly or unreasonably for 3 reasons. First, they say ICBC failed to consider the road conditions. Second, they say ICBC failed to consider that the third party was speeding. Third, they say that ICBC accepted the third party's version of events without any evidence.

**Road conditions**

20. I begin with the applicants' argument that ICBC failed to consider the road conditions. ICBC does not dispute that the road was icy or slushy at the time of the accident.

However, it says that this is not uncommon during the winter months, and that drivers must be aware of the road conditions and drive accordingly.

21. ICBC also says that the road conditions are not relevant to the question of whether Noopur reversed when it was unsafe to do so. I agree. While I accept that Noopur's vehicle was initially over the stop line because of the slippery conditions, the accident undisputedly occurred when Noopur was reversing away from the stop line. The applicants do not argue that Noopur was unable to stop while in reverse. The road conditions do not negate Noopur's responsibility under section 193 of the MVA to ensure that it was safe to reverse before doing so.
22. The applicants also say that the third party could not stop before hitting Noopur because of the road conditions. However, there is no evidence to support this. As noted, there were no witnesses to the accident. The third party did not mention slipping or being unable to stop in their report. Noopur said in their statement that the third party was unable to stop, but did not describe seeing the third party's vehicle slipping or otherwise explain why they believed this.
23. In the absence of any supporting evidence, I find ICBC reasonably concluded that road conditions were not relevant to its determination of responsibility for the accident.

#### Third party's speed

24. I turn to the applicants' argument that the third party was speeding. The applicants say the posted speed limit was 15 km/h. ICBC does not dispute this and so I accept it is accurate.
25. The third party did not estimate their speed at the time of the accident in their report. While ICBC says the third party was stopped behind Noopur when Noopur began reversing, I find this is not supported by the third party's report. They reported that they were westbound on 13<sup>th</sup> Avenue intending to turn right onto Winnipeg Street, but did not say that they were stopped.

26. However, the difficulty for the applicants is that even if the third party was moving forward at the time of the accident, there is no evidence to show that the third party was speeding. Again, there were no witnesses and Noopur did not describe seeing the third party speeding.
27. I find ICBC reasonably concluded that there was insufficient evidence to show that the third party was speeding.

Lack of evidence

28. Lastly, I turn to the applicants' argument that ICBC accepted the third party's description of the accident without any evidence. The applicants suggest that ICBC believed the third party instead of Noopur because the third party reported the accident first. ICBC denies this. The evidence shows that both drivers reported the accident to ICBC on November 22, 2022, but does not show what time each driver made their report. There is no evidence that the third party reported the accident first, or that ICBC accepted their description of the accident for this reason.
29. ICBC acknowledges that it did not take a formal statement from the third party. It says the third party's initial report was sufficient to determine responsibility. I agree. The third party's initial report identified the location of the accident, the vehicles' positions and direction of travel, and the fact that Noopur reversed their vehicle away from the intersection. While the applicants argue that it was unreasonable for ICBC not to take a statement from the third party, they do not explain what information they believe the statement may contain beyond what was in the third party's initial report.
30. The applicants say that the investigation required more substantial evidence, but do not explain what additional evidence they believe ICBC should or could have obtained or considered. I find ICBC reasonably considered the available evidence in making its responsibility determination.
31. On balance, I find the applicants have not proven ICBC acted improperly or unreasonably in investigating the accident and assigning responsibility. So, I find the

applicants have not satisfied section 10(a) of the 2-part test. It follows that the applicants' claim must fail.

32. Given this, I do not need to consider whether Noopur should be held less responsible for the accident, which is part 2 of the test as set out in section 10(b) of the ACR.

## **CRT FEES AND EXPENSES**

33. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The applicants were unsuccessful, so I dismiss their claim for CRT fees. ICBC was the successful party, so I order the applicants to reimburse it \$25 for its paid CRT fees. Neither party claimed dispute-related expenses.

## **ORDERS**

34. I dismiss the applicants' claims.
35. Within 21 days of this decision, I order the applicants to pay ICBC \$25 as reimbursement for CRT fees.
36. ICBC is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
37. Under section 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia or the Provincial Court of British Columbia if it is under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

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Alison Wake, Tribunal Member