Civil Resolution Tribunal

Date Issued: December 12, 2018

File: SC-2018-000998

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *O'Connor v. Piercey,* 2018 BCCRT 842

B E T W E E N :

Frank O'Connor

APPLICANT

A N D :

Gary Piercey

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a motor vehicle accident (MVA) that occurred on March 13, 2016. The applicant, Frank O'Connor, says the respondent, Gary Piercey, should be held responsible, rather than the applicant being 100% liable as found by the Insurance Corporation of British Columbia (ICBC). The applicant says when the

MVA occurred he was turning left in order to make a u-turn, and the respondent attempted to pass him on the left. The applicant wants an order that the respondent is 100% liable for the MVA.

2. The applicant is self-represented. The respondent is represented by an ICBC employee. ICBC says the applicant had signaled left, but had moved slightly to the right and then attempted an improper u-turn that was unsafe, contrary to the *Motor Vehicle Act*. As such, ICBC says the applicant is 100% liable for the MVA.

JURISDICTION AND PROCEDURE

3. 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.

4. 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 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 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.

5. 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.

6. 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.

7. I note that the applicant seeks an order that the respondent is 100% liable for the MVA. In the tribunal decision plan, which sets out the applicant's claims for decision, the applicant does not specify the value of his claim. He does not provide any evidence about his vehicle's damage, which is what I infer this claim is about, rather than personal injury. In the Dispute Notice that started this proceeding, the applicant stated the value was $3,000, although that figure appears to be arbitrary as there are no repair invoices or quotes before me in evidence.

8. The tribunal's monetary limit in small claims disputes is currently $5,000. This means that if I were to order a re-assessment of liability, that re-assessment must be limited to a value of $5,000 or less. By proceeding with this tribunal dispute, the applicant abandoned his claim in excess of $5,000.

ISSUE

9. The issue in this dispute is whether the applicant is liable for the MVA, and if not, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

10. 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 submissions below as necessary to explain my decision.

11. The applicant stopped for gas off Highway 97. He was driving his 1989 Toyota pick-up truck. The off ramp required all motorists at the time to travel northbound on Highway 97, due to construction in the area. The applicant wanted to head southbound instead. The applicant says he took the off-ramp in order to turn around, meaning he planned a u-turn. In particular, the applicant exited the highway

and turned on his left turn signal to make the u-turn, which is undisputed. I accept the applicant's undisputed evidence that he had pumped his brakes several times to alert the respondent, the rear driver, along with putting on his left turn signal.

12. The applicant says the road is marked with a double solid line, and so there should be no passing at this location on the road. The respondent says the applicant should not have attempted the u-turn across the double solid lines, in the circumstances.

13. It is undisputed that locals living in the area routinely used "the parkway" to perform a u-turn to head southbound, as otherwise a motorist who stopped for gas at that location would have to travel a distance north in order to turn around and head south. ICBC says the applicant should have used a pullout "further up the road" to turn around.

14. I find the MVA occurred when the respondent was overtaking the applicant on the applicant's left, while the applicant had either slowed or stopped and had his left turn signal on. This is essentially undisputed, and is supported by the police investigation report and a witness statement in evidence.

15. It is also undisputed that the applicant's left front fender and headlight collided with the front right and door of the respondent's vehicle.

16. ICBC says that given the location on a highway off-ramp, the respondent assumed the applicant must have been confused when he was slowing down and had put on his left turn signal, given that there was nowhere to turn left.

17. Further, as noted above, the respondent says the applicant had veered slightly to the right, and so the respondent proceeded to pass him on the left, just over the centre line. The applicant denies he "turned to the right". He disputes the MVA occurred on the off-ramp, and says it occurred on the Pelmewash Parkway.

18. I find the most likely scenario is that the applicant did veer slightly to the right just off the off-ramp and on the parkway, in order to make the u-turn within the roadway space and get onto the southbound ramp.

19. The central issue in this dispute is whether the applicant's u-turn to his left was safe and compliant with section 168 of the *Motor Vehicle Act*. This section includes the provisions that a driver must not turn a vehicle so as to proceed in the opposite direction unless the driver can do so without interfering with other traffic. In other words, should the respondent reasonably have understood the applicant intended to make a u-turn?

20. In assessing liability for the MVA I must also consider whether the respondent's assumption about the applicant's left-turn signal was reasonable (that it did not mean he intended to make a u-turn to the left across the double line), and, whether the respondent reasonably passed the applicant, over a double solid line, when the applicant had slowed and had his left-turn signal on.

21. The applicant says there were no signs prohibiting a u-turn. The applicant provided an unsigned letter from an RCMP constable, who said their interpretation of section 168 is that "if no one was around, you could complete a u-turn" at the location in question, and that the other driver's actions were not justified.

22. I agree with ICBC that the heavier onus is on the party creating the hazard by making the u-turn, the applicant. This is especially the case as while u-turns in the area may have been common, the applicant could not have been reasonably certain the respondent would understand he intended a left or u-turn with his left signal, given there was no lane in which to turn left. Further, the applicant crossed the solid double line, instead of staying to the right of it as required by section 155 of the *Motor Vehicle Act*.

23. However, I do not agree with ICBC that the applicant should be held 100% liable for the MVA. Section 159 of the *Motor Vehicle Act* states that a driver must not overtake and pass on the left of another vehicle, unless it can be done safely.

Further, given section 155 of the *Motor Vehicle Act*, both the applicant and the respondent improperly crossed the double line.

24. As set out above, the respondent did have his left signal on and had slowed or had just stopped. I find there is no suggestion the respondent had intended to park on the side of the road. Given these circumstances and the double line, I find the respondent unreasonably proceeded to overtake or pass the applicant on his left. I say this in part because based on the photos, I find the respondent ought to have considered whether the applicant intended to make a u-turn in order to get on the southbound ramp, which was the only "left" area available.

25. On balance, given the facts and my findings above, I find the applicant is 75% responsible for the MVA and the respondent is 25% responsible.

26. The applicant stated the value of his claim was $3,000 in the Dispute Notice, and this was not disputed. However, there is no clear evidence before me about the value of the applicant's vehicle repairs, and the applicant did not request a monetary order. I note ICBC's record of a "gross cost" of the respondent's vehicle repair as $1,444.88. I am satisfied in these circumstances that my order falls within the tribunal's $5,000 monetary limit and I leave it to the parties to address any specific damages between them, together with ICBC.

27. There was divided success in this dispute. In accordance with the Act and the tribunal's rules I find the applicant is entitled to reimbursement of half the $75 he paid tribunal fees, namely $37.50. While the applicant claimed $34 in dispute-related expenses, he did not explain what this was for and did not provide any receipts. I dismiss this claim for $34.

ORDERS

28. I order that the applicant is 75% liable for the March 13, 2016 MVA, and the respondent is 25% liable for it.

29. Within 14 days of this decision, I order the respondent to pay the applicant $37.50 as reimbursement of tribunal fees. The applicant is entitled to post-judgment on this amount, as applicable, under the *Court Order Interest Act.*

30. 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.

31. 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.

Shelley Lopez, Vice Chair