



Civil Resolution Tribunal

Date Issued: December 27, 2019

File: SC-2019-005396

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rizzotti v. Belkov*, 2019 BCCRT 1442

BETWEEN:

JOHN RIZZOTTI and LEONA RIZZOTTI

APPLICANTS

AND:

STEVE BELKOV, IGOR BELKOV and Insurance Corporation of British
Columbia

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This is a small claims dispute about a motor vehicle accident that occurred on April 5, 2019 (accident). The applicant, Leona Rizzotti, was driving a vehicle with her husband, John Rizzotti, as passenger, when the vehicle collided with a vehicle driven by the respondent, Steve Belkov, and owned and insured by the respondent,

Igor Belkov. Without meaning any disrespect, as the two individual respondents share the same last name, to avoid confusion I will refer to them simply as “Steve” and “Igor”. Details of the accident are discussed below.

2. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures both parties and internally concluded that Ms. Rizzotti was 100% responsible for the accident.
3. The applicants say Steve is wholly responsible for the accident and request that Steve admit fault for the accident and pay \$3,000 in compensation to fix the damage on their vehicle. The respondents say fault was properly assessed.
4. The applicants are represented by John Rizzotti. The respondents are represented by an ICBC adjuster.

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. Here, I find that I am properly 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 that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the tribunal’s process and found that oral hearings are not necessarily required where credibility is an issue.

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 by 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.

ISSUE

9. The issue in this dispute is who is at fault for the accident, and if not the applicants, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicants bear the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. It is undisputed that at approximately 10:50 pm on April 5, 2019, the parties were each driving westbound on Smithe Street near Hornby Street, in Vancouver, British Columbia. The root of the applicants' claim is that they say Steve reversed into their vehicle when it was unsafe to do so, and collided with the front end of the applicants' vehicle.
12. The parties agree that Steve was driving his vehicle immediately ahead of the applicants. Both parties were intending to turn right onto Hornby Street. The applicants say while making his turn, Steve accidentally turned into the bike lane of

Hornby Street and had to reverse to get out of the bike lane. They say when Steve was reversing his vehicle, he collided with the front of their vehicle.

13. Steve admits that when he turned onto Hornby Street, he was heading into the bike lane, but says that when he realized that, he stopped suddenly and was then struck from behind by the applicants. Steve denies reversing his vehicle at all, until after the collision occurred and both vehicles had to reverse.
14. In support of their position, the applicants provided a very brief text message statement from EP, a friend of Mr. Rizzotti. The applicants say that at the time of the accident, EP was following two cars behind them in a U-Haul truck and saw the accident. The very brief, undated, text message statement states “[t]he car in front of you backed up and hit your car”, noted Steve had a passenger in the vehicle, and stated “it was clearly he who hit you”. The applicants say EP’s statement corroborates their version of events. The respondents say EP is not an independent witness because of his relationship with the applicants.
15. Although I find EP likely gave his statement to the best of his knowledge, I have reservations about the credibility and reliability of EP’s testimony for the following reasons. First, EP is not truly independent, and the extent of EP’s relationship with the applicants is unclear to me, so I am unable to assess his independence as a witness. Further, the statement is undated and I am therefore unable to determine whether the statement was made while events were fresh in EP’s mind, or whether it was given at some later time. Additionally, due to the lack of detail in the statement, I am unable to determine whether EP was truly in a position to witness the accident, given there were other vehicles between him and the location of the accident. Given these reasons, I give EP’s statement little weight.
16. I turn then to the relevant provisions of the *Motor Vehicle Act* (MVA). Section 162(1) states that:

A driver of a vehicle must not cause or permit the vehicle to follow another vehicle more closely than is reasonable and prudent, having due regard for

the speed of the vehicles and the amount and nature of traffic on and the condition of the highway.

17. According to section 162, there was an obligation on Ms. Rizzotti to ensure she kept her vehicle a safe distance behind Steve's vehicle. I find that she did not do so in this case. Even if I found Steve had reversed his vehicle, there is no indication as to how far back he is alleged to have reversed. Therefore, regardless of whether Steve reversed, the obligation was on Ms. Rizzotti to ensure she was a safe distance behind him.

18. In *Nelecpu v. Bartel*, 2001 BCPC 55, the claimant sought compensation for damage to his vehicle as a result of a rear-end collision with the defendant. Mr. Nelecpu was the rear driver, while Mr. Bartel was the lead vehicle. The court in *Nelecpu* stated that:

In the usual case of a rear-end collision, the party who has rear-ended another's vehicle is required to defend against a claim for damages. The usual case is a difficult one to defend because of the presumption of fault.

19. Faced with conflicting evidence from the parties, in the circumstances here it is impossible to know with certainty how the accident happened. As noted above, the burden is on the applicants to prove on a balance of probabilities that Steve was responsible for the accident. On balance, I find the applicants have not established that it is more likely than not that Steve caused the accident. I dismiss the applicants' claim for compensation resulting from the accident.

20. Even if I had found Steve was responsible for the accident, I would not have awarded the applicants' claimed damages in any event. Although they claimed \$3,000 for damage to their vehicle, they did not provide any quote or estimate as to the cost of repairing the minor damage to their bumper.

21. Additionally, I would have declined to award the applicants' requested remedy that Steve admit fault for the accident. An order requiring someone to do something is

known as “injunctive relief”. Injunctive relief is outside the tribunal’s small claims jurisdiction, except where expressly permitted by section 118 of the CRTA. There is no relevant CRTA provision here that would have permitted me to grant the injunctive relief sought in any event.

22. I also would have dismissed the applicants’ \$400 claim for Ms. Rizzotti’s “time spent” dealing with the dispute, specifically putting together the evidence and submissions. This is not the sort of expense that the tribunal would typically order the respondents to pay, and I see no reason to do so here. Unless it is an extraordinary case, the tribunal does not usually allow parties to recover legal fees in small claims, nor does it award compensation for a party’s time spent trying to resolve the dispute. This is not an extraordinary case, and so I would have dismissed this claim in any event.
23. Under section 49 of the CRTA, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As the applicants were not successful, I find that they are not entitled to reimbursement of their tribunal fees. Neither party claimed dispute-related expenses.

ORDERS

24. I order the applicants’ claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair