



Civil Resolution Tribunal

Date Issued: March 15, 2019

File: SC-2018-002703

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *schmidt v. Insurance Corporation of British Columbia et al*,
2019 BCCRT 321

B E T W E E N :

karl schmidt

APPLICANT

A N D :

Insurance Corporation of British Columbia and Enterprise Rent-A-Car

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Karl Schmidt was in a car accident with the driver of a car rented from the respondent Enterprise Rent-A-Car (Enterprise). Mr. Schmidt says the

respondent Insurance Corporation of British Columbia (ICBC) told him he was at fault for the accident, despite dash cam footage that he says shows the other driver RR running a red light.

2. Mr. Schmidt says ICBC told him that no claim had been filed. Since the damage was minor, Mr. Schmidt says he did not pursue the issue further. Later, Mr. Schmidt says he discovered a \$2,275.94 claim, for repairs to other driver's vehicle, on his insurance claim history.
3. Mr. Schmidt seeks \$1,000 for vehicle repairs, and to have the \$2,275.94 claim removed from his ICBC insurance claim history. He also asks for an explanation about why ICBC was able to "place" a claim against him without advising him of it.
4. Mr. Schmidt is self-represented. The respondent ICBC is represented by employee Kim Laurie.
5. While Enterprise was provided with the Dispute Notice by registered mail, it did not file a Dispute Response. As discussed further below, I have decided to dismiss the dispute and so Enterprise's failure to file a Dispute Response is not determinative.

JURISDICTION AND PROCEDURE

6. 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*. 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.
7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "he said, he said" scenario with both sides calling into question the credibility of the other. Credibility of witnesses, particularly where there

is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.

8. 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
9. 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.
10. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

11. The issues in this dispute are:
 - a. Did ICBC properly assess 100% liability against Mr. Schmidt for RR's claim?
 - b. Did ICBC fail to inform Mr. Schmidt of RR's claim and, if so, what is an appropriate remedy?
 - c. Whether the respondent Enterprise is liable for any of the applicant's claims?

EVIDENCE AND ANALYSIS

12. 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.
13. On August 26, 2016, Mr. Schmidt was involved in a minor motor vehicle accident with RR, driving a car rented from Enterprise.
14. Mr. Schmidt was driving southbound on Yew Street in Vancouver. In this area, Yew Street is controlled by stop signs. Mr. Schmidt was stopped at a stop sign waiting to move onto West 4th Avenue.
15. At the same time, RR's car was travelling westbound on West 4th Avenue. The intersection of West 4th Avenue and Yew is controlled by traffic lights on 4th Avenue. The vehicles collided in the intersection.
16. Mr. Schmidt says that RR ran a red light. RR told ICBC he proceeded through the intersection on the amber light and was struck by Mr. Schmidt's car.
17. A photograph of the intersection as it appeared at August 26, 2016 at 9:40:01 was filed in evidence. Mr. Schmidt says this shows that the light was red at this time. No cars are in the intersection. Another still taken at 9:40:02 shows no cars in the intersection. I am unable to determine that the light is red in either of these still photos. I find that the pedestrian signal to cross West 4th is not yet on in either photo.
18. At 9:40:03, the pedestrian signal to cross West 4th is not yet on. The front of a red car can now be seen in front of Mr. Schmidt's car. Mr. Schmidt says this still is from the moment of impact.
19. A further photo time stamped at 9:40:04 shows that the pedestrian signal is now on to cross West 4th.

20. Based on these photographs, I find that Mr. Schmidt moved into the intersection at some time before the pedestrian signal to cross West 4th was illuminated. Although I understand his contention that the vehicle light would have turned red before the pedestrian signal did, at the time of the collision I can only see that the pedestrian signal was not yet on. This means that the vehicle light was either amber or had only just changed red.
21. ICBC determined that Mr. Schmidt was 100% liable for the accident. It assessed a claim of \$2,275.94 against him for repairs to RR's car.
22. Mr. Schmidt contacted ICBC after the accident and was told no claim had been filed. Mr. Schmidt asked to start a claim.
23. ICBC contacted RR. ICBC then informed Mr. Schmidt that he was at fault for the accident unless he had "any other evidence."
24. ICBC owes the applicant a duty of good faith, which requires ICBC to act fairly both in how it investigates and assesses a 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).
25. Given the evidence and submissions before me, I find nothing to suggest ICBC failed to meet that burden.
26. Section 169 of the *Motor Vehicle Act* says that a person must not move a vehicle that is stopped unless the movement can be made with reasonable safety. Section 175 (1)(a) says that where a vehicle is about to enter a highway, the driver of the vehicle must yield the right of way to traffic that had entered the intersection on the through highway or its approaching so closely on it that it constitutes an immediate hazard.

27. When a vehicle is stopped at a stop sign, the driver must ensure it is safe to leave before moving from the stopped position. Here, Mr. Schmidt had a stop sign. When RR came through the intersection, whether on a late amber or early red light, he was entitled to assume Mr. Schmidt would obey his stop sign and not leave until it was safe to do so. Put differently, the moving vehicle was entitled to assume a stopped vehicle would not proceed into the intersection until it was reasonably safe to do so.
28. I find that Mr. Schmidt has not met the burden upon him to demonstrate that RR was liable, on a balance of probabilities. I confirm ICBC's finding that Mr. Schmidt was 100% liable for the claim.
29. Mr. Schmidt says ICBC told him that no claim had been filed by the other party. No written evidence was provided to support this contention.
30. Mr. Schmidt says that because the damage was minor, he decided not to pursue the issue of his own vehicle damage claim.
31. Later, he discovered a claim had been filed in the amount of \$2,275.94. He says this was contrary to what he had been told earlier.
32. On this issue, I find it more likely than not that ICBC informed Mr. Schmidt of the claim, given his admission that ICBC informed him he was 100% liable.
33. Although Enterprise is in default, I find that there is no basis in the evidence for a claim against it. The dispute here is between Mr. Schmidt and ICBC about ICBC's determination of liability for the accident. For this reason, I dismiss Mr. Schmidt's claim against Enterprise.
34. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. The respondents paid no fees. As the applicant was unsuccessful, I find he is not entitled to reimbursement for tribunal fees.

ORDER

35. I dismiss the applicant's claim and the dispute.

Julie K. Gibson, Tribunal Member