



# Civil Resolution Tribunal

Date Issued: November 26, 2019

File: SC-2019-006809

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Driedger v. ICBC*, 2019 BCCRT 1322

**B E T W E E N :**

RONALD DRIEDGER

**APPLICANT**

**A N D :**

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

---

## **REASONS FOR DECISION**

---

Tribunal Member:

Eric Regehr

### **INTRODUCTION**

1. On August 3, 2018, the applicant, Ronald Driedger, was driving near Smithers when he saw a moose on the highway. He slammed on his brakes and managed to nearly stop before he hit the moose. After the collision, the applicant's brakes stopped working properly. This dispute is about whether the cost to repair the brakes is

covered under the applicant's insurance policy with the respondent insurer, the Insurance Corporation of British Columbia (ICBC).

2. The applicant claims \$1,768.29, the estimated cost to repair the brakes. ICBC says that the brake repairs are not covered by the applicant's Autoplan Optional Policy (policy). ICBC asks that I dismiss the applicant's claims.
3. The applicant is self-represented. ICBC is represented by an employee, Lynn Boutroy.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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.
6. 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.
7. 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**

8. The issue in this dispute is whether the brake repairs are covered under the applicant's policy. Based on the language in the policy, discussed below, this issue raises 2 questions:
  - a. Is the problem with the applicant's brakes a "mechanical fracture, failure or breakdown"?
  - b. If so, was the damage to the brakes "coincident with" the collision with the moose?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant must prove his case on a balance of probabilities. I have read all of the parties' evidence and submissions but I will only refer to what is necessary to explain and give context to my decision.
10. While ICBC provided evidence in this dispute, it did not provide any submissions despite having the opportunity to do so.
11. The applicant owns a 2008 Mazda 3. He says that late in the evening on August 3, 2018, he saw a moose on the highway. He slammed the brakes so hard that the brake pedal contacted the floor of the car. He was unable to stop before he hit the moose. However, he was able to slow down enough that the moose survived and ran off. There was only minor damage to the body of the vehicle and the vehicle was drivable. ICBC does not dispute the way the applicant described the collision and I accept the applicant's evidence about the collision.

12. On August 4, 2018, the applicant reported the collision to ICBC and made a claim for the damage to the body of the vehicle. The applicant says that over the next 2 days, he noticed that his brakes were “soft”. He had to pump the brakes repeatedly to stop fully. When the vehicle was stopped but in gear, the brakes could not keep the car from creeping forward.
13. The applicant provided text messages from the morning of August 4, 2018, that corroborate his assertion that he noticed the problems with the brakes right away. ICBC does not dispute that the applicant experienced problems with his brakes immediately after the collision, and I again I accept the applicant’s evidence.
14. On August 7, 2018, the applicant called ICBC again to add damaged brakes to his claim.
15. On August 9, 2018, the applicant went to an ICBC-accredited repair shop. The applicant says that the mechanic there told him that the brakes were good enough for the applicant to drive home to Vancouver Island, as long as he exercised caution.
16. On August 21, 2018, the applicant attended an ICBC Claim Center in Victoria. ICBC repaired the body damage but denied the brake repair claim under section 5.9 of the policy. The parts of section 5.9 that are relevant to this dispute are:

[ICBC] is not liable to indemnify any person for loss or damage consisting of mechanical fracture, failure or breakdown of any part of a motor vehicle, or caused by wear and tear, unless the loss or damage is coincidental with other loss or damage for which indemnity is provided.
17. According to the estimator’s notes, the likely reason for the brakes not working was that the master cylinder had failed.
18. On October 29, 2018, an ICBC adjuster told the applicant that to reconsider the denial, ICBC would need a mechanic’s report to confirm that there was no wear and tear on the brakes. The applicant forwarded the email to his mechanic, who said

that they had inspected the braking issues after the collision and did not find “any evidence of wear and tear on any braking components”.

19. On November 9, 2018, an ICBC employee, BD, whose title is Material Damage Compliance Advisor, emailed the adjuster about the applicant’s claim. BD said that master cylinders “rarely fail even under abusive driving conditions” and other brake components are more likely to be damaged by extreme, repeated braking. He concluded that “one simple panic stop should under no circumstances result in brake system damage”. In other words, BD did not believe that the hard braking before the collision caused the brake problem. On November 15, 2018, the adjuster provided BD’s opinion to the applicant and informed the applicant that ICBC was maintaining its denial.
20. The applicant appealed internally with ICBC, eventually submitting his case to the Claims Coverage Committee (CCC). The CCC made a decision on April 15, 2019.
21. The CCC determined that the problem with the brakes was a faulty ABS actuator valve, not the master cylinder, apparently relying on an inspection by another mechanic. The CCC found that this pre-existing defect would have eventually failed under hard braking, even though the applicant may not have known about it.
22. Before turning to the proper interpretation of section 5.9, I note that in ICBC’s appeal process and this dispute, both parties refer to “wear and tear”. The part of section 5.9 that refers to wear and tear only applies to damage that is “caused by” wear and tear. There is no suggestion that the brake issue caused the collision. Therefore, I find that the part of section 5.9 about wear and tear does not apply in this dispute.
23. Therefore, I find that for the applicant to have coverage under section 5.9, he must prove 2 things. First, the applicant must prove that the brake problem is a “mechanical failure, fracture or breakdown”. Second, the applicant must prove that the brake problem was “coincident with” the collision. I will address each question in turn.

***Is the problem with the applicant's brakes a "mechanical fracture, failure or breakdown"?***

24. Before turning to the specific words in the policy, I note there is a general legal principle that in insurance contracts, coverage should be interpreted broadly and exclusions should be interpreted narrowly: see *Derksen v. 539938 Ontario Ltd.*, 2001 SCC 72, at paragraph 46.
25. First, I find that the brakes are clearly a mechanical component of the vehicle. ICBC did not dispute this.
26. The larger question is whether the brakes' partial but not total loss of function is a "failure" or "breakdown". In the context of motor vehicles, these 2 words are often used interchangeably. However, when words are listed in a contract, they are presumed to each mean something different.
27. Dictionary.com defines a "breakdown" as "a sudden loss of ability to function *efficiently*, as of a machine" (my emphasis). It defines a "failure" as the "nonperformance of something expected" or "a subnormal quality".
28. Based on the above definitions, which I find useful, and the word's common usage, I find that a "breakdown" includes a mechanical issue with a component that falls short of a total failure of that component. For example, an engine that starts but does not run well enough to safely drive the car in traffic could be considered "broken down".
29. As mentioned above, the applicant had to pump the brakes to slow down. The brakes were sufficiently damaged that they could not keep the vehicle stopped while it was in gear. I find that the brake problem made the vehicle unfit to drive. In fact, BD's internal notes indicate that he believed that ICBC should tell the applicant that driving a vehicle with a known braking issue could compromise his coverage. This statement suggests that ICBC considered the braking issue to be significant enough that the vehicle should not be driven.

30. Therefore, I find that the brake issue was a mechanical breakdown within the meaning of section 5.9.

***If so, was the damage to the brakes “coincident with” the collision with the moose?***

31. The applicant relies on *Dhadwal v. ICBC*, 2014 BCSC 449, which addressed the meaning of “coincident with” in section 5.9 in detail. The BC Court of Appeal upheld the judge’s reasoning on this issue in *Dhadwal v. Insurance Corporation of British Columbia*, 2015 BCCA 112. In this decision I refer to the BC Supreme Court decision.

32. In *Dhadwal*, the plaintiff’s vehicle was in a single-vehicle collision that resulted in minor damage to the body. The next day, the engine seized. ICBC refused to pay for the losses associated with the seized engine, relying on section 5.9.

33. After reviewing several dictionary definitions of the word “coincidence”, the Court found that in the context of section 5.9 “coincident with” means “corresponding or having a close similarity in some manner, such as in space, substance, nature, character, value, or time”. The Court found that there did not need to be a causal relationship between the mechanical fracture, failure or breakdown and the other loss or damage for which indemnity is provided. Applied to this dispute, I find that there does not need to be a causal link between the hard braking or the collision and the brake problem for the applicant to be covered.

34. I find that ICBC’s position is essentially that the applicant must prove that the brake problem was caused solely by the collision, which is inconsistent with the reasoning in *Dhadwal*. Even though the Court in *Dhadwal* concluded that the collision was one of several causes of the engine seizing, this finding was not critical to the outcome.

35. Applying the definition in *Dhadwal*, I find that the brake problems are “coincident with” the collision with the moose. The brakes were damaged very close in time to the collision and in the same sequence of events. I find that whether there was a

pre-existing issue with the brakes, as ICBC alleges, is not relevant, because the brakes did not require repair until after the collision.

36. In *Dhadwal*, the Court also found that damage to the engine and damage to the body of the vehicle were close in substance, nature and character. I find that the same reasoning applies in this dispute.
37. Therefore, I find that the brake problems are covered under the policy.
38. As for the applicant's damages, the applicant provided a written estimate from a mechanic that is valid until December 31, 2019, for \$1,768.29. I note that the CCC said in its decision that because the part was already defective, replacing it with a new part would contravene section 5(6) of the policy. Section 5(6) of the policy says that ICBC is not liable for the cost of repair that improves a vehicle.
39. ICBC did not mention section 5(6) in its Dispute Response. I find that the issue has not been properly raised in this dispute. Even if it had, I would have found that section 5(6) did not apply to the applicant's brakes. As mentioned above, the applicant's mechanic did not uncover any issues with the applicant's brakes in its inspections before the collision. Also, CCC's description of the other mechanic's diagnosis is hearsay. While the tribunal has discretion to accept hearsay evidence, I find that the applicant's mechanic's statement is more reliable about the state of the applicant's brakes because it is not hearsay.
40. Accordingly, I find there is no basis in the evidence for a deduction under section 5(6) of the policy. I order ICBC to pay the applicant \$1,768.29.
41. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgement interest on the from August 3, 2019, the date of the collision, to the date of this decision. This equals \$41.62.
42. 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. I find the applicant is entitled to reimbursement of \$125 in tribunal fees. The applicant did not claim any dispute-related expenses.

## **ORDERS**

43. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$1,934.91, broken down as follows:
- a. \$1,768.29 for the cost of the brake repairs,
  - b. \$41.62 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125 for tribunal fees.
44. The applicant is entitled to post-judgment interest, as applicable.
45. Under section 48 of the CRTA, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
46. Under section 58.1 of the CRTA, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

---

Eric Regehr, Tribunal Member