



Civil Resolution Tribunal

Date Issued: February 27, 2018

File: SC-2017-003607

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ivanciuc v. Wang et al*, 2018 BCCRT 55

BETWEEN:

Cristian Ivanciuc

APPLICANT

AND:

Hsiao-Fu Wang and Insurance Corporation of British Columbia

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The respondent insurer, Insurance Corporation of British Columbia (ICBC), internally concluded the applicant Cristian Ivanciuc was 75% liable for damage to an oncoming vehicle owned by the respondent Ms. Wang, arising from a September 20, 2015 motor vehicle accident. Mr. Ivanciuc was driving northbound

and Ms. Wang was stopped southbound, waiting to turn left. The collision occurred when Ms. Wang turned left and Mr. Ivanciuc went through an amber light into the intersection.

2. Mr. Ivanciuc submits ICBC should have found Ms. Wang entirely responsible, because he could not have safely stopped in time for the amber light and could not have avoided the accident.
3. Mr. Ivanciuc wants ICBC to re-assess the accident and find him 0% liable, reimburse him \$1,575.47 for repair costs, and reimburse tribunal fees and dispute-related expenses. Mr. Ivanciuc is self-represented. Ms. Wang is represented by ICBC's representative.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. None of the parties requested an oral hearing.
6. The tribunal 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. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. Under tribunal rule 121, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Could Mr. Ivanciuc have safely stopped for the amber light so as to prevent the collision with Ms. Wang?
 - b. Is a 75% liability assessment against Mr. Ivanciuc appropriate?
 - c. To what extent, if any, is Mr. Ivanciuc entitled to his requested remedies?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. Mr. Ivanciuc did not carry collision coverage and so there was no “own damage” claim that could be made on his own policy. Accordingly, ICBC paid 25% of Mr. Ivanciuc’s total damages under Ms. Wang’s third party liability coverage. As noted, this dispute is about ICBC’s assessment that Mr. Ivanciuc was 75% responsible for the accident, and Mr. Ivanciuc’s claimed damages relate to his vehicle repair costs. This is not a personal injury dispute and nothing in this decision prevents the individual parties from pursuing any personal injury claim. I say this because Mr. Ivanciuc did not frame his dispute as a tort action or one of negligence against Ms. Wang, although Ms. Wang is named as a respondent. That said, even if Mr. Ivanciuc had framed his claims in negligence, I find my conclusions below about liability would be the same.
11. In this case, Mr. Ivanciuc seeks an order overturning ICBC’s 75% liability assessment against him and a full reimbursement of his vehicle repair costs. To do

so, he must prove on a balance of probabilities that ICBC breached its statutory obligations or its contract or insurance, or both. The issue here is whether ICBC acted “properly or reasonably” in administratively assigning responsibility for the collision, with 75% liability against Mr. Ivanciuc and 25% against Ms. Wang (see *Singh v. McHatten*, 2012 BCCA 286, and *Innes v. Bui*, 2010 BCCA 322 at para. 33).

12. Section 76 of the *Insurance (Vehicle) Act*, dealing with third party rights, says that the insurer may at any stage compromise or settle the claim. Section 77(4) of that statute says ICBC has the right to contest its insured’s liability. ICBC owes the applicant a duty of good faith, which requires ICBC to act fairly, both in how it investigates and assesses the claim and as to its decision about whether to pay the claim (see *Bhasin v. Hrynew*, 2014 SCC 71 at paras. 33, 55, and 93). As noted in the Continuing Legal Education Society of BC’s ‘BC Motor Vehicle Accident Claims Practice Manual’, an insurer is not expected to investigate a claim with the skill and forensic proficiency of a detective. An insurer must bring “reasonable diligence, fairness, an appropriate level of skill, thoroughness, and objectivity to the investigation and the assessment of the collected information (see *McDonald v. Insurance Corp. of British Columbia*, 2012 BCSC 283).
13. I have reviewed all of the evidence, some of which comes from the applicant’s own dashcam footage and some from a police officer witness to the collision. I decline to ignore ICBC’s “Claims Assessment Review” or “CAR” decision, as requested by the applicant. I say this because ICBC’s assessment is one factor I must consider in assessing whether ICBC acted reasonably under the legislation and the parties’ insurance contracts.
14. Overall, I am satisfied that ICBC properly concluded that the applicant had a safe opportunity to stop at the amber light and had he done so, he could have avoided the collision with Ms. Wang. Contrary to the applicant’s suggestion, the reasonableness of ICBC’s conclusion does not necessarily turn on a strict mathematical calculation according to a rigid formula.

15. The applicant submits he was only 33 meters from the light, and that ICBC has set a 37 meter threshold for safe stopping distance at 50 km/hr, and cites a publication titled "unsafe speed". However, that document is a guideline and is not determinative. Further, I accept ICBC's position that the 37 meter threshold is an emergency stopping distance, and does not apply when a driver should be anticipating the need to stop.
16. It is undisputed that Mr. Ivanciuc failed to apply his brakes before the collision with Ms. Wang. Mr. Ivanciuc says there was a slight slope and so he kept his foot on the gas to maintain speed. Mr. Ivanciuc's argument is that he made a reasonable decision in the moment to proceed so as to clear the intersection, and did not expect Ms. Wang to make the unsafe turn. However, the "late amber" light turned red at the point of impact in the middle of the intersection. As noted by ICBC, drivers approaching an intersection with a "late amber" light should be expecting that oncoming drivers waiting to turn left will make their left turn on the late amber light. I find Mr. Ivanciuc should have been preparing to slow down given the surrounding circumstances.
17. I note that it was a rainy day. After coming around a bend, Mr. Ivanciuc had a clear and straight approach to the intersection. Mr. Ivanciuc submits that he was anticipating the light could change to amber and that he proceeded with caution by maintaining the 50 km/hr speed limit. However, as he approached the amber light, Mr. Ivanciuc was passing other drivers on his right, suggesting others reasonably realized they needed to slow down and yet he failed to do so. There was also a car in front of Ms. Wang who turned left in front of Mr. Ivanciuc before Ms. Wang made her turn. All of this supports the conclusion that Mr. Ivanciuc should have been slowing down, in anticipation of Ms. Wang also completing her left turn. On balance, I find that as Mr. Ivanciuc approached the intersection, there were a number of indications that the light could turn amber and he should have been preparing for it by slowing down, and yet he failed to do so.

18. The witness police officer gave the applicant a violation ticket for disobeying the traffic light and failing to yield the right of way, contrary to section 125 of the *Motor Vehicle Act*. This is further support for ICBC's conclusion. It is true that Mr. Ivanciuc cannot be said to be "guilty" of that offence because the court later dismissed the ticket for "want of prosecution." However, the court's dismissal does not mean that Mr. Ivanciuc complied with the *Motor Vehicle Act*. There are a number of reasons why the court may dismiss a ticket that have no bearing on the merits of the ticket. I have no evidence before me about why the court made the order. Further, the standard of proof in a criminal proceeding is 'beyond a reasonable doubt', which does not apply to insurance investigations and determinations.
19. Contrary to the applicant's submission, I find the witness police officer was in a position to determine that the applicant had the opportunity to slow for the amber light and avoid the collision. I find ICBC reasonably relied upon the police officer's evidence as a witness. I find ICBC properly acted in accordance with section 74.1 of the *Insurance (Vehicle) Regulation* in investigating the accident and assessing liability. ICBC's decision to hold Mr. Ivanciuc 75% liable is also supported by the outcome in a decision based on similar facts, *Kokkinis v. Hall*, 1996, BCJ No. 150, in which the driver in Mr. Ivanciuc's position was held 100% liable.
20. In summary, I accept ICBC's conclusion that had Mr. Ivanciuc applied his brakes when he saw the light turn amber, he could have slowed down and avoided the collision. I find that ICBC reasonably concluded that Mr. Ivanciuc failed to comply with the *Motor Vehicle Act*, which addresses his obligation to yield and stop in the circumstances. This conclusion does not alter the fact that ICBC also reasonably found Ms. Wang 25% liable for her failure to comply with the *Motor Vehicle Act*. In all of the circumstances, I find the applicant has not proven the liability split was unreasonable.
21. In summary, I confirm ICBC's 75% liability assessment against Mr. Ivanciuc. Given this conclusion, I do not need to address his damages claims. As Mr. Ivanciuc was

unsuccessful, I also dismiss his claims for tribunal fees and dispute-related expenses.

ORDER

22. I order that the applicant's dispute is dismissed.

Shelley Lopez, Vice Chair