



Civil Resolution Tribunal

Date Issued: June 28, 2024

File: AR-2024-002184

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Jonk v. ICBC*, 2024 BCCRT 628

BETWEEN:

KEVIN JAMES JONK

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 October 6, 2022, the applicant, Kevin James Jonk, was in a motor vehicle accident on Highway 1 near the 264th Street onramp in Langley. While driving westbound,

traffic came to a stop, and Mr. Jonk rear-ended a third party vehicle driven by YW. The respondent insurer, Insurance Corporation of British Columbia (ICBC), determined Mr. Jonk was 100% responsible for the accident. Mr. Jonk says ICBC incorrectly determined his responsibility, and that he was 0% responsible.

3. ICBC says it properly and reasonably determined Mr. Jonk was fully responsible for the accident. It asks me to dismiss Mr. Jonk's claim.
4. Mr. Jonk represents himself. An authorized employee represents ICBC.
5. For the reasons that follow, I find ICBC properly and reasonably determined responsibility, and I dismiss Mr. Jonk's claims.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
8. 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. I find 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.

9. 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.

Limitation Period

10. While neither party raised this issue, I have considered whether to dismiss Mr. Jonk's claims as out of time.
11. ACR section 9(1) sets the time limit for a person to ask the CRT to resolve a claim about accident responsibility. The time limit is 90 days after ICBC makes a detailed assessment of responsibility. ACR section 9(2) defines the date that ICBC makes its detailed assessment of responsibility as the date it issues the letter providing its assessment, called a CL722.
12. Here, ICBC issued the CL722 on November 23, 2022. 90 days after November 23 is February 21, 2023.
13. The evidence before me shows Mr. Jonk filed a paper application by email with the CRT on February 23, 2022. Mr. Jonk told the CT he tried to apply earlier but was unable since the CRT's online portal was down. There is no evidence Mr. Jonk contacted the CRT prior to February 23, 2022.
14. CRT staff confirm the portal was down for 3 to 5 days before coming back online on February 24, 2023.
15. Mr. Jonk's paper application was entered by CRT staff on March 1, 2023, and Mr. Jonk paid the application fee by cheque on March 26, 2023. The CRT typically issues a Dispute Notice once a party has paid the necessary fee. Here, given the circumstances, the CRT chose February 23, 2023 as the date of the Dispute Notice. This is 2 days after the expiration of the limitation period.
16. In the circumstances, I am not prepared to dismiss this matter on the basis that Mr. Jonk failed to meet the necessary limitation period. As noted above, evidence shows the CRT's online portal was down for 3 to 5 days prior to February 24, 2023, a period

that includes Mr. Jonk's limitation date. The CRT is an online-only tribunal, which means parties depend on its internet infrastructure to work as intended. Here, Mr. Jonk took steps to file using an alternate method in the days immediately following the limitation period and prior to the portal's repair.

17. Since it would not change the outcome of my decision, I did not ask either party for submissions on the limitation period. I proceed below to address the decision on its merits.

ISSUES

18. The issues in this dispute are:

- a. Did ICBC act improperly or unreasonably in assigning responsibility for the accident, and
- b. If so, to what extent, if any, Mr. Jonk is responsible for the accident.

BACKGROUND, EVIDENCE AND ANALYSIS

19. In a civil claim such as this, Mr. Jonk, as applicant, must prove his claims on a balance of probabilities, meaning "more likely than not". Further, under the ACR, to succeed in his claim against ICBC, Mr. Jonk must first prove that ICBC acted improperly or unreasonably in assigning responsibility for the accident to him. Second, he must prove he is less responsible for the accident than ICBC assessed.
20. Further to ACR section 10, **both** parts of the test described above must be proven. This means that even if Mr. Jonk can prove he is less responsible for the accident than ICBC assessed, he will not be successful if he cannot prove ICBC acted improperly or unreasonably. 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. I note that after filing his application for dispute resolution, Mr. Jonk chose not to submit any submissions, evidence, or reply to ICBC's submissions and evidence, despite being given opportunities to do so.

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 ICBC's detailed responsibility letter, called a 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.

Accident

22. In determining whether ICBC acted improperly or unreasonably, my analysis begins with ICBC's November 23, 2022 CL722. This letter sets out, in detail, the reasons why ICBC assigned responsibility in the manner it did.
23. Since Mr. Jonk did not describe the accident in his application, I depend on the CL722 and ICBC's submissions and evidence to determine what happened.
24. ICBC's accident description comes from three sources: Mr. Jonk's telephone and written reports to ICBC, YW's written response to ICBC's questions, and a written statement from the passenger (M) in YW's car. When the accident occurred, YW was acting as an Uber driver, and M was their passenger.
25. Each of YW's and M's written evidence is included in the CL722.
26. On October 6, 2022, Mr. Jonk was travelling westbound in the left lane on Highway 1 near the 264th St. onramp. YW merged onto the highway from 264th St. and changed lanes to the left so that their vehicle was in front of Mr. Jonk.

27. The parties disagree on the circumstances of YW's lane change. Mr. Jonk told ICBC that YW changed lanes immediately in front of him and only drove for 1 or 2 seconds before suddenly applying the brakes. He says YW cut him off, did not allow time for him to adjust, and then stopped before he had a chance to reestablish a safe following distance.
28. YW told ICBC that he changed lanes in front of Mr. Jonk when there was 4 to 5 cars' worth of space between Mr. Jonk and the vehicle he was following. YW says he travelled in the left lane for 1 to 2 kilometers before coming to a stop because of the traffic ahead.
29. The passenger witness, M, said YW merged in traffic without any problems and drove straight for 2 to 3 minutes. M said because of stopped traffic ahead, YW braked "maybe a bit hard." They were then rear-ended.
30. The accident resulted in damage to YW's rear left bumper.
31. Each party says they pulled off the road to exchange information. Mr. Jonk alleges they stopped only 150 meters from the onramp at an emergency turnaround. YW only says the 264th St. overpass was "behind" them and that they stopped at the roadside.

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

ICBC's Investigation

32. Mr. Jonk says ICBC should not have believed YW or M. He says their accident descriptions were inaccurate and biased.
33. To prove YW and M's inaccuracy, Mr. Jonk says the parties exchanged information at an emergency turnaround only 150 meters after the onramp. He says the exchange location proves YW cannot have been driving for 1 to 2 kilometers or 2 to 3 minutes. Other than his bare assertion, Mr. Jonk provided no evidence to the CRT to support his position.

34. He raised the same issue to ICBC. While his November 14, 2022 email to ICBC said it enclosed Google Maps images to illustrate his point, they were not attached to ICBC's evidence and there is no indication of an attachment in the email header.
35. ICBC says it attempted to follow up with Mr. Jonk to clarify his position but did not receive a response. Even if Mr. Jonk had provided a Google Maps image showing the emergency turnaround's location, I find it would not prove that was where the parties exchanged information. Since ICBC had an independent witness, I find it was reasonable to depend on M's statement.
36. On that note, I also reject Mr. Jonk's suggestion that M is biased. It is undisputed M was an Uber passenger. There is no indication M and YW previously knew each other or otherwise have any relationship. I accept M had nothing to gain by providing ICBC with a biased report. I accept M's evidence is accurate.
37. Mr. Jonk does not raise any other concerns about ICBC's investigation.
38. I find ICBC properly gathered the available evidence and as noted above, advised Mr. Jonk of YW's and M's statements in the CL722.

Application of the MVA

39. In the CL722, ICBC cites MVA section 162(1) to support its decision to find Mr. Jonk 100% responsible. MVA section 162(1) requires a driver not to follow more closely than is prudent, having regard for the vehicles' speed, the amount and nature of traffic, and the highway's condition.
40. I agree that section 162(1) applies. As ICBC argues the similar evidence of YW and M shows YW safely changed lanes and then travelled enough distance to establish themselves as the lead vehicle. The only evidence that YW dangerously cut off Mr. Jonk came from Mr. Jonk himself. Given M's role as an independent party, as noted above, I prefer their evidence. I find ICBC reasonably applied the MVA.

ICBC's Responsibility Assessment

41. Where one party rear-ends another, courts have consistently found the onus is on the following driver to prove the accident was not their fault.¹ I find Mr. Jonk has not met that burden in this case.
42. So, I find ICBC properly investigated the claim and applied the MVA. I find Mr. Jonk did not meet his obligation to maintain a distance and speed that allowed him to stop without hitting YW. On those bases, I find ICBC's decision that Mr. Jonk was 100% responsible for the accident was reasonable.
43. I dismiss Mr. Jonk's claims.

FEES, EXPENSES, AND INTEREST

44. 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. Jonk was not successful, I find that he is not entitled to reimbursement of his paid tribunal fees. ICBC is entitled to \$25 for its paid CRT fees.

ORDERS

45. Within 21 days of the date of this decision, I order Mr. Jonk to pay ICBC a total of \$25 for its paid CRT fees.
46. ICBC is also entitled to post-judgment interest under the *Court Order Interest Act*.
47. I dismiss Mr. Jonk's claims.

¹ See, eg: *Wright v. Mistry*, 2017 BCSC 239, at paras. 16 to 18; *Skinner v. Fu*, 2010 BCCA 321.

48. This is a validated decision and order. 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.

Christopher C. Rivers, Tribunal Member