



Civil Resolution Tribunal

Date Issued: August 19, 2019

File: SC-2019-001442

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pearson v. ICBC*, 2019 BCCRT 985

BETWEEN:

DOUGLAS PEARSON

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Douglas Pearson's 1992 Toyota pick-up truck (truck) rolled backwards down his driveway, colliding with a parked car across the street. The applicant says that the respondent Insurance Corporation of British Columbia (ICBC) wrongly assessed him as 100% at fault for the collision.

2. The applicant seeks an order requiring ICBC to change their liability decision. The applicant also claims \$2,609.03 which he says is to compensate him for the amount his insurance rates increased due to being found at fault for the collision.
3. ICBC says the cause of the collision was the applicant's truck having a brake failure, then rolling across the roadway and hitting the parked car. ICBC says it investigated and reached a reasonable and proper determination that the applicant was 100% liable for the collision. ICBC asks that the dispute be dismissed.
4. The applicant is self-represented. The respondent is represented by employee Lynn Boutroy.

JURISDICTION AND PROCEDURE

5. 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* (CRTA). 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
7. 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.
8. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:

- 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.
9. ICBC says it is not a proper respondent to the applicant's claim. It says LP, the owner of the car damaged in the collision, should be substituted as the respondent. In a preliminary decision the tribunal found that this is a dispute between ICBC and the applicant about liability under the parties' insurance contract. It is not a tort claim in damages. Therefore, the tribunal held that ICBC is a proper respondent. That said, the tribunal member left it open for the tribunal member making the final decision on the merits to decide the question of whether ICBC is the proper respondent.
10. In *Innes v. Bui*, 2010 BCCA 322, the Court of Appeal found that a plaintiff involved in a collision who challenged ICBC's decision about liability for that collision had a claim not based in tort, but rather based in either contract, statute, or both. The court found that the only issue raised by the pleadings in that case was whether ICBC acted properly or reasonably in its administrative decision to assign full responsibility for the collision to the plaintiff. The court said that issue was strictly between the plaintiff and ICBC, and that the other driver in the collision was not the correct party.
11. I agree with the tribunal's preliminary determination that the nature of the applicant's claim here is the same as that in *Innes*, and therefore, I find ICBC is the proper respondent to this dispute.

ISSUES

12. The issues in this dispute are:
 - a. Did ICBC reasonably assess 100% liability against the applicant?
 - b. To what extent, if any, is the applicant entitled to his requested remedies?

EVIDENCE AND ANALYSIS

13. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions but refer to them here only to the extent necessary to explain and give context for my decision.
14. The applicant seeks an order overturning ICBC's internal liability assessment and a refund of increased insurance premiums he says he paid due to ICBC's liability assessment. The central issue is whether ICBC acted "properly or reasonably" in administratively assigning 100% responsibility to the applicant (see: *Singh v. McHatten*, 2012 BCCA 286).
15. 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).
16. Given the evidence and submissions before me, I find nothing to suggest that ICBC failed to meet the burden upon it to assess the claim reasonably. My reasons follow.
17. In May 2018, the applicant had his truck serviced. The mechanic completed work including to the truck's timing belt, water pump, brakes, wheel bearings, and wheel and camshaft seals. The invoice noted that the brake fluid service was overdue and that servicing brake fluid at the proper maintenance schedule would help prevent ABS and brake system failures. Oil and fluid leaks were also recorded.
18. On August 12, 2018, the applicant says he placed the truck in first gear and applied the emergency brake to park it in his driveway. About 30 minutes later, the truck

rolled down the sloped driveway, eventually colliding with the parked car across the road.

19. On August 29, 2018, a mechanic examined the truck and found that the right emergency brake cable had seized and needed replacement.
20. The applicant says ICBC's Claims Assessment Review identified errors in ICBC's initial fault determination but confirmed the decision that he was 100% liable for the collision. I have reviewed the Claims Assessment Review determination in detail.
21. On December 4, 2018, ICBC wrote to the applicant advising him that ICBC upheld its original assessment that he was 100% liable for the collision.
22. The Claims Assessment Reviewer (reviewer) explained that the collision was caused by the truck's mechanical failure. The reviewer found that, on a balance of probabilities, the applicant failed to properly engage the transmission in first gear, and then the emergency brake failed. The reviewer made this finding because it would be an unlikely coincidence to have both the brake fail and the truck slide out of first gear in the same instant.
23. The reviewer found that the fact that the other car was illegally parked within 6 meters of an intersection was not a "contributing factor" to the collision.
24. The reviewer rejected the applicant's argument that, because he did everything he could to ensure his vehicle was safe to operate, he was not liable for the collision. The reviewer found that the truck was not in compliance with section 5.03(1) of the *Motor Vehicle Act Regulation* that requires any vehicle to have an emergency or parking brake that will, alone, stop it from rolling if applied.
25. The reviewer also found that an operator of a vehicle in the truck's condition on a highway would be subject to a Notice and Order and the vehicle removed from the highway for its unsafe condition.

26. The applicant says the truck was serviced only a few months before the accident and that the parking brake was not identified as needing work. He says the parking brake on his truck failed.
27. The applicant again argues that he took reasonable steps to ensure that his truck is safe. The applicant says the accident was “not reasonably foreseeable” and that he did not breach the standard of care.
28. I find that the truck’s maintenance record does not absolve the applicant from liability. The uncontradicted evidence is that the applicant’s car rolled out of the driveway and across the road while its emergency brake was engaged. The brake failed to perform its intended function. The collision would not have occurred but for the failure of the emergency brake.
29. Given that the emergency brake did not alone stop the truck, the applicant is in breach of Section 5.03(1) and is liable for the collision, regardless of whether he knew or ought to have known that the brake would fail.
30. In submissions, the applicant says he is not trying to prove that LP is at fault for the collision. Rather, he argues that ICBC’s decision to apply his third-party coverage to the cost of damage to LP’s car is in error. The applicant asks why ICBC would not recover repair costs from LP under her collision and comprehensive coverage.
31. Third party liability coverage applies when a driver is at fault and the other driver makes a claim, such as LP’s claim for the repairs to her car. I find that, given that the applicant was liable for the collision, it was appropriate for ICBC to address those repairs under the applicant’s third party liability coverage.
32. For these reasons, I uphold ICBC’s determination that the applicant is 100% liable for the collision.
33. Given my conclusion on liability, it is not necessary for me to address the applicant’s claim for a refund of the \$2,609.03 he says he has paid in insurance rates due to the liability determination.

34. Under section 49 of the CRTA 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. ICBC was successful but did not pay tribunal fees or claim dispute-related expenses, so I make no order for them. As the applicant was unsuccessful, I dismiss his claim for reimbursement of tribunal fees.

ORDER

35. I dismiss the applicant's claims and this dispute.

Julie K. Gibson, Tribunal Member