



Civil Resolution Tribunal

Date Issued: April 9, 2024

File: AR-2022-007802

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Huble v. ICBC*, 2024 BCCRT 343

BETWEEN:

LINDA HUBLE

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, Linda Huble, was in a motor vehicle accident with a third party in a parking lot in Prince George, BC, on September 27, 2022. Ms. Huble says the

respondent insurer, Insurance Corporation of British Columbia (ICBC), unreasonably and improperly found her 100% responsible for the accident. Ms. Huble says she should be held 0% responsible instead.

3. ICBC says it reasonably investigated the accident and correctly held Ms. Huble 100% responsible.
4. Ms. Huble 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 court.

Preliminary decision

9. Ms. Huble submitted her application for dispute resolution before asking ICBC to provide its detailed responsibility assessment letter for the accident (known as a CL722), contrary to section 148.8 of the *Insurance (Vehicle) Regulation* (IVR). In its Dispute Response, ICBC said that Ms. Huble's claim should be dismissed because she did not comply with the IVR section 148.8 requirements. A former CRT vice-chair issued a preliminary decision in August 2023 and considered whether the CRT should refuse to resolve this dispute on this basis. The vice-chair found that the IVR section 148.8 requirements were ultimately met when Ms. Huble requested a CL722, and ICBC issued a CL722, despite the fact that Ms. Huble did so after filing her notice of application for this dispute. The CRT vice-chair found ICBC impliedly waived the requirement that Ms. Huble request the CL722 within 90 days of ICBC issuing a notification of responsibility (known as a CL281), as required by IVR section 148.8(2), when it provided the CL722 despite Ms. Huble's late request. The vice-chair also found it significant that ICBC did "not take issue" with Ms. Huble's initial failure to meet the criteria set out under IVR section 148.8.
10. In *Jawanda v. ICBC*, 2024 BCCRT 250, another tribunal member (now, vice-chair) found that although it was not appropriate nor within the CRT's jurisdiction to order ICBC to provide a CL722 when a person requests it more than 90 days after receiving a CL281, ICBC itself has discretion to agree to do so. I find that is the case here. ICBC provided the CL722 despite Ms. Huble's late request. I also note that in submissions, ICBC has not continued to take issue with the timing of Ms. Huble's request for a CL722, or made any further arguments about this issue.
11. Given all the above, I agree with the vice-chair's reasoning in the context of this dispute. Although late, I find that Ms. Huble has requested and received the CL722 from ICBC, and ICBC has impliedly waived the time limit for doing so under IVR section 148.8(2). So, I find Ms. Huble has met the IVR section 148.8 requirements, and has filed this dispute not more than 90 days after the CL722 date. Therefore, I will consider this dispute on its merits.

Reimbursement of increased premiums

12. In submissions, Ms. Huble requested reimbursement for alleged increased insurance premiums due to the accident. However, Ms. Huble did not include this claim in her Dispute Notice. I find this aspect of Ms. Huble's claims is not properly before me and have not considered it in this dispute.

ISSUES

13. The issues in this dispute are:
- a. Was ICBC's investigation or responsibility determination unreasonable or improper?
 - b. If yes, has Ms. Huble proven she is less than 100% responsible for the accident?

BACKGROUND, EVIDENCE AND ANALYSIS

14. In a civil claim such as this, the applicant Ms. Huble must prove her 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.
15. Under ACR section 10, to succeed in her claim against ICBC, Ms. Huble must first prove that ICBC acted improperly or unreasonably in assigning responsibility for the accident to her. Second, Ms. Huble must prove she is less responsible for the accident than ICBC assessed. Ms. Huble must prove both parts of the test.

The Accident

16. On September 27, 2022, Ms. Huble parked her vehicle in a parking lot in Prince George, BC. The parking stall adjacent to the driver's side of Ms. Huble's vehicle was empty when she did so. Ms. Huble opened the driver's side door, and it was struck

by another vehicle driven by a third party as they were pulling into the adjacent stall. None of this is disputed.

17. Ms. Huble reported the accident to ICBC on September 27, 2022 and provided a phone statement. According to ICBC's notes, Ms. Huble reported that she pulled into an empty stall, turned off the engine and removed her seatbelt. No one was beside her as she parked. She did not look out her window to see if somebody was pulling in to her left. She opened her door and there was a bang. The third party hit her driver's side door with their right front bumper. Ms. Huble was not aware of the third party vehicle and did not hear any honking. ICBC's notes also indicate the statement was read back to Ms. Huble and was true to the best of her knowledge. Ms. Huble also indicated there was a witness, and undisputedly provided their contact information to ICBC.
18. ICBC also obtained the third party's version of events. According to ICBC's notes, the third party reported they were about to park their vehicle in a parking stall. When they were halfway into the parking stall, Ms. Huble suddenly opened the driver's side door. The third party's right front bumper struck Ms. Huble's driver's side door. The third party reported they had dash camera footage of the accident.
19. In her reply submissions, Ms. Huble denies making the September 27, 2022 statement detailed above to ICBC "in the form that ICBC states". Ms. Huble says a statement "along the lines set out in this brief was in fact made", but says the "specific statement" that ICBC attributes to her was not made. Ms. Huble says she took great care in making her statement, and says it was recorded, but ICBC has told her the recording is no longer available. Ms. Huble says without producing the exact statement or recording, ICBC should not be permitted to conduct its litigation in this manner. I infer she argues the CRT should not rely on the September 27, 2022 statement as recorded in ICBC's notes, including where it indicates that Ms. Huble reported not looking before opening her door. However, Ms. Huble did not provide any details of the statement she says she provided, or explain how it differed in any way from the September 27, 2022 statement ICBC recorded in its notes. Notably, she

did not deny any specific part of the statement recorded by ICBC, including where it indicated that she reported not looking before opening her door. So, I find Ms. Huble has not provided evidence or submissions to indicate that the September 27, 2022 statement is unreliable. Further, ICBC's notes indicate that the statement was read back to Ms. Huble, which Ms. Huble did not address in her submissions.

20. 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. Given all the above, I do not accept Ms. Huble's submission that she did not make the September 27, 2022 statement recorded in ICBC's notes. I find the oral statements recorded in ICBC's notes are sufficiently reliable, and I accept that Ms. Huble and the third party made the statements as described above. This means I find that once parked, Ms. Huble did not look before opening her door.
21. ICBC also reviewed dash camera footage from the third party's vehicle, and determined it showed Ms. Huble's car parked in a parking stall, the third party turning into the parking stall beside Ms. Huble's, Ms. Huble opening her door, and the door colliding with the third party's front bumper.
22. After investigating the accident, ICBC held Ms. Huble 100% responsible for the accident.
23. As discussed above, Ms. Huble filed her application for dispute resolution before a CL722 was requested or issued. ICBC later issued a CL722 on April 27, 2023. In the CL722, ICBC said section 203 of the *Motor Vehicle Act* (MVA) applied to the accident. Section 203(1) says that a person must not open a vehicle's door on the side available to moving traffic unless and until it is reasonably safe to do so. ICBC said after considering the MVA and the evidence about the accident, including the dash camera footage provided by the third party, ICBC found Ms. Huble 100% responsible.

Was ICBC's decision unreasonable or improper?

24. As noted above, ACR section 10(a) says that to succeed in her claim, Ms. Huble must prove that ICBC acted improperly or unreasonably in finding her 100% responsible for the accident.
25. 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.
26. Ms. Huble argues ICBC improperly and unreasonably investigated and decided responsibility for the accident because it refused to contact a witness that Ms. Huble provided contact information for, hastily reviewed the dash camera footage and made a "snap judgment", and did not consider the third party's obligations while driving in a parking lot. I address each of these below.

Dash camera footage review

27. Ms. Huble says ICBC hastily reviewed the dash camera footage and made a snap judgment about responsibility for the accident. Ms. Huble alleges that ICBC reviewed the dash cam footage while on the phone with her. However, ICBC's initial file review notes indicate that it reviewed Ms. Huble's and the third party's files, including the dash camera footage, before determining responsibility and before calling Ms. Huble to advise her of its responsibility assessment. I find Ms. Huble has not proved that

ICBC hastily reviewed the dash camera footage or made a snap judgment about responsibility for the accident.

Witness contact

28. Ms. Huble says ICBC did not contact a witness to the accident. ICBC does not dispute this. ICBC says it was able to conclude its responsibility investigation once it received both Ms. Huble's and the third party's details of the accident, and reviewed the dash camera footage. ICBC says it did not contact the witness provided by Ms. Huble because the dash camera footage clearly showed how the accident happened. ICBC says given the dash camera footage, the witness would not have provided additional information that would have assisted in the liability investigation. I agree. I find the dash camera footage clearly shows Ms. Huble opening her door into the adjacent parking stall without looking, and as the third party was pulling in. Further, Ms. Huble did not provide any witness statements to show that the witness would have provided any additional information about the accident that is not shown in the dash camera footage.
29. While in some cases, ICBC not contacting a witness may show that it failed to reasonably and properly investigate and assign responsibility for the accident, I find that is not the case here. As discussed above, I have already found that Ms. Huble reported to ICBC that she did not look before she opened her door. Although Ms. Huble argues that dash camera does not show her failing to look, I disagree. I find the dash camera footage, and still images from the dash camera footage, show Ms. Huble opened her door without looking. I also find the dash camera footage shows she did so as the third party was already pulling into the parking stall beside Ms. Huble's vehicle, and the third party vehicle made contact with her door almost immediately as it was opened. The dash camera footage shows that Ms. Huble opened her door into moving traffic when it was unsafe to do so, contrary to MVA section 203.
30. In the specific circumstances of this dispute, I find ICBC not contacting Ms. Huble's witness does not show that ICBC failed to reasonably and properly investigate and

assign responsibility for the accident. There is no evidence that obtaining the witness statement would have affected ICBC's decision. So, I find ICBC reasonably and properly investigated and assigned responsibility for the accident relying on the dash camera footage, without contacting Ms. Huble's witness.

Third party's MVA obligations while driving in a parking lot

31. Ms. Huble says ICBC also failed to consider the third party's MVA obligations while driving in a parking lot. Ms. Huble referred to various MVA sections, including MVA section 144, which requires a person to drive with due care and attention, with reasonable consideration for other persons using the highway, without excessive speed. Ms. Huble says parking lots contain high volumes of pedestrian traffic including children, and moving vehicles must be aware of their surroundings and be prepared to respond to changes in their view. Ms. Huble says the third party did not slow down sufficiently, did not signal before turning, and did not brake or honk upon seeing an open door. However, Ms. Huble has not shown that the accident would have been avoided if the third party had done any of the above. This is particularly so given the evidence clearly shows that Ms. Huble did not look before opening her door into the adjacent parking stall. I find Ms. Huble has not shown that ICBC unreasonably or improperly failed to consider the third party's obligations while driving in a parking lot when investigating the accident and assigning responsibility.
32. In the circumstances, I find that ICBC reasonably obtained both Ms. Huble's and the third party driver's version of events and considered them, along with the dash camera footage, before making a decision about responsibility.
33. On balance, I find Ms. Huble has not proven ICBC unreasonably or improperly investigated the accident and assigned responsibility. So, I find Ms. Huble has not satisfied section 10(a) of the 2-part test. It follows that Ms. Huble's claim must fail. Given this, I do not need to consider whether Ms. Huble 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

34. 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 Ms. Huble was not successful, I dismiss her fee claim. ICBC did not pay any CRT fees and neither party claimed any dispute-related expenses.

ORDER

35. I dismiss Ms. Huble's claims and this dispute.

Leah Volkers, Tribunal Member