



Civil Resolution Tribunal

Date Issued: February 26, 2024

File: AR-2023-001839

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Swift v. ICBC*, 2024 BCCRT 181

BETWEEN:

CHRISTOPHER SWIFT

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about accident responsibility.
2. The applicant, Christopher Swift, was in a motor vehicle accident with a third party in Calgary, Alberta on January 5, 2023. Mr. Swift says the respondent insurer, Insurance

Corporation of British Columbia (ICBC), unreasonably and improperly determined responsibility for the accident. Mr. Swift says he should be held 0% responsible instead.

3. ICBC says it reasonably investigated the accident and correctly held Mr. Swift 100% responsible.
4. Mr. Swift 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. CRTA section 2 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. CRTA section 39 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. CRTA section 42 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.

Preliminary issue

9. Mr. Swift submitted his application for dispute resolution before asking ICBC to provide its detailed responsibility assessment letter for the accident (CL722), contrary to section 148.8 of the *Insurance (Vehicle) Regulation* (IVR). In its Dispute Response, ICBC said that Mr. Swift's claim should be dismissed on that basis. However, since that time ICBC provided the CL722, and in submissions ICBC did not continue to take issue with Mr. Swift's failure to request the CL722 before filing this dispute. Given the above, I find it unnecessary to further address IVR section 148.8, and I will consider this dispute on its merits.

ISSUES

10. 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. Swift responsible for the accident.

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant Mr. Swift must prove his claims on a balance of probabilities, meaning "more likely than not". While I have read all the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. Under ACR section 10, to succeed in his claim against ICBC, Mr. Swift must first prove that ICBC acted improperly or unreasonably in assigning responsibility for the accident to him. Second, Mr. Swift must prove he is less responsible for the accident than ICBC assessed. Mr. Swift must prove both parts of the test.

The Accident

13. On January 5, 2023, Mr. Swift was travelling northbound on Deerfoot Trail in Calgary, Alberta. There were three northbound lanes, and Mr. Swift was travelling in lane 3/3. Mr. Swift says he completed a successful lane change into lane 2/3. He says he had maintained his lane position for around 3 seconds, when the third party driver rear-ended his vehicle.
14. The third party driver is not insured by ICBC. After Mr. Swift reported the accident as described above, ICBC contacted the third party's insurer to obtain their version of events. The third party's insurer provided the third party's version of events to ICBC, and ICBC provided its notes as evidence. According to ICBC's notes, the third party reported he was travelling in lane 2/3 when Mr. Swift made a quick lane change from lane 3/3 to lane 2/3. The third party reported that the right passenger side, fender and wheel of his vehicle collided with Mr. Swift's vehicle, with no direct damage to the front of the third party's vehicle.
15. ICBC acknowledges that its notes are all hearsay. However, the CRT routinely accepts adjusters' notes of phone calls because they are sufficiently reliable. See for example *Medel v. Grewal*, 2019 BCCRT 596. I take the same approach here. I find the oral statements recorded in ICBC's notes are not disputed, and are sufficiently reliable. I accept that Mr. Swift and the third party made the statements as described above.
16. After investigating the accident, ICBC held Mr. Swift 100% responsible for the accident.
17. As noted, Mr. Swift filed his application for dispute resolution before ICBC issued a CL722. However, ICBC issued a CL722 on May 2, 2023. In the CL722, ICBC said section 151(a) of the *Motor Vehicle Act* (MVA) applied to the accident. Section 151(a) says that a driver must not drive a vehicle from one lane to another when a broken line exists between the lanes, unless the driver has ascertained that the movement can be made with safety and will in no way affect the travel of another vehicle. ICBC

said after considering the MVA and the evidence about the accident, ICBC found Mr. Swift 100% respondent.

18. The accident happened in Alberta and ICBC acknowledges that Alberta laws apply to the accident. However, the *Use of Highway and Rules of the Road Regulation* under Alberta's *Traffic Safety Act* has similar provisions to British Columbia's MVA related to traffic lanes and lane changes.

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

19. As noted above, ACR section 10(a) says that to succeed in his claim, Mr. Swift must prove that ICBC acted improperly or unreasonably in finding him 100% responsible for the accident.
20. 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.
21. Mr. Swift argues ICBC improperly and unreasonably investigated and decided responsibility for the accident because it did not communicate properly with Mr. Swift, failed to take vehicle measurements or properly consider the vehicle damage, and failed to consider the third party's conduct and circumstances. I address each below.

Communication with Mr. Swift

22. Mr. Swift says ICBC was not responsive to phone calls, and did not email him when it said it would. However, the evidence shows Mr. Swift communicated with ICBC on several occasions, both by phone and by email. This is not a situation in which Mr. Swift was not able to speak with anyone at ICBC about the accident. He was able to provide his initial report, a detailed statement, and photographs. I find Mr. Swift has not proved that ICBC failed to reasonably communicate with him about the accident, and there is no evidence that any lack of communication affected ICBC's decision.

Vehicle measurements and damage

23. Mr. Swift provided ICBC with photographs of the damage to his vehicle and the third party's vehicle. ICBC says the photographs show damage to the driver's side of Mr. Swift's vehicle and the passenger side of the third party vehicle, with no direct impact to either the rear bumper of Mr. Swift's vehicle or the front bumper of the third party's vehicle. ICBC says the damage is consistent with the third party's version of the accident that Mr. Swift changed lanes into him, rather than being rear ended.
24. Mr. Swift argues that ICBC should have asked for vehicle measurements to help determine the cause of damage. He says that an assessment of the vehicle damage would show his vehicle was struck from behind, consistent with him being rear-ended after being established in lane 2/3 for around 3 seconds. Mr. Swift provided various arguments about how the vehicle damage supports his version of events, and says ICBC failed to consider how the vehicle damage supports his version of the accident.
25. The photographs are consistent with the third party's version of the accident, and show damage to the front passenger side of the third party's vehicle and to the rear driver's side of Mr. Swift's vehicle. Further, apart from his own submissions, Mr. Swift provided no evidence to show that damage measurements would have shown something different than the photographs, or would have supported his description of the accident. I place no weight on Mr. Swift's submissions about what damage measurements would have shown about the accident's cause, because it is outside of ordinary knowledge and would require expert evidence. See *Bergen v.*

Guliker, 2015 BCCA 283. So, I find Mr. Swift has not proven that ICBC acted improperly or unreasonably in considering the vehicle damage photographs, or by failing to take damage measurements.

Third party's conduct and circumstances

26. Mr. Swift says ICBC failed to consider the third party's conduct and circumstances. Mr. Swift says the third party was speeding. ICBC says the third party was undisputedly travelling in lane 2/3. ICBC says because Mr. Swift was in the vehicle changing lanes, Mr. Swift had to show his lane change was completed safely. ICBC argues even if the third party was not speeding, Mr. Swift has not shown he could have changed lanes safely if the third party had been driving more slowly. I agree. I find Mr. Swift has not shown that ICBC unreasonably or improperly failed to consider the third party's speed when investigating the accident and assigning responsibility.
27. Mr. Swift also says after the accident, the third party told him he had undergone eye surgery and had difficulty seeing. However, Mr. Swift provided no evidence to support this allegation, and there is no evidence that he reported this to ICBC before starting this dispute. So, I find Mr. Swift has not shown that ICBC failed to consider the third party's conduct and circumstances when investigating the accident and assigning responsibility.
28. ICBC says it was able to conclude its liability investigation once it received both Mr. Swift's and the third party's details of the accident, as well as photographs and additional details from Mr. Swift. ICBC says it did not obtain further statements because there were no witnesses. ICBC also says neither party provided any video footage of the accident.
29. In the circumstances, I find that ICBC reasonably obtained both Mr. Swift's and the third party driver's version of events and considered them, along with the damage photographs, before making a decision about responsibility. There were no reported witnesses to the accident nor any video footage for review.

30. On balance, I find Mr. Swift has not proven ICBC acted improperly or unreasonably in investigating the accident and assigning responsibility. So, I find Mr. Swift has not satisfied section 10(a) of the 2-part test. It follows that Mr. Swift's claim must fail. Given this, I do not need to consider whether Mr. Swift should be held less responsible for the accident, which is part 2 of the test, set out in ACR section 10(b).

FEES, EXPENSES AND INTEREST

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

ORDERS

32. Within 30 days of the date of this order, I order Mr. Swift to pay ICBC \$25 as reimbursement of CRT fees.
33. ICBC is entitled to post-judgment interest under the *Court Order Interest Act*.
34. I dismiss Mr. Swift's claims.
35. Under CRTA sections 57 and 58, 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.

Leah Volkers, Tribunal Member