



Civil Resolution Tribunal

Date Issued: January 2, 2024

File: AR-2023-000163

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Olek v. ICBC*, 2024 BCCRT 1

B E T W E E N :

RAJINDER OLEKH

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Peter Mennie

INTRODUCTION

1. This dispute is about accident responsibility.
2. The applicant, Rajinder Olekh, was in a motor vehicle accident on November 27, 2022. Mr. Olekh says the respondent insurer, Insurance Corporation of British

Columbia (ICBC), incorrectly determined responsibility for the accident. ICBC held Mr. Olekh 50% responsible, but Mr. Olekh says he should be 0% responsible instead.

3. ICBC says it acted reasonably in finding Mr. Olekh 50% responsible for the accident.
4. Mr. Olekh represents himself. ICBC is represented by an authorized employee.

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 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
7. Section 39 of the CRTA says that 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. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
8. Section 42 of the CRTA says that 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

9. 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 Mr. Olekh responsible for the accident?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Mr. Olekh must prove his claims on a balance of probabilities, meaning more likely than not. Under the ACR, to succeed in his claim against ICBC, Mr. Olekh must first prove that ICBC acted improperly or unreasonably in assigning 50% responsibility for the accident to him. Second, Mr. Olekh must prove he is less responsible for the accident than ICBC assessed.
11. Further to section 10 of the ACR, both parts of the test described above must be proven. This means that even if Mr. Olekh can prove he is less responsible for the accident than ICBC assessed, he will not be successful if he 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. Mr. Olekh did not provide reply submissions despite having the opportunity to do so.

The Accident

12. On November 27, 2022, Mr. Olekh was reversing out of his driveway into a cul-de-sac. Mr. Olekh says that he brought his vehicle to a complete stop and was about to go forward when the rear of his vehicle was hit by a vehicle reversing out of his neighbour's driveway.
13. The third party vehicle was driven by DK who is not a party to this dispute. DK was visiting Mr. Olekh's neighbours. DK reported to ICBC that they reversed out of the

driveway and had come to a complete stop. They say before they could move forward Mr. Olekh's vehicle reversed into the rear of their vehicle.

14. Mr. Olekh provided ICBC with contact information for his neighbour who he believed had witnessed the accident. ICBC contacted Mr. Olekh's neighbour who said they had not witnessed the accident because they were speaking with another person at the time.
15. On January 5, 2023, ICBC issued a CL722 finding Mr. Olekh 50% liable for the accident. ICBC relied on section 193 of the *Motor Vehicle Act* (MVA) which states that a person must not move a vehicle backwards unless it can be done safely. ICBC said that both parties reported they were stopped when the other reversed into them and there were no independent witnesses. So, ICBC apportioned liability 50% to Mr. Olekh and 50% to DK.

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

16. In Mr. Olekh's submissions, he says that ICBC acted improperly and unreasonably in assigning responsibility for the accident because ICBC failed to (1) provide Mr. Olekh with an opportunity to communicate his version of events, (2) contact witnesses, and (3) consider his photographic evidence. I have considered each of these issues below.
17. Mr. Olekh says that he did not have an opportunity to communicate his version of events to ICBC. He says ICBC contacted him when he was at work when it was noisy and difficult to speak. He says the ICBC employee had difficulty understanding his accent. He says he requested to meet in person and to bring a translator, however ICBC said they do not permit in-person statements.
18. I find that ICBC provided Mr. Olekh with an opportunity to present his version of events. Mr. Olekh provided a statement to ICBC on November 27, 2022, which sets out his account of the accident. ICBC's notes from calls with Mr. Olekh on November 28, 2022, and January 5, 2023, show that the ICBC employee understood Mr. Olekh's

objections to ICBC's decision on accident responsibility. Mr. Olekh also sent emails to ICBC in December 2022 with evidence and arguments. Mr. Olekh's account of the accident, that he had been stopped when DK reversed into him, was communicated and understood by ICBC. So, I find that Mr. Olekh was able to present his version of events without an in-person meeting or translator and that ICBC acted reasonably in the circumstances.

19. Mr. Olekh says that ICBC did not complete its investigation and did not contact witnesses who were present at the accident scene. He provided ICBC with contact information for his neighbour who he says witnessed the accident.
20. I find that ICBC did complete its investigation. An insurer is not expected to investigate a claim with the skill and forensic proficiency of a detective. Rather, an insurer must bring "reasonable diligence, fairness, an appropriate level of skill, thoroughness, and objectivity to the investigation and the assessment of the collected information" (see *McDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283 at paragraph 249). ICBC took statements from both parties and contacted Mr. Olekh's neighbour who said they did not see the accident. Mr. Olekh did not provide any other independent witnesses for ICBC to contact. So, I find that ICBC was reasonable in its investigation.
21. Finally, Mr. Olekh argues that ICBC did not consider the other driver's negligence. He provided a photo taken after the accident which shows DK's vehicle just outside his neighbour's driveway. Mr. Olekh says this shows that DK had only started reversing so his vehicle must have already been in the cul-de-sac. That is, Mr. Olekh argues that he reversed his vehicle when it was safe to do so, however DK reversed their vehicle in breach of section 193 of the MVA when his vehicle was in the cul-de-sac and an imminent hazard.
22. The difficulty for Mr. Olekh is that ICBC provided a photo taken after the accident which shows Mr. Olekh's vehicle just outside his driveway. I agree with ICBC that the photos were likely taken after one or both vehicles moved toward their respective

driveways. I find that the photos do not prove whose vehicle was in the cul-de-sac first.

23. I find that ICBC was reasonable in assigning 50% liability to Mr. Olekh. Section 1(2) of the *Negligence Act* says that liability must be apportioned equally if it is not possible to establish different degrees of fault. Both Mr. Olekh and DK told ICBC that the other driver had reversed into them. There was no evidence to disprove either party's account, so I find that ICBC's decision to apportion liability 50% to each party was reasonable in the circumstances.
24. Given my finding that ICBC has acted reasonably in assigning responsibility for the accident, I do not need to consider whether Mr. Olekh should be held less responsible for the accident, which is part 2 of the test set out in section 10(b) of the ACR. I dismiss Mr. Olekh's claim.

CRT FEES AND EXPENSES

25. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to the recovery of their CRT fees and dispute-related expenses. Mr. Olekh was not successful, so I dismiss his claim for reimbursement of CRT fees. ICBC was successful so I order Mr. Olekh to reimburse its \$25 in paid CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

26. I dismiss Mr. Olekh's claim.
27. Within 30 days of the date of this decision, I order Mr. Olekh to pay ICBC \$25 as reimbursement of CRT fees.
28. ICBC is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

29. 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.

Peter Mennie, Tribunal Member