Civil Resolution Tribunal

Date Issued: March 8, 2019

File: SC-2018-006481

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dubnov v. Insurance Corporation of British Columbia,* 2019 BCCRT 287

B E T W E E N :

Martin Dubnov

APPLICANT

A N D :

Insurance Corporation of British Columbia

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a liability for a motor vehicle accident and vehicle repair costs. The applicant, Martin Dubnov, was involved in a July 5, 2016 motor vehicle collision with another driver, KH (the MVA). KH is not a party to this dispute. The respondent,

Insurance Corporation of British Columbia (ICBC), found the applicant was 100% liable for the MVA. The applicant says KH should have been found liable and claims $1,818.44 for vehicle repairs and estimated inflation on those repairs, and mileage.

2. ICBC says this is a tort claim and it is not the proper respondent, KH is. ICBC also says the applicant's dispute was started out of time and that in any event its liability assessment against the applicant was correct.

3. The applicant is self-represented. ICBC is represented by an 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 118 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 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.

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 issues in this dispute are: a) is ICBC properly named as a respondent in this dispute, b) was the applicant's claim started in time, and c) is the applicant liable for the MVA and if not should ICBC pay the applicant's claimed damages?

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 referenced the evidence and submissions as necessary to give context to my decision.

ICBC as respondent

10. I will deal with the issue of ICBC as respondent first. Because the applicant wants compensation for his vehicle damage, in my view ICBC is correct that this is actually a tort claim and the proper respondent is KH. If this were a claim framed as one about insurance coverage, with the applicant seeking a liability reassessment in order to lower future insurance premiums, ICBC would be a proper respondent. However, given my ultimate conclusion below that this dispute must be dismissed, nothing turns on this.

Limitation period – claim out of time?

11. The *Limitation Act* (LA) applies to the tribunal. The LA provides for a 2-year limitation period for an applicant to start a claim. As set out in section 8 of the LA, the running of time started from the date the applicant knew or ought to have known he had a claim against the respondent for the MVA and that a tribunal or court proceeding was appropriate.

12. The applicant submits that the ICBC adjustor deferred the applicant's claim until the tribunal's dispute process was completed. The applicant therefore submits that the running of time does not start until the end of the tribunal's proceedings. That is incorrect. I find there is nothing in ICBC's communications that extended the limitation period in this way.

13. If this were a tort claim, it would be out of time because the MVA occurred on July 5, 2016 and the tribunal did not issue the Dispute Notice until August 31, 2018.

14. However, this claim is against ICBC. As noted the applicant alleges ICBC, the insurer for both drivers in the MVA, incorrectly assessed liability against the applicant. The applicant says while ICBC wrote him a letter on August 17, 2016 setting out its assessment that the applicant was liable for the MVA, he did not receive that letter until September 2, 2016. If September 2, 2016 is the date to start the 2-year limitation period, then the dispute was started in time given the August 31, 2018 Dispute Notice date.

15. In particular, the applicant says he and his roommates routinely did not receive mail for a couple of weeks after the date of the correspondence. He provided a witness statement to this effect from a roommate AB, and about ICBC's August 17, 2016 letter specifically. I accept the applicant's and AB's undisputed evidence that the applicant did not receive the August 17, 2016 letter until September 2, 2016.

16. However, the applicant's evidence shows that on August 17, 2016 he spoke to the ICBC adjuster who told him he was being found 100% liable, and that the applicant asked for a written letter, which resulted in the August 17, 2016 letter being sent.

17. I acknowledge the applicant's submission that he requested a written decision because he had received different decisions by voice and email. I find nothing turns on this. First, ICBC's records do not clearly show the applicant was provided different final decisions. Second, even if the applicant had received prior decisions, the ICBC adjuster's notes from the August 17, 2016 call clearly show the applicant

understood the final decision was that he was being held 100% liable regardless of contrary opinions he had received.

18. I find the applicant's dispute against ICBC was not filed in time, because his discovery of that claim arose on August 17, 2016, when he spoke to ICBC and clearly received the same information set out in ICBC's letter of the same date: the applicant was being held 100% liable for the MVA. I note ICBC's record of the August 17, 2016 conversation is not disputed.

ICBC's liability assessment for the MVA

19. In the event I am incorrect about the application of the LA, or whether ICBC is the proper respondent, I turn then to the question of ICBC"s liability assessment that the applicant was responsible for the MVA. Specifically, whether ICBC acted "properly or reasonably" in administratively assigning responsibility for the MVA (see *Singh v. McHatten*, 2012 BCCA 286, and *Innes v. Bui*, 2010 BCCA 322 at para. 33).

20. 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 (see *McDonald v. Insurance Corp. of British Columbia*, 2012 BCSC 283).

21. So, what are the relevant facts of the MVA? I find this was not clearly explained the parties and so for the most part I rely on the ICBC adjuster's notes in evidence, along with the applicant's map. Again, the applicant bears the burden of proof in this dispute.

22. I find the MVA occurred on a section of road where Steveston Highway eastbound turns to the south to begin the merge onto Highway 99 southbound. The applicant

was in the middle lane. KH had been on the applicant's right, and where KH was at the time of the MVA is disputed and is discussed below. The applicant's vehicle sustained damage (a long scrape) to the passenger side door panel and on the panel above the front right wheel well.

23. The ICBC adjuster's notes show that KH said he had signaled and that the applicant was on his left, just behind him. The vehicles on the ramp were merging. KH said the car ahead of him stopped and the applicant pulled up beside KH on KH's left. KH said he was stopped when the applicant hit him as the applicant tried to bypass him.

24. ICBC concluded that in the spot where the MVA occurred, traffic merged left to right. Despite the applicant's assertion to the contrary, I have no evidence to before me to contradict ICBC's conclusion. In particular, while the applicant says the road signs required the car on the right (KH) to merge to the left, the applicant provided no evidence of such signs. ICBC concluded the onus was on the applicant to comply with section 151 of the *Motor Vehicle Act*, which requires a driver to make lane changes safely.

25. The applicant says he had taken the right turn towards the ramp, and driven past a cross-walk. There was a lane to his left for westbound Steveston traffic. The applicant said the lane to his left was merging into his lane. The applicant said KH failed to merge left before the right turn. The applicant said KH completed the turn using the shoulder, and then after the turn was completed, the applicant said KH tried to merge into the applicant's lane from the shoulder.

26. The applicant says the ICBC adjuster mistakenly concluded the ramp was only wide enough for 1 car. The applicant says the entrance ramp was wide enough for both his vehicle that had the right of way and for KH's vehicle that had been in the curb lane before the right of way signs allegedly advised the curb traffic to enter the middle lane when safe.

27. First, it is not entirely clear to me that ICBC concluded the ramp was only wide enough for one car. However, even if ICBC had been aware the road was wide enough for 2 cars, that does not necessarily alter ICBC's conclusion that KH's version of events should be preferred.

28. The applicant also says the adjuster misinterpreted the traffic rules that apply to right of ways and mergers on entrance ramps to highways, yet he provided no evidence to support this latter assertion.

29. The applicant provided a December 6, 2018 statement from a professional civil engineer Dino Chies who says that the roadway where the MVA occurred "provides ample room for two vehicles to pass through simultaneously". Mr. Chies stated he has been a civil engineer since 1992 and has worked in the fields of construction management. I accept his opinion on this issue as expert opinion, under tribunal rule 113.

30. However, nothing turns on Mr. Chies' opinion, which the applicant relies on to allegedly prove he was beside KH rather than behind him, in that there was in fact room for both cars to be beside each other simultaneously. There is nothing in Mr. Chies' opinion that discusses right of way in merging at the MVA location.

31. Even accepting the ramp was wide enough for 2 vehicles, I find ICBC reasonably determined the applicant was 100% liable for the MVA. I say this in part because of the applicant's own statements to ICBC about how the MVA occurred (my bold emphasis added):

    a. The applicant was in heavy traffic, and noticed KH in the far right lane "before we hit the ramp".

    b. KH was still in the far right lane, which alarmed the applicant, because KH's lane had ended and yet KH was "still in his lane". KH "basically wanted to pass me as he ran out of room".

c. KH "never entered my lane" and instead KH "carried on as if his lane went onto the ramp, he was beside of me and he was not backing off".

d. The applicant denied that KH was in front of him, saying that KH's left front fender collided with the applicant's front right side. However, there is no evidence before me of KH's vehicle, and I note the evidence shows no damage was claimed for it.

e. ICBC asked the applicant about when he realized KH was beside him: "why not just ease up and fall behind" KH? The applicant responded that he did not want to do that, because KH had earlier cut him off in Steveston. **The applicant asserted he had the right of way and was not going to let KH in front of him**. **ICBC told the applicant that once the turn had been completed, the right of way shifted to KH. ICBC told the applicant he had an opportunity to avoid the MVA and chose not to do so**.

32. The applicant said he interviewed the Supervisor of Examiners at the ICBC Testing Branch and they agreed the adjuster was incorrect in the interpretation of right of way when on the traffic ramp. However, the applicant provided no statement from such a person.

33. ICBC submits that KH and the applicant provided conflicting accounts of how the MVA occurred. ICBC found KH's account the most credible in the circumstances, namely that the applicant attempted to overtake KH on KH's left. The fact that the road was wide enough for 2 cars to drive beside each other does not necessarily change this conclusion.

34. In summary, I find ICBC's assessment of liability was appropriate and reasonable in the circumstances, which includes its conclusion that KH was more credible. As such, I find the applicant's claims must be dismissed.

35. In accordance with the Act and the tribunal's rules, as the applicant was unsuccessful I find he is not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDER

36. I order the applicant's claims, and this dispute, must be dismissed.

Shelley Lopez, Vice Chair