



Civil Resolution Tribunal

Date Issued: August 21, 2019

File: SC-2019-002949

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Arnett v. ICBC et al*, 2019 BCCRT 990

B E T W E E N :

ODETTE ARNETT

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA and JILL
ELIZABETH SARAH SCHOLL

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a dispute about liability for vehicle damage from a collision that happened in a parking lot on March 28, 2019.

2. At the time of the collision, the applicant, Odette Arnett, was parked in her Mazda 3 and the respondent, Jill Elizabeth Sarah Scholl, was pulling into a parking stall in her Hyundai Santa Fe. The front right side of Ms. Scholl's vehicle collided with Ms. Arnett's driver's door. The parties dispute whether the door was open when Ms. Scholl pulled in. Both vehicles were damaged in the collision. There is no personal injury claim.
3. The respondent insurer, the Insurance Corporation of British Columbia (ICBC), internally concluded that Ms. Arnett was 100% at fault for the collision. ICBC's conclusion was based on it finding that Ms. Arnett had opened her door into moving traffic contrary to section 203 of the *Motor Vehicle Act*, (MVA).
4. Ms. Arnett says ICBC's internal decision was wrong and wants ICBC to reverse its liability finding to find Ms. Scholl 100% at fault. Ms. Arnett also claims reimbursement of the \$500 deductible to repair her vehicle.
5. Ms. Arnett and Ms. Scholl are self-represented. ICBC is represented by its employee, Colleen Souveryn.

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* (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.
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 "she said, she said" scenario. 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. In the circumstances here, I find that I am properly able to assess and weigh the documentary 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in 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, 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.

ISSUES

11. The issues in this dispute are who should be held responsible for the collision and in particular:
 - a. Did Ms. Arnett open her door into traffic contrary to section 203 of the MVA?
 - b. Did Ms. Scholl act negligently when pulling her vehicle into the parking stall and if so, did her negligence cause the collision?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, Ms. Arnett as the applicant, bears the burden of proving her claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
13. It is undisputed that Ms. Scholl pulled into an empty parking stall on the left-hand side of Ms. Arnett's vehicle and that the front of Ms. Scholl's vehicle impacted Ms. Arnett's driver's door. The parties primarily dispute the timing of when Ms. Arnett opened her door in relation to Ms. Scholl parking. I infer from Ms. Arnett's submission that she says that she opened her door right before Ms. Arnett pulled into the stall. Ms. Scholl and ICBC claim Ms. Arnett opened the door as Ms. Scholl pulled in.
14. Ms. Arnett disputes that section 203 of the MVA applies to this collision. Section 203 reads as follows:

When opening door prohibited

203 (1) A person must not open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so.

(2) A person must not leave a door open on the side of a vehicle available to moving traffic for longer than is necessary to load or unload the passengers.

15. As I understand Ms. Arnett's submissions, she argues that section 203 does not apply to a vehicle that is in the process of parking to a "dead stop" because it is not "oncoming traffic". She says the parking vehicle should be at a "near crawl to stop where it's normal to cover the brake and avoid anything in the stall". Therefore, I infer her position is that the speed of the vehicle determines whether or not it is "oncoming traffic". Section 203 refers to "moving traffic" and not "oncoming traffic", though I do not find it makes any difference to my analysis here. My reasons follow.

16. Under section 119(1) of the MVA, “traffic” includes a vehicle “using a highway to travel”. It does not specify the speed of use. I find a vehicle traveling or moving on a highway at any speed is “moving traffic”. The MVA defines a highway to include a parking lot. Therefore, I find that Ms. Scholl’s vehicle was “moving traffic” as it pulled into the parking stall.
17. Again, Ms. Scholl pulled her vehicle into an empty parking stall on the left-hand side of Ms. Arnett’s vehicle. Since the stall was empty, I find the left side of Ms. Arnett’s vehicle was “available to moving traffic”. I find that section 203 of the MVA applies to this collision.
18. Section 203 of the MVA puts the onus on Ms. Arnett as the “servient” driver, to ensure it was reasonably safe before she opened her door to moving traffic. A “servient” driver is the driver who must yield the right of way to the “dominant” driver, who has the right of way.
19. Both parties made verbal statements to ICBC soon after the collision. The verbal statements were recorded by ICBC employees. Ms. Arnett’s statement reads as follows, with punctuation added for readability but otherwise reproduced as written, “I found a stall I turned right into the stall. I did not see any other vehicle. I turn my car off, took my keys out, and checked to if there, it was clear. I opened the door. I didn’t even get my foot out of the door yet and the other vehicle hit my door.” She said she asked Ms. Scholl what happened, and Ms. Scholl said, “I don’t know I wasn’t driving fast”.
20. Ms. Scholl’s verbal statement to ICBC was, “I turned left to pull into a parking stall and I was well into the stall before she opened her door. After the impact the other driver said she didn’t look before she opened the door so she didn’t notice when I was pulling in to the stall. When I entered the stall the door was closed. The other driver was in the vehicle when I pulled into the stall, she opened the door when I pulled in stall, it was the exact moment when the other driver opened the door. Everything happened at once. My front of vehicle was level with the other driver’s door when she opened the door.”

21. Ms. Arnett said she checked for vehicles before she opened her door. However, she does not say that she continued to check as she opened her door. It is undisputed that Ms. Arnett did not see Ms. Scholl's vehicle entering the stall. I find that Ms. Arnett could not know the exact timing of her opening the door in relation to Ms. Scholl parking. Therefore, I accept Ms. Scholl's version of events as I find there is no contrary evidence.
22. The photographs show that the edge of Ms. Arnett's driver's door sliced the front of Ms. Scholl's vehicle from the bottom of the right headlight to the top of the right running light. The photographs show that the parking stalls are not wide. Based on the location of the damage, I find that Ms. Arnett's door must have been partly open into the next parking stall to "slice" the front of Ms. Scholl's oncoming vehicle. I find Ms. Arnett opened the door as Ms. Scholl's vehicle moved into the parking stall.
23. On the weight of the evidence, I find that Ms. Arnett opened her door into moving traffic when it was not reasonably safe to do so contrary to section 203 of the MVA.
24. I find Ms. Arnett is responsible for the collision unless she can establish that Ms. Scholl was negligent and that her negligence caused the collision (see *Hagreen v. Su*, 2009 BCSC 1455).
25. There are three essential elements in a negligence claim that the applicant must establish. These elements are:
 - a. the respondent owed the applicant a duty of care,
 - b. the respondent breached that duty, and
 - c. the applicant suffered damages that resulted from the breach.
26. There is no question that Ms. Scholl owed Ms. Arnett a duty of care when pulling into the parking stall.
27. Ms. Arnett claims that Ms. Scholl was not paying attention, driving too fast and failed to stop on time to avoid the collision, all of which Ms. Scholl denies.

28. Ms. Scholl explains that the parking lot was always very busy at that time of day and that she was “driving slowly and cautiously”. She says she was not distracted. There were no witnesses and there is no evidence to the contrary. Again, Ms. Arnett did not see Ms. Scholl’s vehicle as it entered the parking stall and does not know the way Ms. Scholl was driving.
29. Ms. Arnett has the burden to prove her claim on a balance of probabilities. I find she has not established that Ms. Scholl was negligent or that her negligence caused the collision. I have already found above Ms. Arnett breached section 203 of the MVA. Accordingly, I find Ms. Arnett is not entitled to reimbursement of her deductible. I am also satisfied that ICBC was not wrong in its internal assessment of fault. Therefore, I dismiss Ms. Arnett’s claims.
30. 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. Since Ms. Arnett was unsuccessful in this dispute, I find she is not entitled to any reimbursement of tribunal fees or dispute-related expenses.

ORDER

31. I dismiss Ms. Arnett’s claims and this dispute.

Trisha Apland, Tribunal Member