



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Won v. ICBC et al*, 2019 BCCRT 848

BETWEEN:

CHIA YUN WON

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA,
WILLIAM JIN SU and SHAO FANG YANG

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 November 3, 2018 (accident). The applicant, Chia Yun Won, was driving a vehicle northbound on Miller Street at Kingsway in Vancouver, British Columbia, when she

was struck by a vehicle heading westbound on Kingsway, driven by the respondent, William Jin Su, and owned by the respondent, Shao Fang Yang.

2. The respondent insurer, Insurance Corporation of British Columbia (ICBC), internally concluded that the applicant was 100% at fault for the accident.
3. The applicant says ICBC should have found the respondents Mr. Su and Mr. Yang 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 to the applicant because she left a position of safety at a stop sign, causing the accident.
5. The applicant seeks a declaration that Mr. Su and Mr. Yang are wholly responsible for the accident and \$500 to reimburse her for the deductible she paid to ICBC.
6. The applicant is self-represented. All respondents are represented by Colleen Souveryn, 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. 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.
11. Although ICBC argues it is not a proper party to the claim, I disagree. 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 under 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. Although ICBC and the other driver were named defendants, the court decided as the claimant had paid money to ICBC, ICBC was the proper party for the claimant to recover that money from. As the applicant in this dispute is seeking reimbursement of a deductible paid directly to ICBC, I find ICBC is a properly named party.

ISSUES

12. 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

13. 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?

14. As noted above, the applicant seeks an order overturning ICBC's internal liability assessment and a refund of the \$500 insurance deductible she was required to pay. I note that although the applicant claims \$500 for reimbursement of her deductible, the evidence is that she only paid \$125 towards that deductible. The applicant says that ICBC failed in its duty to assess her liability under the insurance contract. 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 responsibility to the applicant (see: *Singh v. McHatten*, 2012 BCCA 286).

15. The root of the applicant's claim is that she says Mr. Su entered the intersection when it was unsafe to do so and collided with the applicant's vehicle. Mr. Su, on the other hand, says the applicant was the one who entered the intersection when he

had the right of way. It is undisputed that there were no independent witnesses to the accident. Police attended the scene, but no police file was produced.

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 (*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" (*McDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283).
17. In her submissions, the applicant generally states that ICBC did not base its assessment of fault on the evidence, and that too little time was spent looking at the evidence and making a proper decision. ICBC says its decision is founded in the *Motor Vehicle Act* (MVA). I have discussed the specifics in my liability analysis below.
18. Given the overall evidence, I find that the applicant has not proved that ICBC breached its statutory obligations or its contract of insurance. Apart from the applicant's vague assertion that ICBC did not base its assessment on the evidence, the applicant did not provide any evidence or submissions as to how ICBC failed to meet the duty of good faith it owed to the applicant. I find that ICBC acted reasonably in investigating the claim and in administratively assigning the applicant 100% responsibility for the accident.
19. Having determined that ICBC acted reasonably in its examination of the accident, I now turn to my assessment of liability. I am not bound by ICBC's earlier assessment.

Who is liable for the accident?

20. The following facts are undisputed:

- a. On November 3, 2018, the applicant was stopped at a stop sign northbound on Miller Street at Kingsway.
- b. At the same time, Mr. Su was stopped at a red pedestrian-controlled traffic light westbound on Kingsway, at Miller Street.
- c. Kingsway is comprised of 3 lanes each, both westbound and eastbound. Mr. Su was the first vehicle at the red light, in the middle of the 3 lanes going westbound.

21. The applicant submits she was familiar with the pedestrian-controlled intersection and submits while she was stopped at the stop sign, she noticed the light was red for traffic on Kingsway and determined it was safe to cross the intersection. She says that her view of Mr. Su's vehicle was blocked by a larger vehicle in the closest westbound lane, and that she did not see Mr. Su's vehicle entering the intersection until it was too late.

22. In his statement to ICBC on November 13, 2018, Mr. Su says he was stopped at the red light and a vehicle to his left arrived at approximately the same time. He stated when his light turned green he proceeded into the intersection and when he was about halfway through, the applicant's vehicle came across the intersection from Miller Street and the two vehicles collided.

23. The photographs in evidence show damage to the front end of Mr. Su's vehicle, and the majority of the damage to the front passenger side quarter panel and wheel well of the applicant's vehicle.

24. The applicant submits that she had already crossed nearly 4 of the 6 lanes of travel on Kingsway by the time the accident happened, so she therefore was the dominant driver and had control of the intersection.

25. I turn to the relevant provisions of the MVA. Section 186 requires a driver at an intersection with a stop sign to stop at the marked stop line before entering the crosswalk on the near side of the intersection.
26. Section 175 of the MVA sets out the obligations of the driver who is about to enter a through highway. It states that (1) the driver of a vehicle entering a through highway from a stop sign must yield the right of way to traffic on the through highway that has either already entered the intersection or is so close to the intersection that it constitutes an immediate hazard, and (2), if the vehicle enters the highway after complying with section 186 and 175(1), traffic approaching the intersection from the highway must yield the right of way to the entering vehicle while it enters or proceeds across the highway.
27. Before a vehicle constitutes an “immediate hazard”, it must be in a position and traveling at a speed where a reasonable driver would be able to see it and assess the risk it posed (*Gorman v. Meghji*, 2018 BCSC 1904 at para 114).
28. Further, the time to assess whether a vehicle is an immediate hazard is at the moment the servient driver begins to enter the intersection (*Gorman* at para 115, citing *Carich v. Cook*, 1992 CanLII 995 (BCCA)).
29. Based on the MVA and the case law, as they approached the intersection, the applicant was the servient driver, and Mr. Su was the dominant driver. The “dominant” driver is the driver who has the right of way, and the “servient” driver is the driver who must yield to the vehicle with the right of way. My reasons follow.
30. I am satisfied that given the evidence, when the applicant entered the intersection, Mr. Su’s stopped vehicle did not pose an immediate hazard as it was stopped at a red light. However, the fact that Mr. Su’s vehicle was not an immediate hazard at the time the applicant entered the intersection does not mean the applicant was entitled to drive through the intersection with impunity (*Gorman*, at para 131). A driver entering an intersection, and the driver approaching the intersection on the through highway, both must keep a proper lookout (*Carich*).

31. As noted above, the applicant submits her view of Mr. Su's vehicle was blocked by a larger vehicle in the lane to the left of Mr. Su. It follows that Mr. Su's view of the applicant's vehicle would also have been blocked by the same third-party vehicle. In *Pacheco (Guardian ad litem of) v. Robinson* (1993), 1993 CanLII 383 (BCCA), Mr. Justice Legg held that where a party's vision of the other is blocked by traffic, the dominant driver is generally entitled to continue, absent proof from the servient driver that the dominant driver had a reasonable opportunity to avoid the accident and should have done so.
32. Although *Pacheco* dealt with a left-hand turning situation, I find it still applies in the circumstances before me. In the accident in question, Mr. Su was the dominant driver, already on the through highway. The applicant was the servient driver, seeking to enter the through highway from a stop sign on a side street. As the parties' views of each other's vehicles was obstructed, as in *Pacheco*, Mr. Su, as the dominant driver, was entitled to proceed on his way once the light turned green, and the applicant should have yielded the right of way. The dominant vehicle is entitled to assume the servient vehicle will not create a hazard (*Hodgson v. Saeed*, 2015 BCSC 147).
33. I find that although Mr. Su's vehicle did not constitute an immediate hazard at the time the applicant entered the intersection, it did become an immediate hazard as the applicant continued through. I find that the applicant's decision to continue through the intersection as she did was negligent. The applicant was required to keep a continuous lookout as she crossed the intersection. The applicant knew the traffic lights were pedestrian-controlled and knew the light could change to green for Kingsway traffic at any moment, and that she had 6 lanes to cross before it did. The applicant knew there was a vehicle that was blocking her view of some of the Kingsway westbound travel lanes, including Mr. Su's lane. In spite of these circumstances, she continued through the large intersection, which I find was negligent.

34. Further to *Pacheco*, in order for the dominant driver Mr. Su to be held responsible, the applicant must show that after Mr. Su, once he was aware of the applicant's actions, had an opportunity to avoid the accident. There is no evidence before me to indicate that Mr. Su could, or should have, been able to avoid the accident. In any event, any doubt as to whether there was an opportunity to avoid the accident must be resolved in favour of the dominant driver. In the circumstances, I find that the applicant has not proven Mr. Su did or should have realized the applicant disregarded her legal obligations and had time to avoid the collision.
35. For these reasons, I find the applicant continued through the intersection when it was unsafe to do so, and therefore was responsible for the accident. As a result, I find she is not entitled to a different liability assessment for the accident. The applicant is therefore not entitled to reimbursement of her insurance deductible.
36. Under section 49 of the Act, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As the applicant was not successful, I find that she is not entitled to reimbursement of her tribunal fees. No dispute-related expenses were claimed.

ORDER

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

Andrea Ritchie, Vice Chair