



Civil Resolution Tribunal

Date Issued: July 25, 2018

File: SC-2017-004202

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Malhi v. Singh*, 2018 BCCRT 375

B E T W E E N :

Jagdish Singh Malhi

APPLICANT

A N D :

Gurdeep Gurdeep Singh

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. On February 14, 2016, the applicant, Jagdish Singh Malhi, was involved in a motor vehicle collision with the respondent, Gurdeep Gurdeep Singh. The applicant was in line at the border crossing into the United States. The respondent's vehicle was

in front of the applicant's in line. The applicant says he was stopped on a small uphill, and the respondent rolled back into the applicant's truck. In contrast, the respondent says he was stopped and the applicant rear-ended the respondent's vehicle.

2. The applicant made an insurance claim with the Insurance Corporation of British Columbia (ICBC), and ICBC determined the applicant was responsible for the accident. The applicant says the respondent is responsible, and seeks an order that the respondent pay the \$2,500 deductible ICBC assessed against the applicant for his vehicle repairs.
3. The applicant is self-represented and the respondent is represented by an ICBC employee.

JURISDICTION AND PROCEDURE

4. These are the tribunal's formal written reasons. 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. Some of the evidence in this dispute amounts to a "he said, he said" scenario as to how the collision occurred. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further,

bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

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.

ISSUE

8. The issue in this dispute is whether the respondent was responsible for the motor vehicle accident, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. I have only commented on the evidence and submissions to the extent necessary to give context to these reasons. In a civil dispute such as this, generally speaking the applicant bears the burden of proof on a balance of probabilities.
10. As referenced above, the applicant says the respondent is responsible for the collision. He says the respondent was in front of the applicant going up a small uphill while the applicant was at a full stop. The applicant says the respondent was not able to control his truck, resulting in his truck rolling backwards into the applicant's.
11. The respondent denies rolling backwards or reversing. There are no independent witnesses of the accident and no available video.

12. The respondent submits that the applicant's vehicle was the rear vehicle, and under section 162(1) of the *Motor Vehicle Act* the onus is on the rear-position applicant to prove that he did not cause the accident. I agree.
13. I find that the case law supports that reverse onus (see for example, *Gibson v. Matthies*, 2017 BCSC 839, citing *Cue v. Breitzkreuz*, 2010 BCSC 617). Further, as noted above, the applicant bears the burden of proof in this civil dispute. I find the applicant has not met that burden and has not proved his claim that the respondent was responsible for the collision and the applicant's deductible. Given this conclusion, I do not need to address the respondent's argument that the applicant, who did not own the truck he was driving at the time of the collision, does not have standing to bring this dispute.
14. Given my conclusion above, I find the applicant's claim must be dismissed. As the applicant was unsuccessful, under the Act and the tribunal's rules I find that he is not entitled to reimbursement of his tribunal fees.

ORDER

15. I order that the applicant's claims, and therefore this dispute, are dismissed.

Shelley Lopez, Vice Chair