



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jameson et al v. Insurance Corporation of British Columbia*,
2019 BCCRT 1119

B E T W E E N :

TAYLOR JAMESON and ROCKY JAMESON

APPLICANTS

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This is a small claims dispute about a motor vehicle accident that occurred on July 2, 2018. One of the applicants, Taylor Jameson, and a third party not named in this dispute, D, were travelling in opposite directions along a narrow driveway when their

cars collided. D is Taylor Jameson's aunt. The applicant Rocky Jameson is Taylor Jameson's father and heard the accident happen. The applicants allege that D is wholly responsible for the accident because they say she admitted fault. The applicants are represented by Taylor Jameson.

2. For ease of reference, given the applicants share the same last name, I will refer to Taylor Jameson as "Taylor" and to Rocky Jameson as "Rocky."
3. The respondent insurer, Insurance Corporation of British Columbia (ICBC), internally concluded that Taylor was 50% at fault for the accident. The applicants say ICBC should have found D 100% responsible for the accident and that ICBC breached its statutory obligations in investigating the accident and assigning fault. They seek a declaration that D was 100% at fault. The applicants also request payment of \$2,421.97, which is the other half of what the applicants say the car was worth, as well as \$2,578.02 compensation as "reversal" of the 50% "at fault claim" against Ms. Jameson, for a total of \$4,999.99.
4. ICBC says it is not a proper party to the claim and that D should be substituted as respondent. It also claims that Rocky should not be named as an applicant as he was not the owner, driver, or principal operator of the vehicle Taylor was driving at the time of the accident.
5. ICBC says it assigned fault 50-50 under the *Motor Vehicle Act* (MVA) because Taylor was driving on the wrong side of the driveway. ICBC is 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* (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. In some respects, this dispute amounts to a “they said, it said” scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.
8. 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.
9. 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

10. 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 applicants, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. In a civil dispute such as this, the applicants must prove their claim. They bear the burden of proof on a balance of probabilities.
12. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
13. As mentioned, ICBC takes issue with Rocky being named as an applicant as he is not the owner, driver, or principal operator of the vehicle Taylor was driving at the time of the accident. The applicants have provided no evidence to suggest that Rocky was involved in the accident or that he has an interest in the car. Taylor says that Rocky heard the collision but does not suggest he was in any way involved. Rocky did not provide a witness statement to ICBC or to this tribunal. I also note that the requested resolution is for Taylor to be reimbursed and not Rocky.
14. Due to a lack of evidence, I dismiss Rocky's claims against the respondent.

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

15. As mentioned above, Taylor seeks an order overturning ICBC's internal liability assessment and she requests payment of \$4,999.99. To succeed against ICBC, Taylor must prove on a balance of probabilities that ICBC breached its statutory obligations or its contract of insurance, or both. The question is whether ICBC acted "properly or reasonably" in administratively assigning 50% liability to Taylor (see: *Singh v. McHatten*, 2012 BCCA 286).
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 or 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. In the course of its investigation, ICBC spoke with Taylor who originally said that she was going down the driveway and was just coming up to a blind corner to the right. She said she was on the “left side of the driveway” and saw D’s car coming up the driveway. Taylor said that she stopped but D did not have time to stop and D hit her car resulting in a big dent in the center of Taylor’s car’s front bumper. Taylor said that D sustained damage to the left, meaning the driver’s side corner.
18. According to ICBC’s records, D told ICBC that she was going up the driveway and that there was a blind corner so she did not see Taylor coming down. She said she was able to slow down but not completely stop and she collided with Taylor’s vehicle. She agreed Taylor’s car was damaged in the front middle area and her car was damaged on the driver’ side front bumper, headlight, and fender.
19. ICBC apportioned 50-50 liability based on the parties’ statements and the location of the damage done to the vehicles, specifically that Taylor’s vehicle was damaged in the center and not the side. ICBC determined that this meant that Taylor was not properly driving on the right hand side of the driveway.
20. Taylor says that ICBC failed in its duty to assess liability under the insurance contract. She alleges that ICBC ignored evidence from D that established she was 100% liable. She says that D told ICBC that she was wearing flip flops and her foot slipped off the brake and that she admitted 100% liability.
21. As indicated above, in her initial statement to ICBC Taylor said that she was travelling on the left hand side of the driveway. In her application for an ICBC claims assessment review, she said that what she meant by this was that she was on the left hand side of the vehicle she was driving and not the left hand side of the road.

She also alleged D was speeding and she was travelling slowly and able to come to a complete stop.

22. It is undisputed that there were no independent witnesses who saw the accident.
23. ICBC denies that D told them that she was 100% liable or that her foot slipped off the brake. ICBC admits that D called them after the assessment of liability to tell them that Taylor was not happy about the assessment but she did not say she was 100% liable. ICBC did not provide a contemporaneous record of this call.
24. ICBC states that it assessed liability based on section 154 of the *Motor Vehicle Act* which says that a driver must drive on the right hand side of the roadway when meeting another vehicle that is moving. Also, when meeting another vehicle that is moving, a driver must drive the vehicle so that the other vehicle is able to travel in at least half of the main travelled portion of the roadway as nearly as possible.
25. As noted, Taylor appealed the ICBC internal assessment and the review arbiter agreed that the evidence was unclear as to where the parties were travelling on the narrow driveway and that Taylor might have been driving in the middle based on the damage to her vehicle. The arbiter did not find that she was driving on the right as required by law. He also found that the evidence was unclear as to the speed involved. The arbiter also noted that both cars could have swerved to avoid the accident. The arbiter decided that in the absence of police attendance or investigation and with no independent witnesses it boiled down to a she said/she said scenario and therefore upheld the 50-50 liability assessment.
26. Given the overall evidence, I find that ICBC did not breach its statutory obligations or its contract of insurance. The evidence indicates that ICBC carried out a diligent, fair, thorough and objective investigation, including at the claims review assessment stage. Taylor suggests that ICBC acted unfairly when it did not take into account D's alleged admission that she was 100% liable. However, she has provided no proof that D said this. I find ICBC acted reasonably in administratively assigning Taylor 50% responsibility for the accident.

27. 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?

28. Turning to the facts in dispute, I do not accept Ms. Jameson's statement that when she told ICBC she saw D's car coming because she was on the left hand side of the driveway she actually meant she was on the left hand side of the car. It is obvious that the driver's seat is on the left in North American vehicles. It does not ring true that Taylor felt obliged to point this out. Rather, in the context of her statement, it makes more sense that Taylor was referring to the fact that this was a blind corner on the right so she decided to drive on the left hand side of the driveway so she could see if anybody was coming.

29. Therefore, based on Taylor's statement, and the location of the damage to the vehicles, I find that Taylor was not driving on the right hand side of the road as required under the MVA.

30. As noted above, the applicants brought this claim against ICBC only, and not the driver/or owner of the other vehicle, D. In *Kristen v. ICBC*, 2018 BCPC 106 the court said that the proper defendant in an action to determine liability in a motor vehicle accident is the other driver and not ICBC. However, 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. I note that ICBC stated in its Dispute Response that D should be added as a party. Taylor had the opportunity to add D as a respondent but did not take steps to do so. She also did not indicate why she did not name D at the outset.

31. A recent case from this tribunal, *Singh v. Insurance Corporation of British Columbia*, 2019 BCCRT 701, stated that, given the finding that the applicant had not proved his claim, nothing in the dispute turned on the fact that the applicant did not name the other driver. I have reached a similar conclusion on the facts of this dispute. As discussed below, I find that Taylor has not proved on a balance of probabilities that

D was 100% at fault for the accident and I agree with ICBC's apportionment of 50% fault to each driver. If I had decided differently I may have allowed the applicants to add D as a respondent in this dispute. However, because I find there is no change in liability, 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.

32. Further, I do not accept Taylor's claim that D admitted 100% liability because she was wearing flip flops and her foot slipped off the brake. There is no proof that D provided this information to ICBC either at the initial claim assessment phase or on review. I also note that Taylor had the opportunity to get a witness statement from D and submit it to this tribunal but she did not do so. The only documentary evidence is D's statement to ICBC where she does not indicate that she is 100% liable.
33. As noted, the burden is on the applicants to prove on a balance of probabilities that D was solely responsible for the accident. They have not met this burden. As a result, I find Taylor is not entitled to a different liability assessment for the accident and therefore is not entitled to additional damages.
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. As the applicants were unsuccessful in their claims they are not entitled to have their \$175.00 tribunal fees reimbursed.

ORDER

35. I dismiss the applicants' claims and this dispute.

Kathleen Mell, Tribunal Member