



# Civil Resolution Tribunal

Date Issued: June 26, 2018

File: SC-2017-5786

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pilon et al v. Insurance Corporation of British Columbia*, 2018 BCCRT 282

B E T W E E N :

Blenda Pilon and Raymond Pilon

**APPLICANTS**

A N D :

Insurance Corporation of British Columbia

**RESPONDENT**

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**REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell

## **INTRODUCTION**

1. The applicants, Blenda and Raymond Pilon, seek \$800.75 for damage to the headlights of their 2010 Toyota Prius (Prius) which they say was caused by melting snow and rain.
2. The respondent, the Insurance Corporation of British Columbia (ICBC) says the evidence does not establish the cause of the headlight damage, and the damage does not fall within the scope of coverage under its insurance contract with the applicants.
3. The applicants are self-represented. The respondent is represented by an employee.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the 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. Neither party 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 126, 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 issue in this dispute is whether the respondent is responsible to reimburse the applicants for headlight damage, and if so in what amount.

## **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. The applicants say the headlights of their Prius were damaged due to the effects of a heavy snowfall, followed by heavy rain, in January 2017. They say this was an “act of God” and therefore the headlight repair should be covered under their ICBC insurance.
11. The applicants say the headlights worked properly until the time of the snowfall, but the next day the headlights began flickering and failed. They submit it is therefore logical that the 18 inches of heavy, wet snow caused an electrical short that damaged the headlights.
12. The applicants provided a February 6, 2017 invoice from their mechanic, showing a total of \$830.74 for new headlights, labour, supplies, and taxes. The invoice says the customer noticed that after the car “sat in winter and had to be dug out” that the lights were not as good as they should be. The mechanic wrote that he found that water had intruded into the headlights causing them to short, burning the assemblies and brake retainers. He wrote that he installed new lights and also had to repair some wiring on the fuse box due to overheating from the short.

13. The applicants provided an October 17, 2017 letter from the mechanic, stating that their vehicle was damaged from water intrusion caused by a snowfall that engulfed the vehicle. The mechanic said the snow caused a short when the vehicle was switched on, as “power and ground” were present inside the headlight assemblies. He said the repair required replacement of the headlight assemblies.
14. The respondent agrees that the heavy snowfall occurred, but says the damage is excluded under the insurance contract. The respondent cites several provisions of the ICBC Autoplan Optional Policy (the Policy), the contract under which the applicants claim payment.
15. Division 8 of the Policy sets out “Requirements if loss or damage to vehicle.” It says that if vehicle damage covered under the contract occurs, the insured must promptly notify the insurer of the damage. Paragraph 5(3) of Division 8 says:

(3) If loss of or damage to a vehicle that is covered by this contract occurs, the owner or operator of the vehicle

...

(b) until the insurer has had a reasonable opportunity to inspect the vehicle, must not, without the consent of the insurer, remove any physical evidence of the loss or damage to the vehicle or make any repairs to the vehicle, other than repairs that are immediately necessary to protect the vehicle from further loss or damage.
16. In this case, the applicants admit the Prius was repaired before the respondent was notified of the damage or had any opportunity to inspect it. They say that when the repairs were performed they did not know insurance could cover the claim, and they only considered an insurance claim when their mechanic suggested it months later. They say the mechanic disposed of the wiring harness at the time of the repair because no claim was anticipated. They say they kept the headlights “for a while”, and provided the respondent with a photograph of them.
17. While the applicants’ reasons for proceeding with repairs are understandable, they did not obtain the respondent’s consent to repair the Prius and remove evidence of the damage. I find the repairs were not immediately necessary to protect the Prius

from further loss or damage. Although the headlight repairs were necessary and the car was likely unsafe to drive, there is no evidence to suggest it was getting worse. I also note that the invoice indicates that the repairs were performed at least a week after the snowfall, so they were not done on an emergency basis.

18. For these reasons, I find the applicants failed to comply with paragraph 5(3)(b) of the contract, as cited above.
19. Division 8, paragraph 5(4)(b) of the Policy states that the insurer is not liable under the contract to an owner if the owner, to the prejudice of the insurer, contravenes subcondition 3(b).
20. I find the respondent was prejudiced by the applicants' breach of paragraph 5(3)(b). Because the Prius is fixed and the parts are gone, the respondent cannot verify the mechanic's statement about what caused the headlight damage. While I accept the applicant's submission that their mechanic is an expert, the respondent had a contractual right to perform its own inspection.
21. For these reasons, I find the respondent is not liable to pay for the Prius headlight damage under the terms of the Policy.
22. The applicants submit that a manager employed by the respondent told them the Prius damage would be covered if caused by an "act of God." However, I find that this statement made by an ICBC employee during the claims process does not override the specific written contractual language set out in the Policy. The applicants negated any right to insurance coverage, regardless of the cause of the damage, when they proceeded with repairs and disposed of the parts without the respondent's consent or reasonable opportunity for inspection.
23. I therefore dismiss the applicants' claim.
24. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicants were unsuccessful, so I dismiss their claim for reimbursement of tribunal fees and dispute-related

expenses. The respondent did not pay any fees and did not claim any dispute-related expenses.

## **ORDERS**

25. I dismiss the applicant's claims and this dispute.

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Kate Campbell, Tribunal Member