



Civil Resolution Tribunal

Date Issued: August 14, 2018

File: SC-2017-004054

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Louie v. Insurance Corporation of British Columbia*, 2018 BCCRT 449

B E T W E E N :

Gordon Louie

APPLICANT

A N D :

Insurance Corporation of British Columbia

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The respondent insurer, Insurance Corporation of British Columbia (ICBC), internally concluded the applicant Gordon Louie was 100% at fault in a January 15, 2017 collision with a dump truck driven by Rajbir Singh Chatrath.
2. The applicant says ICBC should have found Mr. Chatrath entirely at fault. He seeks a declaration that Mr. Chatrath was 100% at fault, and a refund of the \$300 insurance deductible.
3. ICBC says the applicant was 100% responsible for the collision under section 158 of the *Motor Vehicle Act* (MVA) because he was passing the dump truck on the right hand side and collided with it.
4. The parties are self-represented, with ICBC represented by an employee.

JURISDICTION AND PROCEDURE

5. 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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 while there are inconsistencies in the evidence about the circumstances of the collision, I find I can fairly resolve the dispute based on the documentary evidence before me. This conclusion is

consistent with the court's observations of the tribunal's processes in the recent decision in *Yas v. Pope*, 2018 BCSC 282.

7. 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.
8. 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.
9. Mr. Chatrath, the dump truck driver is not a party to this dispute. However, in the interests of fairness he was granted the opportunity to provide a statement and submission to the tribunal.

ISSUES

10. The issues in this dispute are:
 - a. Did ICBC properly assess the applicant as 100% liable for the collision?
 - b. If not, should the applicant's \$300 insurance deductible be refunded?

EVIDENCE AND ANALYSIS

11. 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.
12. In this dispute, the applicant seeks an order overturning ICBC's 100% liability assessment against him, and a refund of his wife's insurance deductible. To succeed, the applicant must prove on a balance of probabilities that ICBC breached its statutory obligations or its contract of insurance, or both. The issue

here is whether ICBC acted “properly or reasonably” in administratively assigning 100% responsibility for the collision to the applicant (see *Singh v. McHatten*, 2012 BCCA 286).

13. At the time of the collision, the applicant was driving a compact car owned by his wife. Both the applicant’s car and dump truck driven by Mr. Chatrath were travelling in the same direction (south), approaching a 4-way stop intersection. There were 2 southbound lanes. The leftmost southbound lane was unmarked, allowing for traffic to proceed straight through the intersection or to turn left. The right lane was marked with an arrow indicating right turn only.
14. The applicant’s written statement describes the subsequent events, which I paraphrase as follows:
 - When the applicant approached the intersection in the right southbound lane, the dump truck and at least 1 other car were stopped in the left southbound lane, and waiting at the stop sign. All vehicles in the left lane were completely within their lane of travel, and the dump truck had its left turn signal on.
 - There was another vehicle stopped at the right lane at the stop sign, waiting to turn right. The applicant “pulled up to the vehicle waiting to turn right” and came to a complete stop, with his right turn signal on. The applicant was completely within his lane of travel. The dump truck was behind and beside the applicant, to his left.
 - After a few seconds, vehicles in both lanes ahead of the applicant started moving. The applicant was completely stopped when he felt impact on his vehicle and heard loud crunching. He realized the dump truck from the left lane struck his vehicle on the rear bumper and rear quarter area. He honked his horn several times, and the dump truck stopped.
 - After a few seconds, the dump truck continued moving forward and impacted the applicant’s vehicle along the rear driver’s side door. The applicant honked

several times again. The dump truck stopped, and the applicant quickly pulled forward away from the dump truck in the event it began moving again.

- The applicant stopped his vehicle and got out. When he spoke to the dump truck driver, the driver said he did not see the applicant.
 - The applicant took photographs of the scene before they both moved their vehicles.
15. The applicant says that immediately before the collision, the dump truck was fully within the left lane, with its left turn signal on. The applicant says the dump truck did not move over into the right lane until it struck the applicant from behind.
16. The dump truck driver, Mr. Chatrath, provided a statement to ICBC giving a contrary account of events. He said he approached the intersection in the right lane and was the only vehicle at the intersection. He says he wanted to turn right at the stop sign, so he straddled the right and left lanes in order to make a wide right turn. He says he stopped at the stop sign with his right turn signal on, and started making the right turn when the applicant “attempted to sneak past” him in the right lane. Mr. Chatrath said that as he proceeded to turn right, he felt a bump and immediately stopped.
17. Based on the applicant’s written statement, he admits that he passed the dump truck on the right. The applicant says the dump truck was already waiting in line in the left lane at the stop sign when he approached the intersection, and then he passed the dump truck in the right lane in order to turn right. Section 158(1) of the *MVA* says that a driver must not overtake and pass on the right of another vehicle except in specified circumstances. These circumstances include the following:
- when the vehicle overtaken is making a left turn or its driver has signalled his or her intention to make a left turn,
 - when on a laned roadway there is one or more than one unobstructed lane on the side of the roadway on which the driver is permitted to drive.

18. Section 158(2) of the MVA also says a driver must overtake and pass another a vehicle on the right only when the movement cannot be made safely.
19. Thus, the central conflict in this dispute is whether Mr. Chatrath was turning right at the time of the collision, or whether he was signalling to turn left and then hit the applicant.
20. ICBC says the applicant was 100% at fault for the accident because he was passing the dump truck on the right at the time of the collision. ICBC says this decision was based on the information provided by the applicant and Mr. Chatrath, as well as the accident scene photographs provided by the applicant and the photographs of the damage to the applicant's car. In particular, ICBC says the photographs show that the applicant's left rear bumper was pulled backwards, which is consistent with the applicant driving forward at the time of the collision. ICBC says the applicant collided with the dump truck, which was stopped.
21. I do not agree with ICBC's submissions as set out in the Dispute Response, as they are not consistent with Mr. Chatrath's January 17, 2017 statement or the January 19, 2017 summary of Mr. Chatrath's accident description contained in the ICBC file notes. In particular, Mr. Chatrath never said his vehicle was stopped at the time of the collision. Rather, in the January 17, 2017 statement, he said he had just moved from the stop sign to turn right, and started to turn right in first gear. He said he felt a bump "as I proceeded". The January 19, 2017 summary does not mention the actual collision at all, but only describes the preceding events.
22. Also, ICBC submits that Mr. Chatrath was stopped behind 1 vehicle at the stop sign, so he would be very close to the intersection. In the 2 statements provided in evidence, Mr. Chatrath never said he was stopped behind 1 vehicle. Rather, in his January 17, 2017 statement, he said "I was the only vehicle at the intersection". Neither of his statements mention any vehicles at the intersection other than the applicant's.

23. The January 19, 2017 summary contained in the ICBC claim file indicates that Mr. Chatrath said he stopped at the stop sign, and then the applicant attempted to sneak by him and the collision occurred. I find that this account is inconsistent with the photographs taken at the accident scene. These photographs show debris, including glass or plastic fragments, laying on top of the white-painted right turn arrow on the road. This is at least 1 car length behind the stop line and the stop sign. I find that these fragments came from the applicant's vehicle, based on the damage photographs provided in evidence. Thus, the collision occurred well back from the stop sign. If Mr. Chatrath was turning right after stopping at the stop sign at the time of the collision, as set out in the January 19 summary, the accident debris would have to be much closer to or past the stop sign, instead of well back from the intersection.
24. I also note that based on the post-accident photographs, the dump truck wheels are all pointing straight ahead, rather than turned to the right. The dump truck is still well behind the stop sign. This visual evidence does not support Mr. Chatrath's account of a collision during a right turn from the stop sign with an immediate stop thereafter. I note that the January 19 summary says Mr. Chatrath stopped after the collision, and does not say he straightened his wheels or moved the truck in any way.
25. I find that ICBC's findings about the accident do not account for these inconsistencies in the evidence. Rather, I find the accounts provided by the applicant to be more consistent.
26. For reasons that are unclear, ICBC did not obtain a statement from JI, who was a passenger in the applicant's car at the time of the accident, and who was the only identified non-driver eyewitness. JI's written statement provided as evidence in this dispute says they stopped at the intersection in the far right lane, with around 2 cars in front of them at the intersection. JI says the left rear of their car was then hit from behind by the truck. JI says the truck continued to drive forward, still hitting

their car, and then stopped. He says the applicant then drove his car forward and a little bit away from the truck.

27. I find that JI's account of the collision is substantially similar to the applicant's. JI's statement is clear and contains some level of detail. I find it persuasive and place significant weight on it.
28. The applicant went through ICBC's internal claims assessment review process. The written decision he received says the applicant performed a "right turn overtake", and was therefore 100% responsible. The ICBC arbiter relied primarily on the photographs of the damage to the applicant's vehicle, which show the rear bumper cover "pulled back", "suggesting that his vehicle was in forward motion at the time of the initial impact."
29. 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). I find ICBC has not done so in this case.
30. In particular, ICBC failed to seek a statement from eyewitness JI, and also failed to say why. I also find that ICBC failed to consider that the location of the accident debris shown in the scene photographs is inconsistent with Mr. Chatrath's account of a collision during a right turn commenced after stopping at the stop sign. The ICBC liability review document does not even mention the applicant's assertion that the dump truck was preparing to perform a wide left turn at the time of the collision.

31. ICBC submits that dump truck's right turn signal was activated at the time of the collision. However, this is not clear from the photographs in evidence, and in any event is not determinative because the photographs were taken several minutes after the accident and could have been turned on after the collision.
32. ICBC submits that the "kinking" shown in some of the damage photographs of the applicant's car is consistent with a side impact. However, ICBC has provided no expert opinion to support that assertion. Moreover, ICBC has not provided a corresponding explanation of how the dump truck's front bumper was scraped during a right turn. Based on the photographs, during such a turn the large front wheels would effectively block the dump truck bumper from being hit from behind by a small car such as the applicant's. Thus, the dump truck damage does not appear consistent with Mr. Chatrath's account of a collision during a right turn from the stop sign.
33. It also appears that ICBC did not inspect the dump truck, and did not take the dump truck damage into account when determining the crash events.
34. For these reasons, I find that ICBC's conclusion that the applicant was 100% responsible due to passing on the right was not reasonable. Instead, I find that Mr. Chatrath struck the applicant's vehicle on the left rear panel and bumper, and was 100% responsible for the collision.
35. I therefore find that the \$300 deductible for the applicant's car insurance (owned by his wife), must be refunded.
36. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees. As the applicant was successful in this dispute, I order that the respondent pay the applicant \$125 as reimbursement for tribunal fees. There were no dispute-related expenses claimed.
37. The applicant is also entitled to pre-judgment and post-judgment interest under the *Court Order Interest Act (COIA)*, as set out below in my order.

ORDERS

38. I order that within 30 days of this decision, the respondent refund the \$300 insurance deductible for the applicant's wife's car, plus \$3.92 in pre-judgment interest under the COIA and \$125 as reimbursement of tribunal fees.
39. The applicant is entitled to post-judgment interest under the COIA.
40. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
41. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Kate Campbell, Tribunal Member