



Civil Resolution Tribunal

Date Issued: November 7, 2018

File: SC-2018-002986

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *hougaard v. Insurance Corporation of British Columbia et al*,

2018 BCCRT 699

BETWEEN:

caleb hougaard

APPLICANT

AND:

Insurance Corporation of British Columbia and Rexford Rene Hayes

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The respondent insurer, Insurance Corporation of British Columbia (ICBC), internally concluded the applicant caleb hougaard was 100% at fault in a February 21, 2018 motor vehicle collision with the respondent Rexford Rene Hayes. Mr.

Hougaard, who was the rear driver in the collision, says ICBC should have found Mr. Hayes entirely at fault because he made an illegal left turn.

2. The applicant seeks an order that ICBC's liability decision be reversed, and that Mr. Hayes be held 100% responsible for the collision. He also seeks an order that the respondents pay \$1,121.05 for repairs to his truck.
3. The applicant is self-represented. The respondents are represented by Jennifer Kwan, an ICBC employee.

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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence based on the written 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found 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.

ISSUES

8. The issue in this dispute is whether the applicant is entitled to a re-assessment of his liability for the February 21, 2018 motor vehicle collision, such that he is held 0% responsible.

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. This is not a tort claim alleging personal injury or damage. Rather, it is a claim under the applicant Mr. Hougaard's insurance policy with ICBC. In essence, Mr. Hougaard says ICBC failed in its duty to assess his liability under the insurance contract. For the reasons that follow, I find that Mr. Hougaard has not proved his claim.
11. Mr. Hougaard provided a videotaped description of the accident. In that recording, he says that just before the collision occurred, he was travelling in the left lane approaching an intersection. He says Mr. Hayes was in the lane to his right, then turned across in front of Mr. Hougaard in the intersection while Mr. Hougaard continued to travel in the left turn lane. Mr. Hougaard says the front of his vehicle then hit the back left corner of Mr. Hayes' bumper.
12. It is undisputed that the collision occurred at low speed, that it was snowing heavily, and that there was snow on the ground at the time.

13. The root of Mr. Hougaard's claim is that he says Mr. Hayes was performing an illegal left turn at the time the accident occurred, which caused an unavoidable collision. Mr. Hougaard says Mr. Hayes' left turn was illegal because he turned left from the centre lane, rather than from the left turn lane.
14. Mr. Hayes denies the allegation that he turned left from the centre lane. He says he was in the left lane in front of Mr. Hougaard, making a left turn, when Mr. Hougaard hit him from behind. Mr. Hayes' Dispute Response Form says Mr. Hougaard was travelling too fast for road conditions, which Mr. Hougaard denies.
15. Mr. Hougaard says the video footage, which was apparently taken some time after the collision, shows tire tracks travelling from the centre lane over to the left side of the intersection. I place no weight on that visual evidence because no single set of tire tracks can be discerned. Also, the video is not time-stamped, and there is no way to know how many other vehicles travelled through the intersection between the collision and the video capture.
16. Mr. Hougaard says it is impossible that Mr. Hayes was in the left turn lane turning left when the collision occurred, because the vehicle damage shows that the front right corner of Mr. Hougaard's vehicle hit the rear left bumper of Mr. Hayes' vehicle. I disagree with that assertion. I find that the vehicle damage shown in the photographs could also be consistent with a scenario where Mr. Hayes was turning left from the left turn lane and Mr. Hougaard skidded to the left in the snow due to braking, after approaching too quickly from behind.
17. Based on these findings, and the fact that there are no other witness statements or accident scene evidence, I conclude that Mr. Hougaard has not proven that Mr. Hayes executed an illegal left turn, and that this caused the collision.
18. An inference of negligence by the rear vehicle driver is often drawn in cases involving rear-end collisions because, as stated in *Wallman v. John Doe*, 2014 BCSC 79 at para. 410:

[410] ... the following driver owes a duty to drive at a distance from the leading vehicle that allows reasonably for the speed, traffic and the road conditions: *Barrie v. Marshall*, 2010 BCSC 981, at paras. 23-24; *Rai v. Fowler*, 2007 BCSC 1678, at para. 29. This duty is codified in ss. 144 and 162 of the *Motor Vehicle Act*.

19. I find that this inference of negligence by the applicant applies in this case because Mr. Hougaard has not proved that the events leading up to the collision could not have been avoided: see *Dorsett v. Sahib*, 2018 BCSC 1884.
20. Section 76(4) of the *Insurance (Vehicle) Act* says that the insurer may at any stage compromise or settle a claim. Section 77(4) of that statute says ICBC has the right to contest its insured's liability. Section 74 of the *Insurance (Vehicle) Regulation* provides that ICBC will assist the insured by investigating and negotiating a settlement, where, in ICBC's opinion, its assistance is necessary. Section 74.1 says that ICBC is entitled to exclusive conduct and control of the defence of an action, including an entitlement to admit liability, in whole or in part, on the insured's behalf.
21. 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 in 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 done so, as discussed further below.
22. Mr. Hougaard did not make submissions about whether ICBC failed to conduct a thorough investigation. However, based on the information set out in ICBC's liability assessment letter, I find that its investigation met the test set out in *McDonald*. ICBC reasonably concluded that as the rear driver at the time of the collision, Mr. Hougaard had not met the onus of proving that Mr. Hayes was negligent, and that Mr. Hayes' negligence contributed to the collision.

23. In summary, in order to succeed in his claim, Mr. Hougaard 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 Mr. Hougaard 100% responsibility for the collision (see *Singh v. McHatten*, 2012 BCCA 286, and *Innes v. Bui*, 2010 BCCA 322 at para. 33). I find that Mr. Hougaard has not proved that ICBC failed to do so.

24. As the applicant was unsuccessful, in accordance with the Act and the tribunal’s rules I find he is not entitled to reimbursement of tribunal fees.

ORDER

25. I order the applicant’s claims, and therefore this dispute, dismissed.

Kate Campbell, Tribunal Member