



Civil Resolution Tribunal

Date Issued: February 6, 2024

File: AR-2023-001508

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Salim v. ICBC*, 2024 BCCRT 116

B E T W E E N :

RAJU SALIM

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about who is responsible for a motor vehicle accident.
2. The applicant, Raju Salim, is the registered owner of a vehicle that was involved in an accident on July 14, 2022. Ms. Salim's daughter, VM, was driving Ms. Salim's

vehicle at the time of the accident. Ms. Salim says the respondent insurer, Insurance Corporation of British Columbia (ICBC), incorrectly determined that VM was fully responsible for the accident. She says VM should be held 0% responsible instead.

3. ICBC says it acted reasonably in its liability assessment and determining VM was 100% at fault. ICBC asks me to dismiss Ms. Salim's claims.
4. Ms. Salim is self-represented. 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.
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.
9. Ms. Salim submitted 2 pieces of evidence that are screenshots of a conversation in the message board parties use during the CRT's facilitation phase. ICBC objects to

the admissibility of this evidence. Under section 89 of the CRTA, information provided during the dispute's facilitation stage is confidential and not admissible as evidence unless all parties consent, which I find is not the case here. So, I have not considered these 2 pieces of evidence in reaching my decision.

ISSUES

10. The issues in this dispute are:

- a. Was ICBC's responsibility determination reasonable and proper?
- b. If not, has Ms. Salim proven that VM is less than 100% responsible for the accident?

BACKGROUND, EVIDENCE, AND ANALYSIS

11. In a civil proceeding such as this, Ms. Salim as the applicant must prove her claims on a balance of probabilities, meaning "more likely than not". While I have read all of the parties' evidence and submissions, I refer only to what I find necessary to explain my decision.
12. Under section 10 of the ACR, to succeed in her claim against ICBC, Ms. Salim must first prove that ICBC acted improperly or unreasonably in assigning responsibility for the accident to VM. Second, Ms. Salim must prove VM was less responsible for the accident than ICBC assessed. Ms. Salim must prove both parts of this test.

The Accident

13. The accident occurred in a public underground parking lot just before 8:00 pm on July 14, 2022. The 2 drivers disagree on how the accident happened. VM reported to ICBC that they were pulling into a parking stall, front first, but came to a stop at an angle in the stall when the vehicle in the stall directly to their right started to reverse. VM said that the reversing vehicle turned too early, and the third party's driver side door hit the front passenger side corner of VM's vehicle. VM says their vehicle was still in

gear, but that they were at a complete stop when the third party reversed into their vehicle.

14. In contrast, the third-party driver reported that they were parked in their vehicle with the engine off, when VM's vehicle collided with their vehicle while trying to park beside them. The third party said they did not see VM's vehicle before the impact and denied that the third party's vehicle was moving when the accident occurred.
15. There were no independent witnesses and no dash cam footage of the accident.
16. On December 5, 2022, ICBC issued a CL722 (a detailed responsibility letter) finding VM 100% responsible for the accident. ICBC relied on section 144 of the *Motor Vehicle Act* (MVA), which requires people to drive with due care and attention, with reasonable consideration for other persons using the highway, and at a speed that is not excessive relative to the road, traffic, visibility, or weather conditions. The CL722 stated that to shift any responsibility to the third-party driver that said they were parked, ICBC must have objective evidence showing that the parked vehicle left its parked position. In the absence of any evidence that the parked driver had moved, ICBC found VM 100% responsible.

Was ICBC's liability determination reasonable and proper?

17. As referenced above, ACR section 10(a) says that to succeed in her claim, Ms. Salim must first prove that ICBC acted improperly or unreasonably in assigning VM sole responsibility for the accident.
18. In the recent non-binding CRT decision in *De Paras v. ICBC*, 2024 BCCRT 106, a vice chair considered the legal test under ACR section 10(a). In short, the vice chair found that in assessing the reasonableness of ICBC's responsibility determination, the CRT must review the CL722 alongside the evidence ICBC had at the time and consider whether ICBC's decision was logically justified and supported by the available evidence and the applicable law. However, the vice chair found it was not appropriate to defer to ICBC's substantive assessment of the law or its application to given facts. The vice chair also found that the ACR requirement for ICBC's

responsibility decisions to be proper refers to ICBC's investigation and process, rather than the outcome. The vice chair stated that a proper investigation does not require ICBC to endlessly investigate all accidents and should be proportional. I agree with the reasoning in *De Paras* and apply it here.

19. Ms. Salim makes 3 arguments about how ICBC's decision was improper and unreasonable. First, she says that ICBC improperly decided responsibility while it was still gathering information about how the accident happened. In other words, Ms. Salim says ICBC determined responsibility prematurely. Second, Ms. Salim says ICBC unfairly relied solely on the third party's statement in determining responsibility, and required VM to prove their version while the third party did not have to produce any proof. Third, Ms. Salim says ICBC improperly failed to assess both vehicles to determine who hit who.
20. I begin with the timing of ICBC's responsibility assignment. Both drivers reported the accident to ICBC on July 15, 2022, the day after the accident. VM also emailed ICBC drawings of how they said the accident happened and a photo taken some time after the accident, which VM said showed their vehicle's position at the time of accident, to the best of their recollection.
21. ICBC acknowledges that once it received the drivers' statements and VM's email, it advised VM that same day that VM was 100% responsible for the accident. However, ICBC's file notes show that VM called ICBC back on July 15, and advised that a nearby business may have video footage of the accident. So, ICBC reverted the responsibility assignment to "unresolved", while VM tried to obtain the video footage.
22. In the meantime, VM emailed ICBC on July 21, to suggest that it physically examine both vehicles. ICBC responded that reviewing vehicle damage in person is not normally done to resolve liability, particularly in this case where the main issue was establishing whether the other vehicle moved from a parked position. ICBC asked VM to explain why they thought a physical examination would assist the investigation, but there is no evidence VM responded. More on this below.

23. On August 22, ICBC received an email from the business owner with a CCTV camera in the parking lot. The business owner advised that they no longer had the footage from July 14, but that they had reviewed the footage shortly after the accident and confirmed the camera's view did not capture the accident. ICBC says it finalized its responsibility assessment on August 28, and because there was no video footage of the accident supporting VM's account, it held VM 100% responsible for the accident.
24. I find that ICBC did not prematurely determine responsibility. While ICBC initially determined liability based solely on the drivers' statements and VM's diagrams and photo, I find that it clearly re-opened the investigation when it discovered other information might be available. Once ICBC determined that no other evidence was available, it made its final responsibility determination. I find nothing improper about ICBC proceeding with its investigation in this manner.
25. Next, I consider Ms. Salim's argument that ICBC unreasonably accepted the third party's version of the accident and required VM to prove their version correct. I find this is a mischaracterization of ICBC's approach. It is apparent from ICBC's file notes and the CL722, that ICBC did not necessarily believe one driver's version over the other. Rather, it first determined the agreed facts between both driver's accounts, which were that the third party was initially parked in a stall, not moving, and VM was pulling into the stall beside the third party. At that point, the drivers' versions diverge. ICBC placed the onus on the driver of the vehicle that was undisputedly in motion (VM) to provide some objective evidence that the parked vehicle started moving.
26. This might seem like a somewhat arbitrary burden to impose on one driver to prove their version of the accident. However, in circumstances like this one, where 2 drivers have opposing reports about how the accident occurred, ICBC cannot accept both versions. As noted, the MVA requires drivers to drive with due care and attention. So, when both parties to an accident agree that one vehicle was in motion leading up to the accident, I find it reasonable to assume the driver of the moving vehicle caused the accident unless they can show the other driver bears some responsibility. In other words, contrary to Ms. Salim's submission, I find it was reasonable for ICBC to require

that VM provide some evidence that the third party left its parked position to cause or contribute to the accident.

27. Finally, I turn to Ms. Salim's argument that ICBC should have inspected the vehicles. Ms. Salim says that an ICBC employee told her that ICBC is obligated to physically examine vehicles to assess claims made by either party, even when there is no dispute about what caused the accident. The only evidence she provided in support of this position was an email from ICBC about an unrelated claim, with instructions on how to take photos of vehicle damage for ICBC's review. Ms. Salim says this shows it is ICBC's policy to review vehicle damage.
28. ICBC denies it is standard procedure to review material damage when determining liability. ICBC says the relevance of vehicle damage depends on the circumstances, and when material damage review is needed to resolve liability, ICBC will complete such a review. I infer that ICBC decided that reviewing the damage was unnecessary in this case.
29. I find that Ms. Salim has provided insufficient evidence to prove ICBC must review vehicle damage in every claim. In the circumstances of this accident, I find ICBC properly decided it was unnecessary. The main issue was whether the third party had moved from a parked position. Ms. Salim provided no supporting evidence that the vehicle damage would have provided any useful information in determining that issue. In fact, ICBC's file notes show that after Ms. Salim started this CRT dispute, an ICBC material damage manager reviewed photos of both vehicles and was unable to determine who hit who or what vehicle or vehicles were in motion at the time of impact.
30. As noted above, ICBC's investigation does not have to be exhaustive and should be proportional to the stakes involved. I find this was a relatively minor accident and there is no indication that the extent of damage was at issue. Therefore, I find Ms. Salim has not proven ICBC's investigation was improper for failing to further investigate the vehicle damage.

31. Given that I find Ms. Salim has not proven ICBC acted improperly or unreasonably in investigating the accident and assigning responsibility, I do not need to consider whether VM should be held less responsible for the accident under ACR section 10(b).
32. That said, even if Ms. Salim had proved ICBC acted improperly or unreasonably, I would have dismissed her claim. Contrary to Ms. Salim's submissions, ICBC does not bear the burden in this dispute to prove that VM caused the accident. Rather, Ms. Salim must prove that VM was less than 100% responsible. I find she has not done so. While both drivers' accounts of the accident are possible, I find the third party's version that VM simply misjudged how close they were to the third party's vehicle when turning into the parking stall is simply more plausible. In the absence of any evidence supporting VM's allegation that the third party started reversing, I find Ms. Salim has not proved the third party was negligent or did anything to contribute to the accident.
33. For all these reasons, I dismiss Ms. Salim's claim.
34. 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. As Ms. Salim was unsuccessful, I dismiss her claim for CRT fees. ICBC was the successful party, and so I find Ms. Salim must reimburse it \$25 for its paid CRT fees. Neither party claimed dispute-related expenses.

ORDERS

35. Within 21 days of the date of this decision, I order Ms. Salim to pay ICBC \$25 as reimbursement of CRT fees.
36. ICBC is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
37. I dismiss Ms. Salim's claims.

38. 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.

Kristin Gardner, Tribunal Member