



Civil Resolution Tribunal

Date Issued: February 26, 2024

File: AR-2023-001955

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Patel v. ICBC*, 2024 BCCRT 179

B E T W E E N :

JOAN EILEEN PATEL

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. This dispute is about who is responsible for a motor vehicle accident.
2. The applicant, Joan Eileen Patel, was in a motor vehicle accident on December 2, 2022. Mrs. Patel says the respondent insurer, Insurance Corporation of British Columbia (ICBC), incorrectly determined responsibility for the accident. ICBC held

Mrs. Patel 100% responsible, but Mrs. Patel says she should be found 0% responsible instead. Mrs. Patel also claims \$5,000 in damages against ICBC.

3. ICBC says it acted reasonably in determining Mrs. Patel was 100% responsible for the accident. It asks me to dismiss Mrs. Patel's claims.
4. Mrs. Patel is represented by a friend. 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), and small claims under CRTA section 118. CRTA section 133(1)(d) and Part 2 of the *Accident Claims Regulation* (ACR) give the CRT jurisdiction over accident responsibility determinations.
6. CRTA section 2 states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
7. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, the parties to this dispute call into question the credibility, or truthfulness, of each other. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. Here, neither party requested an oral hearing, and I find that I am properly able to assess and weigh the documentary evidence and submissions before me. So, I decided to hear this dispute through written submissions.
8. CRTA section 42 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.

Accident Responsibility and Small Claims Jurisdictions

9. Mrs. Patel brought this dispute under the CRT's accident claims jurisdiction. CRTA section 133(1)(d) gives the CRT jurisdiction over a claim concerning ICBC's determination about the extent to which the applicant is responsible for an accident. Under this jurisdiction, to succeed in her claim against ICBC, Mrs. Patel must first prove that ICBC acted improperly or unreasonably in assigning responsibility for the accident to her. Second, Mrs. Patel must prove she is less responsible for the accident than ICBC assessed. This test is set out under ACR section 10.
10. However, in submissions, Mrs. Patel says she wishes to make a civil claim against ICBC under the *Insurance (Vehicle) Act* (IVA), as she says that ICBC breached its statutory obligations or insurance contract, or both. She claims \$5,000 in damages for vehicle damage and increased insurance premiums.
11. I find Mrs. Patel's claim for damages based on ICBC's statutory obligations or insurance contract is separate from her accident responsibility claim, and is instead based on IVA section 174. This section requires ICBC to indemnify an insured for their vehicle's damage to the extent the insured is not responsible for an accident. Prior decisions in the CRT's small claims jurisdiction have found that this section requires ICBC to correctly determine responsibility (see, for example, *Carriere v. ICBC*, 2023 BCCRT 963 and *Ganev v. ICBC*, 2023 BCCRT 975).
12. ICBC says that Mrs. Patel's damages claim is an attempt to circumvent the two-part test under the ACR. It is true that the tests under the ACR and under the IVA are different. As noted, under the ACR, Mrs. Patel must first prove that ICBC has acted improperly or unreasonably in assigning responsibility for the accident, before the CRT may consider whether she is less responsible than ICBC determined. In contrast, under the IVA, Mrs. Patel must only establish that ICBC incorrectly determined responsibility. However, I find nothing in the ACR or the IVA requires an insured to pursue only one of these options. Mrs. Patel is entitled to seek an accident responsibility determination under the ACR in the CRT's accident claims jurisdiction, as well as claim damages under the IVA within the CRT's small claims jurisdiction.

13. ICBC says that it would be procedurally unfair to consider Mrs. Patel's damages claim, as it was not included in her Dispute Notice and was raised late in the CRT process. ICBC asks me to consider CRTA section 11(1)(a), which says that the CRT may refuse to resolve a claim that is more appropriate for another legally binding process.
14. I agree that Mrs. Patel's damages claim was not included in her Dispute Notice. Typically, I would decline to consider a claim that is only raised in submissions. However, here Mrs. Patel submitted a letter in evidence showing that she contacted the CRT and ICBC before the tribunal decision process began, advising that she wished to pursue a claim for damages under the IVA. ICBC had notice of this additional claim and made submissions about it. So, I find it is not procedurally unfair in these specific circumstances to consider Mrs. Patel's damages claim.
15. Consistent with the CRT's mandate for accessible, informal and flexible dispute resolution, and in the interests of certainty and finality, I find it is appropriate to consider Mrs. Patel's damages claim. I also find it is appropriate to issue one decision for both claims, although the claimed remedies fall under two different areas of CRT jurisdiction (see *Karnik v. Kulasik*, 2022 BCCRT 932 at paragraphs 14 and 15). Ultimately, nothing turns on the addition of the damages claim, as I dismiss it below in any event.

ISSUES

16. The issues in this dispute are:
 - a. Whether ICBC acted improperly or unreasonably in assigning responsibility for the accident, and if so, whether Mrs. Patel has proven that she is less than 100% responsible for the accident, and
 - b. Whether ICBC has breached its statutory obligations to or contract of insurance with Mrs. Patel, and if so, whether it must pay her the claimed \$5,000 in damages.

EVIDENCE AND ANALYSIS

17. In this civil proceeding, the applicant Mrs. Patel 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 have only addressed the evidence and arguments to the extent necessary to explain my decision.

The Accident

18. The accident occurred on December 2, 2022, on Bowen Road in Nanaimo, BC. Mrs. Patel says that she turned right onto the right northbound lane on Bowen Road from a strip mall parking lot near Labieux Road. Bowen Road has two northbound lanes. Mrs. Patel says she travelled about two car lengths when a vehicle driven by a third party, FP, moved from the left northbound lane into the right lane and struck the driver’s side of her vehicle.
19. FP provided a different description of the accident to ICBC. They said their vehicle was already established in the right lane of Bowen Road when Mrs. Patel’s vehicle exited the parking lot and hit their vehicle.
20. The drivers exchanged information, and both drivers reported the accident to ICBC. The parties agree that emergency services did not attend, and there was no available video evidence. There were no witnesses to the accident other than Mrs. Patel’s husband, who was a passenger in her vehicle at the time.
21. ICBC investigated and held Mrs. Patel 100% responsible for the accident. Mrs. Patel argues that it did so improperly or unreasonably, and in breach of its statutory obligations or insurance contract.

Accident Responsibility

22. I begin with Mrs. Patel’s claim under the ACR. As noted, ACR section 10(a) requires that Mrs. Patel first prove that ICBC acted improperly or unreasonably in assigning her 100% responsibility for the accident. Only then may the CRT consider whether Mrs. Patel is in fact less than 100% responsible, under ACR section 10(b).

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

23. In the recent decision *De Paras v. ICBC*, 2024 BCCRT 106, a CRT vice chair considered the legal test under ACR section 10(a). In short, the vice chair found that to assess whether ICBC's responsibility determination was reasonable, the CRT must review ICBC's detailed responsibility assessment 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.
24. 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 generally requires ICBC to at least interview available witnesses and consider the damage to each vehicle, but does not require ICBC to endlessly investigate all accidents. A proper investigation is proportional to the circumstances. Although prior CRT decisions are not binding on me, I find the reasoning in *De Paras* persuasive and I apply it here.
25. Mrs. Patel generally argues that ICBC's responsibility assessment was unreasonable because ICBC accepted FP's version of events and ignored her own. She says ICBC's responsibility assessments contain errors, and that ICBC "fabricated" its rationale to support its initial assessment.
26. The parties provided multiple detailed responsibility assessments in evidence. The first is dated February 10, 2023 (first assessment). It reproduces both drivers' initial reports of the accident, and cites section 169 of the *Motor Vehicle Act* (MVA), which says that a person must not move a stopped or parked vehicle unless they have signaled appropriately and the movement can be made with reasonable safety. The first assessment concludes that Mrs. Patel is 100% responsible for the accident.
27. Notably, the first assessment says "In addition to the *Motor Vehicle Act*, ICBC relies on objective evidence from sources like independent witnesses and dash cameras to

assess responsibility. <Free form text - Please include additional information here.>” (reproduced as written). This suggests that ICBC’s general practice is to provide a more detailed explanation of its decision, beyond simply providing both drivers’ reports, an MVA section, and its conclusion.

28. In *De Paras*, the vice chair acknowledged that ICBC’s detailed responsibility assessments are typically short letters that ICBC must produce at a high volume, and the CRT should not expect ICBC to describe and assess every piece of evidence or provide a detailed legal analysis. However, the vice chair noted that it is impossible to determine whether a decision was reasonable if ICBC did not explain it.
29. I agree with this reasoning and apply it here. I find ICBC’s first assessment was unreasonable. It did not explain how MVA section 169 applied to the accident, or why it found that Mrs. Patel had contravened that section. It did not explain why it found Mrs. Patel 100% responsible for the accident.
30. I acknowledge that file notes in evidence show that an ICBC representative explained ICBC’s decision in more detail over the phone to Mrs. Patel, also on February 10, 2023. However, as noted, the written responsibility assessment forms the basis for determining whether ICBC’s assessment was reasonable. I find the reasonableness requirement necessarily includes an expectation that ICBC provide consistent information, whether it is interacting with an insured by phone or in writing. As ICBC did not adequately explain its decision in the first assessment, I find it acted unreasonably.
31. In submissions, ICBC says that it referenced two incorrect MVA sections in the first assessment, though as noted it only referenced MVA section 169. ICBC says it realized this error when it received Mrs. Patel’s CRT Dispute Notice, and it sent a corrected assessment to Mrs. Patel on April 17, 2023. While Mrs. Patel also references an April 17, 2023 assessment, the only updated responsibility assessments ICBC provided in evidence are dated September 25, 2023 and November 23, 2023. It is not clear whether and how these two documents differ from ICBC’s April 17, 2023 assessment. The two assessments appear identical to each

other, despite having different dates. I will refer to them collectively as the “later assessments”.

32. The later assessments provide more detail than the first assessment. They include both drivers’ initial reports as well as later statements that each driver made to ICBC. The later assessments identify MVA section 176 as being applicable, which I discuss further below. They explain that FP’s vehicle was established on the road and had the right of way, so the onus was on Mrs. Patel to make sure that it was “clear” for her to exit the parking lot. The later assessments say that the vehicle damage was consistent with Mrs. Patel entering the roadway and impacting FP’s vehicle.
33. While the later assessments explain ICBC’s decision in more detail, I find they contain several errors and inconsistencies. First, the later assessments say that Mrs. Patel is disputing being held 100% liable for striking a stationary vehicle, which is undisputedly not the case for this accident and is clearly an error.
34. Second, ICBC’s submissions about its rationale for its decision are inconsistent with the later assessments, in two ways. As noted, the later assessments say that the vehicle damage is consistent with Mrs. Patel striking FP’s vehicle while entering the road. However, in submissions ICBC argues that the damage is consistent with either driver’s version of the accident. Photographs in evidence and the drivers’ statements show that Mrs. Patel’s vehicle sustained damage to the front driver’s side bumper, and FP’s vehicle was damaged on the passenger side. I find this damage would be similar regardless of whether Mrs. Patel struck FP’s vehicle while entering the road, or whether FP struck Mrs. Patel’s vehicle while changing lanes.
35. While it is technically correct for the later assessments to say that the damage is consistent with Mrs. Patel’s vehicle striking FP’s vehicle while entering the road, I find this statement is incomplete without an acknowledgment that the damage is also consistent with Mrs. Patel’s description of the accident. The first assessment does not mention reviewing the vehicle damage at all, and the later assessments only say that the damage is consistent with FP’s description of the accident. I find it is unreasonable for ICBC not to have considered whether the damage was consistent

with Mrs. Patel's description, or if it did so, not to explain this in its responsibility assessments.

36. Lastly, as noted, the later assessments identify MVA section 176 as the only section applicable to the accident. However, in submissions, ICBC says it also considered section 151, which prohibits a driver from making a lane change unless they can do so safely and without affecting the travel of another vehicle. ICBC says that it relied on the "greater onus" under section 176. This information was not included in the later assessments. I find section 151 is applicable, given Mrs. Patel's allegation that FP changed lanes into her vehicle and FP's statement that they changed lanes before the accident. If ICBC considered section 151 in making its decision, as it argues, it did not mention that consideration in any of its responsibility assessments. I find it is unreasonable for ICBC to consider an applicable MVA section but not refer to that section in its responsibility assessment.
37. Ultimately, while I do not find that ICBC "fabricated" its rationale to support its initial assessment as Mrs. Patel argues, I find its multiple responsibility assessments did not adequately explain its decision to hold Mrs. Patel 100% responsible for the accident. To be clear, I do not mean to say that any error in ICBC's responsibility assessment is necessarily unreasonable, or that an unreasonable assessment cannot be corrected by issuing an updated letter. The standard is reasonableness, not perfection. However, here I find that even the updated assessments contained multiple errors and did not provide a detailed and accurate rationale for ICBC's decision. So, I find ICBC acted unreasonably in its responsibility determination and Mrs. Patel has met the first part of the ACR test.
38. Given this, I find I do not need to consider Mrs. Patel's additional arguments about why she believes ICBC acted improperly or unreasonably. I turn to the second part of the ACR test.

To what extent is Mrs. Patel responsible for the accident?

39. As noted, ICBC relies on MVA section 176 in support of its position that Mrs. Patel is 100% responsible for the accident. Section 176(1) addresses yielding to pedestrians on sidewalks, so I find it is inapplicable. Mrs. Patel says section 176(2) is also inapplicable, as it deals with crossing a highway from an alley, lane, driveway, building, or private road. However, section 176(2) also applies to a vehicle *entering* a highway from those areas, and requires the driver to yield the right of way to traffic approaching on the highway so closely that it constitutes an immediate hazard.
40. Mrs. Patel was undisputedly entering Bowen Road, which as a public road is a “highway” under the MVA. She was leaving a strip mall parking lot. While section 176(2) does not explicitly mention a parking lot, the BC Supreme Court has applied section 176(2) in cases involving parking lots (see for example *Kerr v. Hall*, 2013 BCSC 2347 and *Glavica v. Lott*, 2014 BCSC 2238).
41. Mrs. Patel also argues that ICBC’s position that she was required to yield the right of way would only apply to a two-way road with traffic travelling in both directions. It is not clear what she means by this, as there is no dispute that Bowen Road does allow travel in both directions. In any event, section 176(2) applies to any traffic that is an immediate hazard, not just traffic in a specific direction of travel. So, I find section 176(2) is applicable here.
42. I also find MVA section 151 applicable. As noted above, section 151(a) prohibits a driver from making a lane change unless they can do so safely. Here, I find Mrs. Patel has not proven that FP made an unsafe lane change, for the following reasons.
43. Because Mrs. Patel was required by section 176(2) to yield the right of way to existing traffic, she was the servient driver. FP, as the driver already established on Bowen Road, was the dominant driver (*Lowe v. Greyhound Canada Transportation Corp.*, 2008 BCSC 64 at paragraph 30). The burden is on Mrs. Patel to prove that FP’s vehicle was not an immediate hazard at the time she entered Bowen Road (*Kerr v. Hall*, 2013 BCSC 2347 at paragraphs 14-15 and 20).

44. A vehicle is an immediate hazard if its driver has to take some sudden or violent action to avoid the threat of a collision if the servient driver fails to yield the right of way (*Keen v. Stene*, 1964 CanLII 521 (BCCA)).
45. In her statement to ICBC and her submissions, Mrs. Patel says that she saw FP's vehicle on the road when she approached the parking lot exit, but that it was four to five car lengths away and was in the left lane. She says that she turned onto Bowen Road and drove approximately two car lengths before FP's vehicle hit her.
46. In contrast, FP says in their statement that they had been in the right lane for about five car lengths when Mrs. Patel's vehicle pulled out of the parking lot and hit them. FP says that they swerved to the left in an attempt to avoid the accident but that Mrs. Patel's vehicle hit their passenger side.
47. As noted, there was no video footage of the accident and no independent witnesses. The vehicle damage is consistent with both drivers' descriptions. The question is whether Mrs. Patel has proven that she is less responsible for the accident than ICBC assessed.
48. Mrs. Patel provided a statement from her husband, MP. MP's statement says that FP's vehicle was "a safe distance away" and was in the left lane when Mrs. Patel turned onto Bowen Road. I place very little weight on this statement, because MP as Mrs. Patel's spouse has an interest in the outcome of the dispute (see *Kim v. Wood*, 2021 BCSC 2135 at paragraph 53). Given that MP is not a neutral witness, I find their statement is not sufficiently reliable to prove that FP's vehicle was not an immediate hazard at the time Mrs. Patel turned onto Bowen Road.
49. Mrs. Patel also says that FP admitted fault for the accident when the drivers were exchanging information. She says that FP acknowledged that they had changed lanes because they were going to be turning right. This is a hearsay statement. While the CRT has discretion to admit hearsay evidence, I decline to do so here as it is about a central issue in this dispute, and it is unsupported by any other evidence. FP

denied responsibility for the accident in their statement to ICBC, and MP's statement does not mention FP admitting responsibility.

50. I find the parties' positions in this dispute are similar to those in *Glavica*. In that case, the defendant was turning left out of a parking lot. He said that he safely made his left turn into the left lane, when the plaintiff swerved from the right lane into the left lane and hit him. In contrast, the plaintiff said she was established in the left lane when the defendant's vehicle turned left out of the parking lot and hit her. The court found that the damage to both vehicles was consistent with either version of the accident, as is the case here.
51. The court considered MVA section 176(2) and found that the defendant failed to yield the right of way to the plaintiff. The court noted that even if the plaintiff had been driving in the right lane, as the defendant alleged, the defendant acted hastily by making his left turn before waiting for the plaintiff's vehicle to pass. The court said this did not indicate careful driving, as there were no other vehicles on the road at the time and the plaintiff's vehicle would have passed by within seconds.
52. I find similar reasoning applies in this case. Mrs. Patel admits to seeing FP's vehicle approaching, and says it was the only car left after she let other vehicles pass. I find Mrs. Patel has not proven that FP's vehicle was in the left lane when she entered Bowen Road, but even if it had been, I find a prudent driver would have waited for FP's vehicle to pass.
53. In summary, I find Mrs. Patel has not proven that FP's vehicle was not an immediate hazard at the time she entered Bowen Road. In the absence of any evidence to support Mrs. Patel's argument that she was established on the road before FP changed lanes, I find this allegation unproven.
54. So, I find Mrs. Patel has not proven that she is less than 100% responsible for the accident. It follows that I must dismiss her claim under the ACR.

Damages Claim

55. I turn to Mrs. Patel's damages claim. As noted, IVA section 174 requires that ICBC indemnify an insured for their vehicle damage or loss to the extent the insured is not responsible for the accident. This requires that ICBC correctly assess responsibility. I find Mrs. Patel has not proven that ICBC's responsibility assessment was incorrect, for the reasons outlined above.
56. Mrs. Patel also alleges that ICBC has treated her poorly and unfairly. She does not explain this argument further, other than general allegations that ICBC is biased against her. Mrs. Patel raised these arguments in reply submissions, so ICBC did not have an opportunity to respond to them. In any event, while I have found above that ICBC acted unreasonably in its responsibility assessment, I find there is no evidence that this was motivated by bias. I find Mrs. Patel has not proven that ICBC breached its statutory obligations or insurance contract. It follows that I must dismiss her damages claim.
57. I note that I would have dismissed Mrs. Patel's damages claim in any event, as she has not proven her claimed damages. Mrs. Patel claims \$5,000 for her vehicle damage and any increase to her insurance premiums. However, she provided no evidence of the cost to repair her vehicle damage or of any increased insurance costs.
58. Mrs. Patel also says that the length of time it has taken to resolve this matter has affected her health and well-being, but she provided no evidence in support of this. So, even if I had found that ICBC had breached its obligations to Mrs. Patel, I would have dismissed her damages claim as unproven.

CRT FEES AND EXPENSES

59. 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. Mrs. Patel was unsuccessful, so I dismiss her claim for

CRT fees. ICBC was successful, so I find Mrs. Patel must reimburse it for the \$25 it paid in CRT fees. Neither party claimed dispute-related expenses.

ORDERS

60. Within 21 days of this decision, I order Mrs. Patel to pay ICBC \$25 as reimbursement for CRT fees.

61. ICBC is entitled to post-judgment interest under the *Court Order Interest Act*.

62. I dismiss Mrs. Patel's claims.

63. 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.

Alison Wake, Tribunal Member