



Civil Resolution Tribunal

Original Decision Issued: January 3, 2024

New Decision Issued: February 7, 2024

File: AR-2023-002225

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Durrani v. ICBC*, 2024 BCCRT 7

B E T W E E N :

CHANGIZ DURRANI

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, Changiz Durrani, was in a motor vehicle accident on October 26, 2022. Mr. Durrani says the respondent insurer, Insurance Corporation of British Columbia (ICBC), incorrectly determined responsibility for the accident. ICBC held Mr. Durrani 100% responsible, but Mr. Durrani says he should be found no more than 5% responsible instead.
3. ICBC says it acted reasonably in finding Mr. Durrani 100% responsible for the accident.
4. Mr. Durrani 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.

Jurisdictional Defect

9. I issued a decision on January 3, 2024 dismissing Mr. Durrani's claims on the basis that he submitted his application for dispute resolution at the CRT after the 90-day deadline set by section 9 of the ACR. This was based on the Dispute Notice which noted that Mr. Durrani submitted his application on March 2, 2023. Later, CRT staff advised me that Mr. Durrani tried to file his application at the CRT on February 24, 2023. Due to a CRT error, Mr. Durrani's application was not accepted on this date, but was accepted one week later on March 2, 2023. The Dispute Notice was issued on April 5, 2023. Mr. Durrani's February 24, 2023 application submission date was not before me at the time I issued my original decision. Mr. Durrani requested that I re-open this matter based on this discrepancy.
10. Under section 51(3) of the CRTA, and under the common law, an administrative tribunal may reopen a proceeding to cure a jurisdictional defect. In *Fraser Health Authority v. Workers' Compensation Appeal Tribunal*, 2014 BCCA 499, the BC Court of Appeal held that it is a jurisdictional defect for an administrative tribunal to fail to provide the parties with procedural fairness. In *Chandler v. Alberta Association of Architects*, 1989 CanLII 41 (SCC), the Supreme Court of Canada held that a tribunal is bound to start afresh to cure a jurisdictional defect.
11. I find it would be a breach of procedural fairness for me to dismiss Mr. Durrani's claim when I did not have all of the information before me. So, I have exercised my authority under CRTA section 51(3) to reopen this dispute. I have voided my original decision and issued this new decision in its place.

ISSUES

12. The issues in this dispute are:

- a. Did Mr. Durrani file his accident responsibility claim within 90 days of the CL722, as required by section 9 of the ACR?
- b. Did ICBC act improperly or unreasonably in assigning responsibility for the accident?
- c. If ICBC acted improperly or unreasonably, to what extent is Mr. Durrani responsible for the accident?

EVIDENCE AND ANALYSIS

- 13. In a civil claim such as this, the applicant Mr. Durrani must prove his claims on a balance of probabilities, meaning more likely than not. A preliminary issue in this matter is whether Mr. Durrani filed his application for dispute resolution within the 90 day timeline set by the ACR. If Mr. Durrani filed in time, to succeed under the ACR in his claim against ICBC, Mr. Durrani must first prove that ICBC acted improperly or unreasonably in assigning sole responsibility for the accident to him. Second, Mr. Durrani must prove he is less responsible for the accident than ICBC assessed.
- 14. Further to section 10 of the ACR, Mr. Durrani must prove both parts of the test described above. This means that even if Mr. Durrani 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.

Background

- 15. The accident occurred on October 26, 2022. Mr. Durrani was driving home from a work event. He says he was not feeling well so he pulled off the road for a few minutes. He then resumed his journey travelling east on a road with two lanes, one westbound and one eastbound, separated by a double solid yellow line. He says he saw a third party vehicle traveling west towards him at a high speed when it was

raining and visibility was poor. He says he blacked out and was hit by the third party vehicle.

16. The third party driver reported to ICBC that they were travelling west at a speed of 40-50 km/hour. They reported that Mr. Durrani's vehicle crossed the center line into the westbound lane "as if [Mr. Durrani] tried to do a u-turn but didn't make it" (reproduced as written). The third party driver braked, however their car skidded and collided with Mr. Durrani's vehicle. The front of the third party's vehicle hit the passenger side doors of Mr. Durrani's vehicle. The third party driver provided ICBC with a photo just after the accident which shows Mr. Durrani's vehicle perpendicular across the westbound lane.
17. It is undisputed that emergency services arrived at the scene shortly after the accident. The police did not issue a ticket to either driver.
18. On November 25, 2022, ICBC issued a CL722 finding Mr. Durrani 100% responsible for the accident. ICBC relied on the following sections of the *Motor Vehicle Act*:
 - a. Section 144 which states that a person must not drive without due care and attention, without reasonable consideration for other drivers, or at a speed excessive to road conditions.
 - b. Section 150 which states that a driver must drive on the right side of the road.
 - c. Section 154 which states that a driver must keep to the right side of the road when meeting another vehicle.
19. ICBC found that Mr. Durrani crossing the center line was the cause of the accident. It held that there was no evidence of speeding or negligence by the third party driver, so Mr. Durrani was 100% responsible for the accident.

Did Mr. Durrani file an accident responsibility claim within 90 days of the CL722?

20. Section 9 of the ACR says a party must request dispute resolution under section 4 of the CRTA for a determination about accident responsibility no more than 90 days

after ICBC issues its CL722. In this case, ICBC issued its CL722 on November 25, 2022. Section 4(2) of the CRTA says that an applicant may request dispute resolution at the CRT by filing an application and paying the applicable fee. As noted above, Mr. Durrani requested dispute resolution about accident responsibility on February 24, 2023. He obtained a fee waiver on March 2, 2023.

21. BC's *Interpretation Act* sets out how to calculate periods of time. Section 25 of the *Interpretation Act* says calculations start from a "reference day," which in this case is November 25, 2022 when ICBC issued its CL722 letter. Section 25.2(2)(a) of the *Interpretation Act* says that a period of time is calculated by counting forward from and including the day after the reference day. This means that Mr. Durrani had 90 days from and including November 26, 2022, to apply for dispute resolution. So, his deadline was February 23, 2022.
22. Mr. Durrani applied for dispute resolution on February 24, 2023 which is more than 90 days after the CL722 was issued. This means Mr. Durrani filed his application for dispute resolution after the deadline set by section 9 of the ACR. I have no authority to extend the deadline. So, I must dismiss Mr. Durrani's claim.
23. In the event that I am wrong about the limitation period in this case, I would have dismissed Mr. Durrani's claim in any event. My reasons follow.

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

24. In Mr. Durrani's submissions, he says that ICBC unreasonably determined that he was 100% responsible for the accident. He argues that (1) ICBC failed to fully investigate the third party driver's conduct, (2) the third party was speeding and caused the accident, (3) he should not be responsible for the accident because he blacked out, and (4) ICBC was biased against him. I deal with each of these issues below.
25. Mr. Durrani says the photo showing his vehicle perpendicular in the westbound lane does not prove how the accident happened. He says there is insufficient evidence

about what caused the accident. He says ICBC should have conducted a more thorough investigation into the third party driver's history and the third party's vehicle condition. He also says that the third party driver should have taken a breathalyzer test.

26. I find that ICBC's investigation was reasonable. In *De Paras v. ICBC*, 2024 BCCRT, 106, a Vice Chair found that a proper investigation does not require ICBC to endlessly investigate an accident. Instead, a proper investigation must be proportional to the circumstances. Although other CRT decisions are not binding on me, I find the Vice Chair's reasoning in *De Paras* persuasive and I apply it here. There is no evidence that the third party was impaired, distracted, or driving a vehicle with mechanical problems. I note as well that it is the police that conduct field sobriety testing, not ICBC. I find that Mr. Durrani's claims are speculative at best and ICBC was not required to investigate them.
27. The post-accident photos show Mr. Durrani's vehicle perpendicular across the opposite lane blocking oncoming traffic. The third party vehicle's front collided with Mr. Durrani's passenger side doors. There is no indication that either vehicle was moved before these photos were taken. Mr. Durrani admits that he lost consciousness before the accident. In these circumstances, I find that it was reasonable for ICBC to conclude that Mr. Durrani crossed the center line which caused the accident.
28. Mr. Durrani argues further that the third party was driving over the 30 km/hour speed limit when the road was wet and visibility was poor. He says that the third party's vehicle skidded when they braked because they were driving too fast in poor conditions. He argues that the third party's speeding was the cause of the accident so he should not be responsible.
29. The third party's statement to ICBC was that they were driving between 40 and 50 km/hour. I agree with ICBC that the posted speed limit where the accident took place is 50 km/hour. The 30 km/hour sign Mr. Durrani refers to is an advisory sign which a driver may choose to follow. I note as well that excessive speed alone is not a basis

for liability in the absence of evidence that a lower speed would have avoided or mitigated the collision (see *Uy v. Dhillon*, 2019 BCSC 1136, affirmed 2020 BCCA 163). There is no evidence that the third party could have avoided the accident if they were travelling at a lower speed. I find that it was reasonable for ICBC to conclude that speeding was not a cause of the accident.

30. Mr. Durrani also argues that he should not be liable for the accident because he blacked out. He has provided a brief letter from his GP dated November 1, 2022, which states that he must be allowed to work from home due to a medical condition. The letter does not provide a medical diagnosis. Mr. Durrani says that he has no medical conditions and never blacked out before. He says he should not be liable for unforeseen circumstances.
31. Though he did not use this term, I infer that Mr. Durrani is raising an “inevitable accident” defence which means that the accident was caused by circumstances beyond his control that were not reasonably foreseeable and could not be avoided by the exercise of reasonable care.
32. A driver having symptoms or warnings of an illness cannot raise an inevitable accident defence because losing consciousness is reasonably foreseeable (see *Holt v. Rother*, 2013 BCSC 1065). Mr. Durrani admits that just before the accident he was tired and not feeling well so he pulled off the road. He took a risk and chose to continue driving because he was near his home. I find that Mr. Durrani was negligent in continuing to drive while tired and in poor health and that losing consciousness was reasonably foreseeable. So, I find that Mr. Durrani cannot raise an inevitable accident defence.
33. Finally, Mr. Durrani argues that ICBC was biased against him. He says that he currently has a court case against ICBC for discrimination. He also says that ICBC has not reimbursed him for some medical benefits he says he is entitled to after the accident.

34. There is no evidence before me that ICBC was biased against Mr. Durrani. I find that ICBC reasonably investigated the accident and assigned Mr. Durrani 100% responsibility for the accident. In any event, this dispute is about accident responsibility. Any case Mr. Durrani may have against ICBC or with respect to his accident benefits is not before me and I make no finding about these issues.
35. Given my conclusions above, I dismiss Mr. Durrani's claims.

FEES, EXPENSES, AND INTEREST

36. 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. Durrani was not successful, so I dismiss his claim for reimbursement of CRT fees. ICBC was successful and so I find Mr. Durrani must reimburse its \$25 in paid CRT fees. Neither party claimed dispute-related expenses.

ORDERS

37. Within 30 days of the date of this decision, I order Mr. Durrani to pay ICBC \$25 as reimbursement of CRT fees.
38. ICBC is entitled to post-judgment interest under the *Court Order Interest Act*.
39. I dismiss Mr. Durrani's claims.
40. Under sections 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

