



Civil Resolution Tribunal

Date Issued: June 21, 2024

File: AR-2023-004672

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Janus v. ICBC*, 2024 BCCRT 585

BETWEEN:

MAGDALENA NICOLE JANUS

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. This dispute is about responsibility for a motor vehicle accident. The applicant, Magdalena Nicole Janus, was driving along Hornby St., just past Dunsmuir St., when

a third party driver, GR, changed lanes in front of her and, soon after, suddenly stopped. The applicant rear-ended GR.

2. The applicant says the respondent insurer, Insurance Corporation of British Columbia (ICBC), issued an April 19, 2023 accident responsibility letter that incorrectly determined the applicant was 100% responsible. The applicant says ICBC acted unreasonably in doing so and that she is between 0% and 25% responsible.
3. After the applicant filed her dispute, ICBC changed its apportionment of responsibility. Its final decision found the applicant and GR were equally responsible for the accident. However, since the applicant continued her claim, I am not bound by ICBC's updated decision, and my decision does not turn on it. The updated decision simply supports ICBC's position in this dispute that the applicant is 50% responsible. ICBC asks me to dismiss the applicant's claims on that basis.
4. The applicant is self-represented. An authorized employee represents ICBC.
5. For the reasons that follow, I find ICBC acted unreasonably in its initial determination of the applicant's responsibility. I also find the applicant is 20% responsible.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over accident claims brought under *Civil Resolution Tribunal Act* (CRTA) section 133. CRTA section 133(1)(d) and *Accident Claims Regulation* (ACR) Part 2 give the CRT jurisdiction over accident responsibility determinations. CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
7. CRTA section 39 says that the CRT has discretion to decide the hearing's format, including by writing, telephone, videoconferencing, email, or a combination of these. In this matter, neither party requested an oral hearing. There is also dashcam footage of the accident. So, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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. The applicant initially provided a copy of their dashcam footage without audio. Late in the dispute process, the applicant provided a copy with audio. ICBC reviewed the footage with audio and advised it did not change their submissions. Since there is no prejudice to ICBC, I accept the late evidence and have considered it in coming to my conclusion.

ISSUES

10. The issues in this dispute are:
 - a. Did ICBC act unreasonably or improperly in determining accident responsibility?
 - b. If so, has the applicant proven she was less responsible than ICBC assessed?

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil claim such as this, 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 have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. Under ACR section 10, to succeed in her claim against ICBC, the applicant must first prove that ICBC acted improperly or unreasonably in assigning her responsibility for the accident. Second, the applicant must prove she is less responsible for the accident than ICBC assessed. She must prove both parts of the test.

The Accident

13. Dashcam footage from the applicant's car shows the accident.
14. On January 11, 2023, the applicant was driving in Vancouver. She drove a black Audi westbound in the middle of three lanes on Hornby St. towards the intersection with Dunsmuir St. GR was driving a Ford SUV in the right lane.
15. As the applicant approached and crossed Dunsmuir, GR signaled and quickly changed lanes, moving from the right lane to the middle lane. Almost all of GR's lane change took place in the middle of the intersection and left little space between GR and the applicant. The applicant slowed her vehicle and flashed her headlights twice at GR as they crossed the intersection.
16. Both parties finished crossing the intersection. GR signaled a change into the vacant left lane at the same time as the applicant began to move her car into the left lane. As both parties changed into the left lane, the applicant again flashed her lights. She also sounded her horn twice. GR then suddenly and unexpectedly applied the brakes and came to a complete stop. The applicant rear-ended GR.

ICBC's Investigation and Decision

17. ACR section 10(a) says that to succeed in her claim, the applicant must first prove that ICBC acted improperly or unreasonably in determining her responsibility for the accident. As I note above, the applicant filed on the basis of ICBC's initial, April 19 decision. So, it is the process leading to that decision that I have considered.
18. In determining whether ICBC acted improperly or unreasonably, my analysis begins with ICBC's detailed responsibility assessment letter, called a CL722. This letter sets out, in detail, the reasons why ICBC assigned responsibility in the manner it did.
19. 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.

20. The applicant reported the accident to ICBC the day it happened. ICBC's notes generally align with the accident description above, though the applicant incorrectly says GR did not signal before changing lanes. The applicant also provided witness contact information.
21. The next day, the applicant gave ICBC an oral statement that generally aligns with the dashcam footage, though she again incorrectly described GR's use of their turn signal, this time saying GR had their turn signal on the whole time.
22. An ICBC adjuster's notes show they reviewed the dashcam footage and obtained a statement from the applicant's witness on January 17, 2023. I find the witness's statement generally matched the dashcam footage. Importantly, the witness confirmed there was no visible reason for GR to brake, as there was nothing in front of them.
23. After reviewing the footage and witness statement, ICBC determined the applicant was 100% responsible. The applicant disagreed and requested a review.
24. In the April 19, 2023 CL722, ICBC confirmed the applicant was 100% responsible. It cited *Motor Vehicle Act* (MVA) section 162(1), which prohibits a driver from following more closely than reasonable and prudent, given the surrounding circumstances, including vehicle speed, nature of traffic, and the highway's condition.
25. However, as the applicant points out, ICBC's CL722 incorrectly noted that there was no independent witness.

26. As I set out above, ICBC obtained an independent witness statement. Without reviewing that evidence, ICBC could not properly address the entirety of the circumstances. ICBC's statement in the CL722 that there was no witness calls into question whether ICBC considered the witness statement in making its decision. I note that ICBC did not say it preferred the dashcam footage to the eyewitness – it says there was no independent witness statement.
27. I acknowledge that in coming a decision, ICBC is not held to the "rigorous standard of a judge."¹ However, I find it must base its assessment on the information it collected. I find the witness statement was a critical piece of evidence that ICBC was obligated to consider when determining whether the applicant was following too closely. By saying there was no witness statement in the CL722, I find ICBC could not have properly considered and applied MVA section 162(1), and so acted unreasonably in determining the applicant was 100% liable.

Responsibility

28. Since I have found ICBC acted unreasonably, I must now determine whether the applicant has proved she is less responsible than determined by ICBC. As noted above, after issuing the CL722, ICBC undertook a further review and reduced the applicant's responsibility from 100% to 50%.
29. MVA section 162 creates a presumption that following drivers are at fault for rear-end accidents. This is because following drivers must leave enough room to safely react to unexpected stops or events. However, the presumption is not absolute since the following driver must leave space according to the circumstances. So, I must consider the circumstances together.
30. In this case, I find each driver acted negligently and bears partial responsibility for the accident. I address each's negligence below.

¹ See: *MacDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283.

31. I find GR acted negligently by coming to a sudden and unexpected stop in the middle of the left lane. GR says they moved into the left lane in preparation to stop 5 meters ahead and then allow a hotel concierge to take the SUV into underground parking. They say they stopped suddenly because the applicant was “continually blowing their horn” and they were concerned there was something dangerously wrong with their vehicle.
32. The evidence does not support their statement. The dashcam shows the applicant gave two short honks after GR suddenly changed lanes in front of them. Even if GR was correct about the applicant’s honking, I would still find their decision to fully stop in the middle of the lane unreasonable and dangerous. If GR believed there was something wrong with their car, they had an obligation to act safely and in consideration of the other road users. At a minimum, I find this includes slowly coming to a stop and pulling over safely to the side of the road. They did neither.
33. I also note the street signs do not permit GR to stop their vehicle where they did. Since their SUV is not a commercial vehicle, the street signs prohibited stopping at that time.
34. Given that both the dashcam footage and the witness indicate there was nothing in front of GR, I find the applicant could not have reasonably expected GR to come to a sudden stop. There was no traffic or pedestrians in front of or beside GR and there was nothing about the highway’s condition that suggested GR would stop suddenly.
35. However, I find the applicant was also negligent. A following driver is obligated to follow at a speed and distance that allows the vehicle ahead of them to stop unexpectedly. The applicant did not do so. The applicant says GR was driving “aggressively and erratically” and had suddenly changed lanes twice. So, I find a reasonably prudent driver would have slowed down and given them additional space.

36. When two drivers are both negligent, their responsibility is split based on their relative fault or blameworthiness. This requires an assessment of how much each person's driving fell below a reasonable standard.²

37. Here, I find GR was mostly responsible for the accident. Their decision to unexpectedly stop in the middle of a travel lane, contrary to the signage, and without any visible reason to do so was the primary cause of the accident. I also find the applicant did not leave enough space in the event that GR were come to an unexpected stop, given GR's earlier driving. On that basis, I find the applicant is 20% responsible for the accident.

FEES, EXPENSES, AND INTEREST

38. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As the applicant was successful, I find that they are entitled to reimbursement of their \$125 in paid tribunal fees.

ORDERS

39. I order ICBC to amend its internal responsibility assessment to reflect that the applicant driver is 20% responsible for the January 11, 2023 accident.

40. Within 14 days of the date of this decision, I order ICBC to pay the applicant a total of \$125 in CRT fees.

41. The applicant is entitled to post-judgment interest under the *Court Order Interest Act*.

² See: *Chambers v. Goertz*, 2009 BCCA 358.

42. This is a validated decision and order. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Christopher C. Rivers, Tribunal Member