



Civil Resolution Tribunal

Date Issued: June 10, 2019

File: SC-2018-008005

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Singh v. Insurance Corporation of British Columbia*, 2019 BCCRT 701

BETWEEN:

JAGTAR SINGH

APPLICANT

AND:

Insurance Corporation of British Columbia

RESPONDENT

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 December 13, 2017 (accident). The applicant, Jagtar Singh, and a third party driver not named in this dispute, SHC, were each traveling westbound on Bridgeport Road, west of Knight Street in Richmond, British Columbia. The vehicle driven by

SHC was apparently owned by a family member, AL. The applicant was traveling in the left-hand lane, and SHC had recently merged into the right-hand lane. The two vehicles collided. The applicant alleges that SHC and AL are wholly responsible for the accident because SHC was attempting to change lanes into the applicant's lane when the accident occurred.

2. The respondent insurer, Insurance Corporation of British Columbia (ICBC), internally concluded that the applicant was 50% at fault for the accident, and that SHC and AL, together, were 50% at fault.
3. The applicant says ICBC should have found SHC and AL 100% responsible for the accident, and that ICBC breached its statutory obligations in investigating the accident and assigning fault. He seeks a declaration that SHC and AL were 100% at fault, and payment of \$2,400.
4. ICBC says it is not a proper party to the claim, and that SHC and AL should be substituted as respondents. The applicant declined to make a claim against SHC. ICBC says it assigned fault 50/50 under section 151 of the *Motor Vehicle Act* (MVA) because there is an onus for each driver to stay in their own lane.
5. The applicant is self-represented, with ICBC represented by an employee.

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. Some of the

evidence in this dispute amounts to a “he said, she 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.

8. In this dispute, the applicant identified that he has difficulty speaking English. While section 20 of the Act creates a general rule that parties must represent themselves, a party is entitled to use a “helper” throughout the tribunal process. The applicant also could have made a request for representation, but did not do so. In any event, although it does not appear the applicant used a helper in this case, I am satisfied the applicant understood the proceedings and that all the relevant evidence and submissions are before me.
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 payment of \$2,400. 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 applicant has not made a claim for injury, and ICBC said the applicant did not report any damage to his vehicle. The applicant seeks \$2,400 from ICBC, but did not provide any evidence as to what this \$2,400 claim is for. I infer it is a claim for increased premiums as a result of being apportioned 50% fault for the accident.

15. The root of the applicant's claim is that he says SHC changed lanes into his lane when it was unsafe to do so and collided with the applicant's vehicle. It is undisputed that there were no independent witnesses to the accident. SHC and the applicant both deny changing lanes in the statements they provided to ICBC, which are in evidence.
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 in 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).
17. The applicant says that ICBC "investigated nothing" when assigning fault to both drivers. In their statements to ICBC, both drivers denied changing lanes and they each disagree on which lane the accident happened in. As noted, no independent witnesses were identified and ICBC says no dash cam footage was taken at the time of the actual collision.
18. Given the overall evidence, I find that ICBC did not breach its statutory obligations or its contract of insurance. I find ICBC acted reasonably in administratively assigning the applicant 50% responsibility for the accident.
19. 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?

20. As noted above, the applicant has brought this claim against ICBC only, and not the driver and/or owner of the other vehicle involved in the accident. In *Kristen v. ICBC*, 2018 BCPC 106, the court held that:

The court cannot assess liability unless the other driver is given an opportunity to present his or her case on that issue. If the other driver is not served and given an opportunity to be heard the court would only have the version of events provided by the claimant to consider. The other driver has a right to notice that the court is being asked to consider the issue of liability and an opportunity to participate in the proceedings to present his or her version of the events.

The proper way for the claimant to do that is to sue the other driver. The proper defendant in an action to determine liability in a motor vehicle accident is the other driver, not ICBC...

21. In *Kristen*, rather than dismissing the claim for not having named the other driver, the court allowed the claimant an opportunity to amend his Notice of Claim and add the other driver as a defendant.
22. In the case of *Morin v. ICBC, Clark & Berry*, 2011 BCPC 290, the claimant brought an action against both ICBC and the driver of the other vehicle involved in a collision. The court held that ICBC had incorrectly charged the claimant a deductible pursuant to a “hit and run”, when it found the defendant driver’s negligence had caused the accident. Therefore, the court determined the claimant was entitled to reimbursement for the deductible he paid, and although both ICBC and the other driver were named defendants, ordered the claimant was “entitled to recover from ICBC the entire amount of his damages”.
23. I find that the *Kristen* and *Morin* cases are not inconsistent. *Kristen* states that in order to properly assess liability, the other driver should be named to give them an opportunity to present their version of the accident events. I agree, as not doing so

would likely be procedurally unfair. However, there was no decision in *Kristen* on who would be responsible for paying damages, should they be awarded. In *Morin*, both ICBC and the other driver were named defendants, so the court assessed liability accordingly, and decided as the claimant had paid money to ICBC, ICBC was the proper party for the claimant to recover that money from. The evidence of the defendant driver in *Morin* was used to help determine liability in that case.

24. Given my conclusion below that the applicant has not proved his claim, in this dispute nothing ultimately turns on the fact that the applicant did not name the other driver.
25. For the reasons that follow, I dismiss the applicant's claim for a re-apportionment of liability and for damages as the applicant has not proven on a balance of probabilities that the other driver was 100% at fault for the accident. Had I been inclined to find in favour of the applicant, I may have allowed the applicant to take steps to add the other driver as a respondent in this dispute. In the circumstances of this dispute, where I find the applicant has not proven the other driver was 100% at fault for the accident, I do not need to determine who would have been the proper party for the applicant to recover damages from, whether ICBC or the other driver.
26. The applicant says SHC attempted to change lanes into the left-hand lane and collided with the back end of the applicant's vehicle. The applicant's initial statement to ICBC on December 15, 2017 was provided in evidence. In his statement, the applicant stated SHC was merging into his lane and her vehicle's front left quarter panel struck the middle of the passenger side of the applicant's vehicle.
27. Although SHC is not named as a respondent in this dispute, the statement she provided to ICBC after the accident is in evidence. In her statement, SHC stated she merged from Knight Street Bridge onto Bridgeport Road heading west. She said while in the merge lane she was stopped and yielded to other vehicles. She said she was able to merge safely into the right-hand lane of traffic and had been traveling in that lane for 3 to 4 car lengths when the applicant's vehicle hit her

vehicle's left side mirror and driver's side door. She stated she did not leave her lane of travel.

28. Given the above evidence, I am satisfied the accident was not a rear-end collision, but a sideswipe-type collision between the 2 vehicles.
29. As noted above, ICBC assessed both the applicant and SHC 50% at fault for the accident. ICBC concluded that as both drivers stated they remained in their own lane of travel, neither driver was able to show the other driver was negligent. I agree, for the reasons that follow.
30. The applicant submits that photographs taken at the scene show that SHC is responsible for the accident because they show her erasing dash cam footage. However, I have reviewed the photographs and do not agree. The photographs were taken after the accident and show 2 individuals passing each other an item, which cannot clearly be made out. The photo appears to show two dash cameras, or some other technology, on the windshield. ICBC submits no dash cam footage was taken at the time of the actual collision. I am not satisfied the photographs show what the applicant states they do. The applicant's allegation that SHC erased the dash cam footage to cover up her fault is speculative and I give it no weight.
31. The applicant submits that a video he took at the scene shows SHC admitting the accident was her fault. I disagree. In the video the applicant can be heard telling SHC the accident was her fault, but SHC does not admit she was at fault. I find the video is of no assistance in determining liability for the accident.
32. Faced with conflicting evidence from the applicant and SHC, 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 SHC and AL were solely responsible for the accident. I find regardless of not having named SHC or AL in this dispute, the applicant has not met his burden.
33. As a result, I find the applicant is not entitled to a different liability assessment for the accident and therefore not entitled to damages.

34. Even if I had found the applicant was 0% at fault for the accident, I would not have allowed the applicant's damages as claimed. He claims \$2,400, but did not provide any evidence as to what the \$2,400 was for. He merely requested a \$2,400 payment "because ICBC charged both us of 50/50". This is not sufficient evidence to award damages.
35. Given my conclusions above, I find the applicant's claims must be dismissed. In accordance with section 49 of the Act, and tribunal rules, as the applicant was unsuccessful in this dispute, I find he not entitled to reimbursement of his tribunal fees. No dispute-related expenses were claimed.

ORDER

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

Andrea Ritchie, Vice Chair