



Civil Resolution Tribunal

Date Issued: June 24, 2024

File: AR-2023-002152

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Pogue v. ICBC*, 2024 BCCRT 588

BETWEEN:

RORY POGUE

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. This dispute is about accident responsibility.
2. On November 28, 2022, the applicant, Rory Pogue, was driving his Mustang on Highway 99 near the Massey Tunnel when he and a third party driver, MF, were

involved in a motor vehicle accident. The respondent insurer, Insurance Corporation of British Columbia (ICBC), determined Mr. Pogue was 100% responsible for the accident. Mr. Pogue says ICBC incorrectly determined his responsibility, and that MF was completely responsible.

3. ICBC says it properly and reasonably determined Mr. Pogue was fully at fault for the accident. It asks me to dismiss Mr. Pogue's claims.
4. Mr. Pogue is represented by a lawyer, Stephen Grey. The respondent is represented by an employee.

JURISDICTION AND PROCEDURE

5. These are the Civil Resolution Tribunal's (CRT) formal written reasons. 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.
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, there is a clear record of the steps ICBC took in investigating the accident, as well as dashcam footage that shows what happened. So, 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.

ISSUES

9. 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, the applicant is responsible for the accident.

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil claim such as this, Mr. Pogue must prove his claims on a balance of probabilities, meaning “more likely than not”. Under ACR section 10, to succeed in his claim against ICBC, Mr. Pogue must first prove that ICBC acted improperly or unreasonably in assigning him responsibility for the accident. Second, he must prove he is less responsible for the accident than ICBC assessed.
11. Further ACR section 10 sets out that Mr. Pogue must prove **both** parts of this test. This means that even if he can prove he is less responsible for the accident than ICBC assessed, he will not be successful unless he can also prove ICBC acted improperly or unreasonably.
12. 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

13. On November 28, 2022, Mr. Pogue was driving his Mustang south on Highway 99, just north of the Massey Tunnel. Dashcam footage shows there was heavy, moving traffic. Mr. Pogue, in the rightmost of three lanes, attempts to pass a tractor-trailer

truck, driven by MF, in the middle lane. The right lane is narrowing and coming to an end ahead, requiring Mr. Pogue to change into the middle lane. He attempts to merge to the left, ahead of MF, who he had tried to pass, and behind a large dump truck. Dashcam footage shows that when he tried to pass MF, there was only 1 to 1.5 car lengths of space between MF and the dump truck ahead.

14. As he merges left, MF strikes Mr. Pogue's vehicle. While the dashcam footage does not show the point of impact between the vehicles, the Mustang shakes when struck. At the time of impact, Mr. Pogue's vehicle was approximately halfway into the middle lane.
15. It is undisputed that MF's right front bumper struck Mr. Pogue's Mustang on the left rear tire and quarter-panel.

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

16. ACR section 10(a) says that to succeed in his claim Mr. Pogue must first prove that ICBC acted improperly or unreasonably in assigning responsibility for the accident.
17. 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.
18. Here, ICBC's CL722 cites *Motor Vehicle Act* section 151(a). That section requires a driver not to change lanes unless they have determined they can do so with safety and without affecting the travel of another vehicle.
19. ICBC's CL722 also includes summaries of the information it collected from both drivers about the accident and confirms it reviewed the dashcam footage. It describes the accident, noting MF was established in the middle lane when Mr. Pogue attempted to merge ahead of them. ICBC concludes MF had the right of way, and to that find MF had any responsibility, there must be evidence that proves MF was negligent. It concluded there was not.

20. ICBC also describes the limited distance between MF and the dump truck when Mr. Pogue attempted merging, and notes that Mr. Pogue was in MF's blind spot when merging.
21. 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.
22. In his submissions, Mr. Pogue argues ICBC did not properly consider MF's obligation to keep a proper lookout and should have found MF wholly at fault. While he does not use exactly these words, I find he is arguing MF was not driving with due care and attention. He does not allege any shortcomings in ICBC's investigation or evidence, but only argues its conclusion.
23. I find the evidence shows ICBC considered the available evidence. I also find that ICBC reasonably and proportionally described the law that applies in the circumstances.
24. In *Stene v. Roberts*, 2024 BCSC 659, the Supreme Court provides a more detailed analysis of the principles ICBC stated in their letter. At paragraph 58, the court writes that having the right of way under the MVA does not relieve a driver of their obligation to exercise reasonable care. If they do not take such care, they run the risk of being found negligent.

25. At paragraph 59, it sets out the obligation that an overtaking driver has when changing lanes. It says when deciding whether or not to overtake a vehicle, a driver must be reasonably certain it is safe to do so, and if there is uncertainty, the driver must wait until it is reasonably safe.
26. Here, as ICBC says in the CL722, there is no evidence MF did not exercise reasonable care. The dashcam footage shows MF was travelling in flow with the surrounding traffic. The location of the damage on the vehicles and the dashcam footage show that Mr. Pogue merged in front of MF without leaving sufficient space and had not completed his lane change when he was struck. This shows that his decision to try to overtake MF on the right before merging was not reasonably safe. While MF undisputedly said he did not see Mr. Pogue, ICBC addressed this by noting Mr. Pogue was in MF's blind spot.
27. Taken together, I find the evidence shows ICBC made a reasonable decision after a proper investigation. That means Mr. Pogue has not satisfied ACR section 10(a). So, I do not need to consider the second part of the test, which is whether Mr. Pogue is less than 100% responsible. I dismiss his claims.

FEES, EXPENSES, AND INTEREST

28. Under CRTA section 49 and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As Mr. Pogue was not successful, I find he is not entitled to reimbursement of his paid tribunal fees. I allow ICBC's claim for \$25 in paid tribunal fees.

ORDERS

29. Within 21 days of the date of this decision, I order Mr. Pogue to pay ICBC a total of \$25 for reimbursement of tribunal fees.
30. ICBC is entitled to post-judgment interest under the *Court Order Interest Act*.

31. I dismiss Mr. Pogue's claims.

32. This is a validated decision and order. 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.

Christopher C. Rivers, Tribunal Member