



Civil Resolution Tribunal

Date Issued: May 16, 2019

File: SC-2018-005546

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Medel v. Grewal et al*, 2019 BCCRT 596

BETWEEN:

Eduardo Medel

APPLICANT

AND:

Avtar Grewal, KTL Transport Inc., and INSURANCE CORPORATION
OF BRITISH COLUMBIA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This is a small claims dispute about a motor vehicle accident that occurred on April 13, 2018 (accident). The applicant, Eduardo Medel, and the respondent, Avtar Grewal, were traveling northbound on Hwy 99 at Hwy 17A in Delta, British

Columbia. The vehicle driven by Avtar Grewal was apparently owned by the respondent KTL Transport Inc. (KTL), and it struck the left side of the applicant's vehicle. The applicant alleges that Mr. Grewal and KTL are wholly responsible for the accident because Mr. Grewal was attempting to change lanes into the applicant's lane.

2. The respondent insurer, Insurance Corporation of British Columbia (ICBC), internally concluded that the applicant was 50% at fault for the accident and the respondents, Mr. Grewal and KTL, were 50% at fault.
3. The applicant says ICBC should have found the respondents Mr. Grewal and KTL 100% responsible for the collision and that ICBC breached its statutory obligations in investigating the accident and assigning fault.
4. ICBC says it is not a proper party to the claim and that it assigned fault 50/50 because neither driver admitted liability and there was no other evidence to assign fault otherwise.
5. The applicant seeks a declaration that Mr. Grewal and KTL are wholly responsible for the accident, \$150 to reimburse him for the 50% deductible he paid to ICBC, \$1,000 or the actual costs of his increased premiums, and \$2,500 in legal fees.
6. The applicant is represented by Miranda Moore, legal counsel. All respondents are represented by Kim Laurie, an ICBC adjuster.

JURISDICTION AND PROCEDURE

7. 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.

8. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a “he said, he said” scenario. The credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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 British Columbia Supreme Court recognized the tribunal’s process and found that oral hearings are not necessarily required where credibility is an issue.
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 9.3(2), 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 breach its statutory obligations in investigating the accident and assessing fault?

- b. Who is liable for the accident? If not the applicant, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

Did ICBC breach its statutory obligations in investigating the accident and assessing fault?

13. As noted above, the applicant seeks an order overturning ICBC's internal liability assessment and a refund of the 50% portion he was required to pay for his insurance deductible. To succeed against ICBC, the applicant must prove on a balance of probabilities that ICBC breached its statutory obligations or its contract of insurance, or both. The issue against ICBC is whether ICBC acted "properly or reasonably" in administratively assigning 50% responsibility to the applicant (see: *Singh v. McHatten*, 2012 BCCA 286).
14. The applicant says that ICBC failed in its duty to assess his liability under the insurance contract. The parties have not made any claim for injury, but the applicant seeks reimbursement for the portion he paid for his insurance deductible and for the unknown cost of future premium increases, or \$1,000. ICBC submits the applicant does not currently have a vehicle insured with them and therefore are unable to determine his premiums.
15. The root of the applicant's claim is that he says Mr. Grewal changed lanes into his lane when it was unsafe to do so and collided with the applicant's vehicle. There were no independent witnesses to the accident and the ICBC adjuster stated both the applicant and Mr. Grewal denied changing lanes.

16. 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 and the assessment of the collected information" (see: *McDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283). I find ICBC has done so, as discussed further below.
17. The applicant says that ICBC failed to conduct a thorough examination about the accident. The applicant says that ICBC denied him the opportunity to submit photographic evidence, to review the statement of the other driver, and to submit additional evidence before ICBC rendered its decision on liability.
18. ICBC says both drivers were asked about witnesses, the availability of dash-cam footage and photographs that would assist with determining liability, and that neither party submitted any video or photographs. ICBC submits no formal statements were taken from either driver, only oral reports. It also states there was a witness who was not initially interviewed as the witness knew Mr. Grewal and was therefore not independent. ICBC further submits that once the Dispute Notice was filed, it contacted that witness, who stated they did not see either driver leave their own driving lane.
19. Given the overall evidence, I do not find that ICBC breached its statutory obligations or its contract of insurance. I find ICBC acted reasonably in administratively assigning the applicant 50% responsibility for the accident.
20. Having determined that ICBC acted reasonably in its examination of the accident, I turn now to my assessment of liability.

Who is liable for the accident?

21. The following facts are undisputed:
 - a. On April 13, 2018, both the applicant and Mr. Grewal were driving northbound on Hwy 99 approaching Hwy 17A in Delta, British Columbia.
 - b. Prior to the accident, the applicant was driving in the right-hand lane and Mr. Grewal was driving in the left-hand lane.
 - c. There are no independent witnesses to the accident.
22. The applicant says Mr. Grewal attempted to changes lanes into the right-hand lane and collided with the applicant's vehicle.
23. Mr. Grewal did not provide a statement in evidence, but did give ICBC an oral report about the accident. The tribunal has flexibility to receive evidence that is not admissible in court, such as hearsay. In the context of this dispute, ICBC submits that no written statement was provided to it and submits that as part of its routine business procedures Mr. Grewal did provide an oral report in which he stated he did not make a lane change or leave his lane. The content of Mr. Grewal's oral report is hearsay, but I find the fact the statement was made to ICBC is not in dispute. I accept that Mr. Grewal made the statement as described above.
24. As noted above, ICBC assessed both the applicant and Mr. Grewal 50% at fault for the accident. ICBC concluded that there was no evidence Mr. Grewal left his driving lane and submits that the only evidence available to determine fault was two drivers each denying they left their own driving lane. I agree, for the reasons that follow.
25. The applicant submits that photographs taken at the scene show that Mr. Grewal is responsible for the accident. However, I have reviewed the photographs and do not agree. The photographs were taken after the accident and show the applicant's vehicle in the right lane and Mr. Grewal's vehicle in the left lane. Neither vehicle is

shown to be crossing into the other's lane. As such, I find the photographs are of no assistance in determining liability for the accident.

26. Faced with conflicting evidence from the parties, in the circumstances here it is impossible to know with certainty how the accident happened. As noted above, the burden is on the applicant to prove on a balance of probabilities that Mr. Grewal and KTL were solely responsible for the accident. I find that he has not met that burden.
27. As a result, I find the applicant is not entitled to a different liability assessment for the accident. The applicant is therefore not entitled to reimbursement of his insurance deductible nor the unquantified increase of future insurance premiums. I note that had I been inclined to find in the applicant's favour, I would have needed to consider whether the value of the premiums fell within the tribunal's \$5,000 small claims limit.
28. Details of the relationship between Mr. Grewal and KTL and therefore KTL's role in the accident were not before me in this dispute, other than ICBC stating in its Dispute Response that Mr. Grewal and KTL were the proper respondents and were both insured by ICBC. Given my finding that the applicant has not met his burden of proving Mr. Grewal and KTL were responsible for the accident, I find nothing turns on the absence of evidence about the respondents' relationship and role in the accident.
29. The applicant also requested \$2,500 in legal fees incurred to attempt informal resolution of the dispute. Tribunal rule 9.4 sets out that, except in extraordinary cases, the tribunal will not order a party to pay legal or representative fees for the dispute. This is not an extraordinary case. Therefore, I decline to order reimbursement of the applicant's legal fees. I would not have ordered reimbursement of the applicant's legal fees in any event, given the applicant was unsuccessful in his claims.
30. 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 applicant was unsuccessful in this dispute and is thus not entitled to reimbursement of tribunal fees or dispute-related expenses. The respondents did not pay tribunal fees or claim dispute-related expenses.

ORDER

31. I order the applicant's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair