



Civil Resolution Tribunal

Date Issued: December 28, 2018

File: SC-2018-001583

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Burns v. Cobra Electric (South Coast) LTD.*, 2018 BCCRT 922

B E T W E E N :

Bobbie Burns

APPLICANT

A N D :

Cobra Electric (South Coast) LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about alleged personal injuries and damage to personal property.
2. The applicant, Bobbie Burns, says that on March 5, 2017 he pulled his vehicle off to the side of BC Highway 99 to clear his windows of snow, when his right leg dropped

into an uncovered manhole. He seeks \$5,000 in damages for personal injuries and damage to a ring.

3. The respondent, Cobra Electric (South Coast) LTD., says it is not liable, as it met its maintenance obligations under its contract with the provincial government.
4. The applicant is self-represented. The respondent is represented by Wayne Keiser, and employee or principal.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
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.

Preliminary Issue – Third Party Claim

9. The respondent attempted to file a third party claim against the British Columbia Ministry of Transportation (government). At a preliminary stage, the tribunal determined that such a claim was outside the tribunal's jurisdiction. Section 9 of the Act says that the government may not be a party to a tribunal proceeding, and section 3.1(2)(b) of the Act says that the tribunal does not have jurisdiction in a claim for or against the government.
10. The respondent now submits that the tribunal should dismiss or refuse to resolve this dispute, since the tribunal refused to allow a third party claim against the government. I disagree. The applicant has the right to file a claim against the respondent. If the applicant proves on a balance of probabilities that he was injured and that the respondent is liable for those injuries, then a finding of liability against the respondent is appropriate. The respondent's argument that any liability lies with the government is a defence that I must consider, but it does not bar the applicant's right to pursue his claim against the respondent. The respondent would not be prevented from pursuing a remedy against the government in a separate court proceeding, if the respondent were found liable in this dispute.
11. For these reasons, I find that it is not appropriate to dismiss or refuse to resolve this dispute due to the tribunal's preliminary decision that the government cannot be named as a third party to the dispute.

ISSUES

12. The issues in this dispute are:

- a) Is the respondent liable for personal injuries to the applicant, and if so, what is the appropriate remedy?
- b) Is the respondent liable for damage to the applicant's ring, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

- 13. 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.
- 14. The applicant says that on March 5, 2017, he was driving on BC Highway 99, and pulled over under an underpass to clear snow from his windows. The applicant says the area was dark and poorly lit, and a metal lid had come off an inspection hole in the ground. He says his right leg dropped into the hole, and he was able to catch himself, but he injured his hands, neck, shoulders, and back.
- 15. The applicant says he reported the incident to the police, who forwarded the information to the government. The government sent the applicant a March 8, 2017 letter asking him to fill out a notification of claim form. The letter said that under the terms with their contractor, any incident arising out of acts or omissions of the contractor become a matter for the contractor and its insurer to consider. The letter said the applicant's notification of claim form would be forwarded to the contractor responsible for the area where the incident occurred.
- 16. The respondent received a copy of the notification of claim form submitted by the applicant. In an undated letter to the applicant, the respondent said they received a call on March 6, 2017 and their electrician visited the site of the incident and made temporary repairs, which included covering the top of the junction box with a steel plate and marking the location with safety cones. The letter said permanent repairs were made on March 7. The respondent said this met its contractual repair

obligations, and that the respondent did not accept liability for the applicant's financial claim.

Personal Injury Claim

17. The respondent's letter confirms that the junction box was uncovered on March 5, 2017. Based on that admission, and the photos provided by the applicant, I accept that the applicant stepped in the box and sustained minor abrasions to the palm of his hand. However, I find the applicant has not established that he sustained any further personal injury, and has not established that he is entitled to compensation for personal injury.
18. Specifically, I find the medical evidence provided by the applicant does not support the conclusion that the junction box incident caused any injury beyond minor hand abrasions. The applicant says he sustained injuries to his hands, neck, shoulders, and back. There is no medical or other record before me documenting neck or back injuries, or hand injuries beyond minor abrasions. There is no evidence indicating that the applicant sought medical attention after the March 5, 2017 incident, including visiting an emergency room or family doctor. Thus, there are no records documenting any injuries resulting from the junction box incident. The applicant says his wife was in the car at the time of the incident, but she provided no evidence in this dispute.
19. The applicant provided copies of prescriptions for muscle relaxant medication obtained on March 15, 2017. However, this was 10 days after the claimed incident. Based on this time delay, and the lack of any evidence about why the muscle relaxants were prescribed, I find this evidence does not establish that the applicant sustained injuries on March 5, 2017, beyond the minor hand abrasions. Similarly, the applicant obtained pain medication and more muscle relaxants on April 11, 2017, but there is no evidence showing that these prescriptions, purchased over 1 month later, were related to the junction box incident. The applicant was prescribed anti-inflammatory medication on August 8, 2018, but again there is no information

showing what condition was being treated, or relating it to the March 5, 2017 incident.

20. The applicant provided receipts showing that he attended physiotherapy treatments on May 28, June 5, and June 19, 2017. These treatments started almost 2 months after the March 5, 2017 incident, and there is no information about what condition was being treated, so I find this evidence does not establish that the applicant was injured on March 5, 2017, beyond the minor hand abrasions.
21. The applicant underwent cortisone injections performed by an orthopaedic surgeon on February 7, 2018. Again, there is no information before me showing why this was prescribed, what body part was affected, or connecting this treatment to the junction box incident 11 months earlier. I note that the applicant did not provide a copy of the orthopaedic surgeon's consultation report.
22. The applicant underwent right and left shoulder MRIs on November 30, 2017. The MRI report says the applicant had bilateral shoulder pain, worse on the right. Under "clinical indication", the report says "Injury 2 months previous". This may be an error, as the report also says the applicant had previous bilateral shoulder MRIs on May 8, 2017. However, the May 8, 2017 MRI reports were not provided in evidence, and there is no evidence before me linking the November 2017 MRI findings to the March 5, 2017 junction box incident.
23. Based on the evidence provided in this dispute, I find the applicant has not met the burden of proving that he sustained any physical injuries on March 5, 2017 beyond minor hand abrasions. For that reason, I find he is not entitled to any compensation for personal injury. I find the hand abrasions he sustained do not warrant compensation because they were minor, as shown in the photos, there is no evidence that they lasted for a sustained period, and there is no evidence that they had any impact on the applicant's ability to function or work.

Ring

24. The applicant says the stone in his ring was damaged during the junction box incident. He provided a somewhat unclear photo of the ring showing what appears to be a piece missing from the centre of the stone. He says the photo was taken on the day of the incident. The applicant also provided a March 23, 2017 letter from a jewellery sales manager stating that the synthetic ruby has a large chip in the middle, which would cost \$840 plus tax to repair and replace.
25. I find the applicant has not established that his ring was damaged in the junction box incident. While the evidence shows that the ring has damage, there is insufficient evidence to confirm how the damage occurred. The applicant did not explain how the ring was broken during his fall, or when he noticed the damage. Although he says his wife was present during the incident, she did not provide any evidence.
26. For these reasons, I find the applicant is not entitled to compensation for the ring damage. I dismiss the applicant's claims.
27. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful and so I dismiss his claims for reimbursement of tribunal fees and dispute-related expenses.

ORDER

28. I dismiss the applicants' claims and this dispute.

Kate Campbell, Tribunal Member

