



Civil Resolution Tribunal

Date Issued: January 2, 2020

File: SC-2019-006478

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Armilotta v. ICBC*, 2020 BCCRT 1

BETWEEN:

GREGORY ARMILLOTTA

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and
JONATHAN FLORES

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This is a dispute about liability and damages from an August 22, 2017 motor vehicle accident between the applicant, Gregory Armilotta, and the respondent, Jonathan Flores (respondent). The respondent Insurance Corporation of British Columbia (ICBC) insures Mr. Flores.

2. ICBC internally concluded that the applicant was 75% at fault for the accident and the respondent was 25% at fault. The applicant wants an order that ICBC reverse its decision and find the respondent 100% at fault for the accident. The applicant also claims \$4,900 in damages for pain and suffering.
3. The respondent says that the applicant was either wholly or mostly at fault for the accident. The respondent also says that the applicant has not proven that it suffered personal injuries entitling him to \$4,900 in damages.
4. For its part, ICBC says that it is not a proper respondent this dispute.
5. The applicant is self-represented. The respondent and ICBC are both represented by an ICBC employee, Ben Heiskanen.

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, both parties of this dispute call into question the credibility, or truthfulness, 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. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, 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.
10. I will first address ICBC's main argument that it is not a proper respondent in this dispute. The tribunal has consistently found that an insured has a right to claim against ICBC if they believe that ICBC did not meet its statutory obligations to reasonably investigate an accident. I agree with this approach. However, in this dispute, the applicant makes no claims about ICBC's investigations. Rather, his claims relate only to who was liable for the accident and what his damages are. Therefore, I agree that the applicant has not made any claims against ICBC, and I dismiss his claims against ICBC.

ISSUES

11. The issues in this dispute are:
 - a. Which driver is liable for the accident?
 - b. What are the applicant's damages?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant must prove his case on a balance of probabilities. I have read all the parties' evidence and submissions but I will only refer to what is necessary to explain and give context to my decision.
13. The following facts are not in dispute. The applicant was travelling eastbound on the Lougheed Highway, approaching an intersection. At the intersection, there were 2 eastbound through lanes and a left-turn lane. The applicant was in the left through lane. The respondent was stopped in the intersection going westbound, waiting to make a left turn onto the cross street. The applicant was travelling through the intersection when the respondent began making a left turn. The respondent did not see the applicant because his view was obstructed by another vehicle turning left in the other direction. After the applicant swerved to avoid the respondent, the front of the respondent's vehicle struck the applicant's driver's side door.
14. The key issue is what colour the light was when the applicant entered the intersection. I will address the evidence on that point in some detail.
15. On behalf of the respondent, ICBC provided its file notes as evidence. The file includes "statements" from the applicant, the respondent and 3 independent witnesses. Of these statements, all but one (an email from a witness) are notes from ICBC adjusters of telephone conversations. There are no written statements directly from the witnesses, the applicant or the respondent.
16. These statements are all hearsay. The tribunal has discretion to admit evidence that would not be admissible in court proceedings, including hearsay. In *Medel v. Grewal*, 2019 BCCRT 596, a tribunal vice chair accepted similar hearsay evidence on the basis that ICBC, as part of its standard procedures when investigating an accident, receives oral reports from witnesses and records those summaries in its file. I agree with that reasoning, and I find that these statements are admissible.
17. That said, I have placed less weight on these notes than I would have placed on a written statement directly from the witnesses or respondent. While I accept that the

adjusters' job involves accurately recording a witness's recollections, the words are still those of an adjuster, not the witnesses themselves. I therefore find that it would be inappropriate and unfair to rely on the exact words in the statements. Rather, I find that they accurately record only the witnesses' general recollections. As a sophisticated litigant, I would expect ICBC would understand the importance of providing direct evidence wherever possible if it wants the tribunal to rely on the finer details of a witness's evidence.

18. I will start with the applicant's evidence. The applicant says that the respondent is responsible for the accident for several reasons. First, the applicant says that the respondent was distracted because he was driving to meet his girlfriend. The applicant says that the respondent was a brand new driver and did not know the area well. The applicant also says that the respondent did not try to swerve out of the way when the accident was imminent.
19. In his evidence in this dispute, the applicant does not say whether the light was green, yellow or red when he approached the intersection. However, the applicant does not dispute the accuracy of ICBC's notes of his oral statement to the ICBC adjuster. In the ICBC notes, the applicant says that the light was green as he approached the intersection and it turned yellow when the front of his vehicle was already in the intersection.
20. According to the ICBC notes, the respondent said that he entered the intersection when his light was still green. He stopped to wait for a break in traffic to make his left turn. As he waited, the light turned yellow. He saw another vehicle stop at the stop line coming in the opposite direction as the light turned red. He crept forward, saw no oncoming traffic, and started his turn. He says that he then saw the applicant coming towards him, but it was too late to avoid the collision.
21. One of the ICBC statements is an email from a witness, A, who says that they were driving in the lane next to the applicant. A says that when they saw the light turn yellow, the car in front of A slowed down and stopped, but the applicant sped up. A says that the light turned red as the applicant crossed the pedestrian crosswalk.

22. According to the ICBC notes, another witness, M, was walking at the intersection when she saw the respondent stuck in the intersection waiting to turn. M said that the light was red when the impact occurred and yellow when the applicant entered the intersection.
23. According to the ICBC notes, the final witness, KH, was travelling 3 car lengths behind the applicant in the lane next to the applicant. KH saw the accident but did not see the colour of the traffic light at the time. KH assumed it was yellow because the traffic in their lane stopped for the light.
24. The applicant also provided a statement that he says KH made to him by email. KH's email to the applicant, dated November 7, 2019, is much more detailed than the one he gave to ICBC, which was from a phone call on August 29, 2017. In the email, KH says that the light changed to yellow as the applicant "continued into the intersection". This contradicts ICBC's notes, in which KH said that he did not see the colour of the traffic light.
25. Other parts of KH's email are very similar to the applicant's submissions. They are both written in all capital letters and contain similar language. For example, in his submissions, the applicant says: "I reacted swiftly and immediately in braking and swerving into the curblane of the intersection to avoid the collision". KH's statement says: "the applicant immediately braked and swerved towards the curblane to avoid the incursion".
26. Given the similarities between KH's email and the applicant's submissions and the fact that KH's email is more detailed than what he previously had said to ICBC, I find that ICBC's notes are a more reliable account of KH's recollections. It is unlikely that KH's memory improved in the 2 years since the accident. I find that the applicant likely wrote KH's email on KH's behalf. For these reasons, I rely on ICBC's notes and find that KH did not see what colour the light was when the applicant entered the intersection.

27. Both A and M said that the light was yellow and nearly red when the applicant entered the intersection. I find that they were both in a good vantage point to see the traffic light and the accident. I find that the detail of the colour of the light is important enough that the ICBC adjuster would have been careful to record that aspect of their statement carefully. I find that A and M provided the most objective and reliable evidence. I note that their evidence is consistent with the respondent's evidence. On balance, I find that the applicant entered the intersection on a very late yellow and that the light turned red just before the collision. I will turn to the applicable law.
28. Section 128(1)(a) of the *Motor Vehicle Act* (MVA) says that a driver approaching an intersection and facing a yellow light must stop before entering the marked crosswalk unless they cannot stop safely. Section 174 of the MVA says that a driver turning left must yield the right of way to through traffic that is either in the intersection or so close that it is an "immediate hazard".
29. There are many court cases that have considered how these 2 provisions interact when a driver enters an intersection and collides with another driver turning left.
30. In *Brucks v. Caslavsky*, 1994 CanLII 3116 (BC CA), a "left turn case", the Court of Appeal said that a driver turning left can "assume that others will obey the rules of the road" and can rely on that assumption until it becomes apparent that the other vehicle is an "immediate hazard".
31. ICBC relies on *Lam v. Cumming*, 2002 BCSC 1413. In that case, the left-turning defendant saw the plaintiff's vehicle approaching the intersection when the light turned yellow. Based on the plaintiff's distance from the intersection, the defendant assumed that the plaintiff would stop, but the plaintiff did not slow down. The Court concluded that the plaintiff entered the intersection on a late yellow or red and that the defendant was entitled to assume that the plaintiff would stop. Therefore, even though the plaintiff's car was there to be seen, the plaintiff was found fully liable for the accident.

32. The Court reached a similar conclusion in *Henry v. Bennett*, 2011 BCSC 1254. The plaintiff entered the intersection on a “stale yellow”, which turned red while he was in the intersection. Vehicles in the other lane, which were ahead of the plaintiff, had stopped, but the plaintiff tried to beat the yellow light. He struck the defendant, who was turning left. The defendant admitted that she did not see the plaintiff approach the intersection because her view was blocked by another vehicle. The Court found the plaintiff 100% liable for the accident. The Court relied on the fact that because the yellow light was turning red, she had to get out of the intersection to avoid putting herself at risk.
33. I find that the circumstances in this dispute are very similar to those in *Henry*. I find that the applicant entered the intersection on a very late yellow, which turned red just before the accident. I find that the drivers in the other eastbound through lane who were roughly the same distance from the intersection when the light turned yellow safely slowed to a stop. Based on this, I find that the applicant could have safely stopped, too, but did not attempt to do so. I therefore find that the applicant breached section 128(1)(a) of the MVA and his duty of care to the respondent.
34. I also find that the evidence does not support a finding that the respondent breached the standard of care for a driver in his situation. He was waiting to turn left on a yellow light and other drivers were stopping. The light either turned red or was about to turn red as he began his turn. If he had waited any longer, he would have become stranded in the middle of the intersection on a red light, an unsafe position. I find that he began his turn on the reasonable assumption that if there were any vehicles approaching the intersection, they would stop. As in *Henry*, I find that his failure to see the applicant does not demonstrate a lack of care in the circumstances.
35. As noted above, ICBC internally concluded that the respondent was 25% at fault for the accident. I am not bound by ICBC’s assessment. For the above reasons, I find that the applicant was 100% at fault for the accident.
36. Given my conclusion on liability, I do not need to assess the applicant’s damages.

37. 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. The applicant has not been successful so I dismiss his claim for reimbursement of tribunal fees and dispute-related expenses. Neither the respondent nor ICBC claimed any dispute-related expenses.

ORDER

38. I dismiss the applicant's claims, and this dispute.

Eric Regehr, Tribunal Member