



Civil Resolution Tribunal

Date Issued: December 30, 2019

File: SC-2019-006807

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chan v. ICBC*, 2019 BCCRT 1448

BETWEEN:

TAK KWONG ANDREW CHAN and LAI YING JOSEPHINE HUI

APPLICANTS

AND:

THE INSURANCE CORPORATION OF BRITISH COLUMBIA and
MA CRISTINA ESCAMILLA

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 June 28, 2019.

2. The applicant, Tak Kwong Andrew Chan, was driving a vehicle insured by the applicant, Lai Ying Josephine Hui, when it collided with a vehicle driven by the respondent, Ma Cristina Escamilla.
3. The respondent insurer, The Insurance Corporation of British Columbia (ICBC), insures both Ms. Hui and Ms. Escamilla. ICBC internally concluded that Mr. Chan was 100% at fault for the accident for unsafely changing lanes.
4. The applicants say ICBC should have found Ms. Escamilla 100% responsible for the accident for unsafely changing lanes. The applicants ask that ICBC change its finding of fault or pay them \$5,000, which they say is the cost of their vehicle repairs, so they can pay off the ICBC claim to avoid increased premiums.
5. The applicants are represented by Mr. Chan. The respondents are represented by an ICBC adjuster.

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. 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.

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 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

10. The issue in this dispute is who is liable for the accident, and if not the applicants, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

11. 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.
12. The following facts are undisputed:
 - a. On June 28, 2019, at approximately 11:50 pm, Mr. Chan and Ms. Escamilla were both traveling northbound on Smithe Street, just north of the Cambie Bridge.

- b. While stopped on Smithe Street at Expo Blvd, Ms. Escamilla was in the right most lane of three (lane 1/3) and Mr. Chan was in the lane immediately to her left (lane 2/3).
 - c. Mr. Chan says, after crossing Expo Blvd, Ms. Escamilla improperly changed lanes into his lane, colliding with his vehicle. In contrast, Ms. Escamilla says Mr. Chan changed into her lane, colliding with her vehicle.
 - d. The parties agree the accident occurred in the second-right most lane (lane 2/4) of Smithe Street, after Expo Blvd.
 - e. Mr. Chan's right rear door and right rear quarter panel and Ms. Escamilla's left front side came into contact.
13. ICBC determined that Mr. Chan was solely responsible for the accident for unsafely changing lanes in the Smithe/Expo intersection. Mr. Chan says it was Ms. Escamilla who improperly changed lanes, and that he remained in his lane the entire time.
14. I find this dispute turns on the layout of the intersection. On Smithe Street, just before Expo Blvd, there are 3 northbound lanes. The Smithe/Expo intersection curves to the left. After Expo Blvd, Smithe Street turns into 4 northbound lanes, with the fourth lane (a dedicated right turn lane) added on the far right. Unfortunately, there are no lane lines painted in the intersection.
15. As noted above, before Expo Blvd, Ms. Escamilla was in the right most lane (lane 1/3). To remain in that same lane, it would be the second-right most lane after Expo Blvd (lane 2/4). After Expo Blvd, the right-most lane of Smithe turns into 2 lanes (lane 1/4, which is new, and lane 2/4). A driver previously in lane 1/3 may continue straight, into lane 2/4, or move into the right lane, lane 1/4. This is consistent with the ICBC adjuster's notes from a September 10, 2019 telephone call with Dave Coburn, traffic management employee with the City of Vancouver. Mr. Coburn stated a driver in the right-most lane before Expo Blvd, has the option of choosing either the right-most or second-right most lane after crossing Expo Blvd, while lanes 2 and 3 must continue straight.

16. Before Expo Blvd, Mr. Chan was in the second-right most lane (lane 2/3). To remain in that same lane, after the curve and new lane addition, Mr. Chan would have had to proceed through the intersection and continue in what is then the third-right most lane (lane 3/4) after Expo Blvd. However, when crossing the intersection, Mr. Chan moved his vehicle into the second-right most lane (lane 2/4), which was actually Ms. Escamilla's "straight-through" lane.
17. Mr. Chan says that as he was in the second-right most lane before the intersection, it makes sense that he would continue to be in the second-right most lane after the intersection. However, given the intersection's design, with the curve and the added right lane, I disagree. I find Mr. Chan changed into the lane immediately to his right while crossing the intersection, instead of remaining in his through lane.
18. Section 151(a) of the *Motor Vehicle Act* says that a driver must not move from one lane to another unless the movement can be done with safety and will in no way affect another vehicle's travel. Here, I find Mr. Chan mistakenly changed lanes when it was unsafe to do so, and so he is 100% liable for the accident. I therefore dismiss the applicants' claim for damages.
19. Even if I had found Ms. Escamilla responsible for the accident, I would not have ordered ICBC to change its internal fault assessment. 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 by the applicants in any event.
20. 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 paid tribunal fees. Neither party claimed dispute-related expenses.

ORDER

21. I order the applicants' claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair