



Civil Resolution Tribunal

Date Issued: November 6, 2019

File: SC-2019-003425

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Brown v. Johnson et al*, 2019 BCCRT 1261

B E T W E E N :

KAITLYN BROWN

APPLICANT

A N D :

NICOLE JOHNSON, INSURANCE CORPORATION OF BRITISH COLUMBIA, V K DELIVERY & MOVING SERVICES LTD., DALJIT SINGH, and B.C.A.A. HOLDINGS LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This small claims dispute is about a motor vehicle collision. The applicant, Kaitlyn Brown, was using a car-share vehicle owned by the respondent, B.C.A.A. Holdings

Ltd. (BCAA). While the vehicle was parked, the applicant says that a vehicle driven by the respondent Daljit Singh and owned by the respondent V K Delivery & Moving Services Ltd. (VK) backed into and damaged it.

2. The respondent insurer, Insurance Corporation of British Columbia (ICBC), through its employee Nicole Johnson, determined that the applicant was 100% at fault for the collision. The applicant says that Ms. Johnson and ICBC failed to investigate the incident properly, and should have found that Mr. Singh and VK were at fault. The applicant seeks a declaration that she is not at fault and not responsible for a \$1,000 deductible, which she has not yet paid to BCAA.
3. Ms. Johnson and ICBC say they are not appropriate parties to this dispute. They say that the insureds Mr. Singh and VK are the appropriate respondents, and point out that ICBC has exclusive conduct over claims against its insureds. The respondents say that liability was determined properly in accordance with the *Motor Vehicle Act* (MVA).
4. The applicant is self-represented. The respondents ICBC, Ms. Johnson, Mr. Singh and VK are represented by an employee of ICBC. BCAA is represented by an employee.

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 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, he 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 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 the decision in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal’s process and that oral hearings are not necessarily required where credibility is in issue.
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.

ISSUES

9. The issues in this dispute are:
 - a. did ICBC breach its statutory obligations in investigating the collision and assessing fault,
 - b. who is at fault for the collision, and

- c. whether the applicant must pay a \$1,000 deductible to BCAA.

EVIDENCE AND ANALYSIS

10. As a preliminary matter, I will address Ms. Johnson's standing as a respondent. Ms. Johnson is employed as a claims adjuster at ICBC. ICBC assigned the claim or claims arising from the collision to her, and Ms. Johnson made the liability determination. As there is no indication that Ms. Johnson acted outside the course of her employment when dealing with the applicant, I find that she is not appropriately named as an individual respondent. I dismiss the applicant's claims as against Ms. Johnson. However, I find that the applicant has properly brought the claim about investigation of the collision against ICBC.
11. In a civil dispute such as this, an applicant bears the burden of proof on a balance of probabilities. The applicant and ICBC have provided evidence and the parties have provided submissions in support of their respective positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.

Did ICBC breach its statutory obligations?

12. The applicant says that ICBC did not properly investigate the collision and made an arbitrary decision. She says ICBC did not collect evidence from the scene and did not ask any of the surrounding facilities for video footage of the incident. Although ICBC contacted the other driver, Mr. Singh, the applicant says that ICBC did not ask for her version of events.
13. ICBC states that it completed an investigation before making the liability determination. ICBC says that its adjusters do not attend collision and cannot obtain surveillance footage due to privacy legislation. ICBC says that it contacted Mr. Singh as he reported the collision to ICBC, whereas the applicant only reported to BCAA. In any event, ICBC says that it had the applicant's statement from BCAA (the insurance policy holder), and submits that the information she provided in that

statement does not differ from the information she has provided in this dispute. As there were no witnesses other than the 2 drivers, ICBC says it accepted the versions of events reported by both drivers as factual, and made its liability determination based on the applicable legislation.

14. The applicant says that the British Columbia Supreme Court's decision in *McDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283 supports her position. Paragraph 249 of this decision states that an insurer is "not expected to investigate a claim with the skill and forensic proficiency of a detective" and it is not required "to assess the collected information using the rigorous standards employed by a judge". Instead, the insurer's duty is to "bring reasonable diligence, fairness, an appropriate level of skill, thoroughness and objectivity to the investigation, and the assessment of the collected information".
15. Aside from making submissions about what ICBC should have done in its investigation, the applicant has not proven that ICBC does routinely attend collision scenes to conduct investigations. Further, privacy concerns aside, the applicant has not proven that any video footage would have been available at the scene. There is no indication that there was dash camera footage available from either vehicle involved in the collision.
16. The evidence before me shows that the applicant reported the collision to BCAA on the day it occurred, and that BCAA forwarded that information (including the applicant's version of events) to ICBC the following day. An ICBC employee spoke with Mr. Singh on March 27, 2018 to obtain his statement. ICBC had statements from both drivers involved in the collision and the benefit of internet-based map images of the scene. In the context of the legislative scheme set out in the MVA (which I will discuss below) I find that this was reasonably sufficient evidence for ICBC's decision.
17. In order to be successful, the applicant must prove that ICBC failed to act "properly or reasonably" in administratively assigning responsibility of the collision to her (see *Singh v. McHatten*, 2012 BCCA 286). It does appear that there was some delay in

ICBC communicating its liability determination to BCAA (and in turn to the applicant). However, I do not find that the delay was determinative. Given the available evidence, I find that ICBC acted reasonably in investigating the claim and administratively assigning the applicant 100% of the responsibility for the collision. I dismiss the applicant's claims against ICBC.

Liability for the Collision

18. The applicant was using a vehicle owned by BCAA to transport items from her storage locker. She says that, as the loading bay close to the storage facility was occupied, she parked the vehicle in front of a dumpster near the centre of the loading zone. She says she selected this location as it would not block access to any of the garages in the area. The applicant submitted photos that show that the driver's side of the vehicle was closest to the dumpster.
19. The applicant says that she was trying to put an item in the front passenger seat when she was startled by a crunching sound next to her. According to the applicant, a van owned by VK and driven by Mr. Singh backed into her open door, which caused damage to the door's interior and exterior. Mr. Singh reported to ICBC that he had gotten out of his vehicle to check the area prior to reversing, and the doors on the applicant's vehicle had been closed. He said that he got back into his vehicle, honked before reversing, and that the applicant opened her door into his reversing vehicle. The applicant denies this, and states that she had been standing by the open door for about a minute before the collision occurred.
20. ICBC considered sections 193 and 203 of the MVA in determining liability. Section 193, "Caution in backing vehicle", states that a driver must not cause a vehicle to move backwards unless the movement can be made in safety. Section 203, "When opening door prohibited", states that 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. It also says that 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 passengers. Both drivers had obligations under these legislative sections.

21. The applicant's position is that she did not violate section 203 as the collision scene did not constitute "moving traffic". Section 119 of the MVA defines "traffic" as including a vehicle "using a highway to travel". Section 1 of the MVA defines "highway" as including "every private place or passageway to which the public, for the purpose of the parking or servicing of vehicles, has access or is invited". Contrary to the applicant's submission, I find that the loading bay and surrounding area meet the definition of a highway.
22. A photograph provided by the applicant shows that the driver's side of the vehicle was closest to the dumpster, and the passenger side was facing the travelled portion of the passageway (or, the highway). Therefore, the applicant had an obligation not to open the passenger side door of her vehicle unless it was reasonably safe to do so, and to not leave the door open for longer than is necessary to load or unload passengers. As discussed above, the applicant was loading belongings rather than passengers into the vehicle at the time of the collision. However, I find that this is not determinative.
23. Based on the evidence before me, I find that it is more likely than not that the applicant's door was closed when Mr. Singh viewed the area, and that she opened it at some point after that. I find that the applicant was in violation of section 203 of the MVA.
24. Based on the contravention of section 203, I find the applicant is responsible for the collision unless she can establish that Mr. Singh was negligent and that his negligence caused the collision (see *Hagreen v. Su*, 2009 BCSC 1455). The applicant's description of Mr. Singh's conduct as negligent is not sufficient to establish negligence. In order to be successful in a claim for negligence, the applicant must establish that Mr. Singh had a duty of care, failed in that duty, and that the failure caused the loss.
25. There is no dispute that Mr. Singh had a duty of care when driving VK's vehicle. The applicant says that the VK vehicle would have struck her vehicle even if the door had not been open. As the applicant's images of the scene do not show the

placement of the vehicles at the time of the collision, I find that this claim is not substantiated. The applicant also says that Mr. Singh was “off course” and did not have sufficient skills to reverse his vehicle. Mr. Singh’s evidence is that he checked the area and honked prior to reversing. I prefer his version of events, noting the applicant admits she heard the honk. I place less weight on the applicant’s statement, as her attention was focused on her task and she admits that she did not see the other vehicle until after the collision occurred.

26. I find that the applicant has not met her burden to prove that Mr. Singh was negligent or that his negligence caused the collision. I dismiss the applicant’s claim in this regard.

The Deductible

27. The applicant also asks for an order that she is not responsible for the \$1,000 deductible. Given my conclusions above, I would dismiss this claim. However, I find that the applicant’s claim amounts to a request for declaratory relief, which the tribunal does not have the jurisdiction to grant.

28. 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 applicant was not successful, I dismiss her claim for reimbursement of tribunal fees.

ORDER

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

Lynn Scrivener, Tribunal Member