Civil Resolution Tribunal

Date Issued: January 9, 2020

File: SC-2019-006677

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Muller v. ICBC*, 2020 BCCRT 34

B E T W E E N :

MICHAEL MULLER

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA, DAVID LEWIS and REIMER BROS TRUCKING LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Lynn Scrivener

INTRODUCTION

1. This small claims dispute is about a June 7, 2019 motor vehicle collision. The applicant, Michael Muller, was involved in a collision with a commercial truck owned by the respondent Reimer Bros Trucking Ltd. and driven by the respondent David

Lewis. The applicant says that the respondent Insurance Corporation of British Columbia (ICBC) did not properly investigate the collision, and wrongly determined that he was 100% responsible for it. The applicant asks for an order that Mr. Lewis is liable for the collision and for $5,000 in unspecified damages. The respondents disagree with the applicant's position.

2. The applicant is self-represented. The respondents are represented by an ICBC adjuster.

JURISDICTION AND PROCEDURE

3. 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.

4. 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 "he 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.

5. 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.

6. Where permitted under section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. The issues in this dispute are:

   a. whether ICBC breached its statutory obligations in investigating the collision and assessing fault,

   b. who is at fault for the collision, and

   c. whether the applicant is entitled to $5,000 in damages.

EVIDENCE AND ANALYSIS

8. In a civil dispute like this one, an applicant bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer only to what is necessary to provide context to my decision.

Did ICBC breach its statutory obligations?

9. The applicant ‘s position is that ICBC did not investigate the collision properly as it did not obtain a written statement from 1 of the 2 independent witnesses.

10. The applicant gave ICBC contact information for T and A, who were bystanders in the area of the collision and saw what occurred. It appears that ICBC spoke to both

witnesses but only obtained a formal statement from T. ICBC says that it attempted to contact A for a formal statement, but did not receive a response.

11. The British Columbia Supreme Court decision in *McDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283 states at paragraph 249 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".

12. In this case, ICBC obtained statements from the drivers and T. It documented A's verbal comment that she "saw [the applicant's] vehicle change lane, the truck driver did not slow down", but was unable to obtain a more detailed or formal statement. In my view, the evidence suggests that ICBC exercised reasonable diligence in speaking to witnesses and in attempting to obtain A's detailed statement. I find that ICBC acted reasonably in investigating the claim, and I dismiss the applicant's claim in this regard.

Who is liable for the collision?

13. The collision occurred in busy stop-and-go traffic on Hastings Street in Vancouver. The applicant was driving his vehicle in the centre lane and made a lane change into the curb lane in front of the respondents' vehicle. Shortly afterwards, the traffic slowed and stopped for a traffic signal. The respondents' truck struck the rear of the applicant's vehicle and pushed it into the vehicle in front of his (Vehicle 2), which in turn struck the vehicle in front of it (Vehicle 3).

14. ICBC investigated the matter and internally determined that the applicant was responsible for the collision as he had made an unsafe lane change contrary to section 151(a) of the *Motor Vehicle Act* (MVA). This section says that a driver who is driving a vehicle on a laned roadway must not drive it from one lane to another when a broken line only exists between the lanes, unless the driver has ascertained

that movement can be made with safety and will in no way affect the travel of another vehicle.

15. The applicant's position is that the collision was not related to his lane change, and that Mr. Lewis should be 100% responsible for the collision. The thrust of the applicant's argument is that, based on the positions and speeds of the vehicles, and the interval between his lane change and the traffic stoppage, Mr. Lewis had ample time to stop his truck. The applicant suggests that Mr. Lewis did not apply his air brakes, made no attempt to stop, and must have been distracted before the collision.

16. The respondents say that the exact speed of the vehicles and the timing between the lane change and the collision cannot be proven. However, the respondents say that the applicant took away the safe stopping space that Mr. Lewis had left in front of his truck, and the applicant's lane change resulted in there being not enough time or space for a loaded tractor trailer to stop.

17. The evidence before me shows that the drivers and witnesses have different recollections and perspectives about the speeds and positioning of the vehicles, the timing between the lane change and collision, and the efforts made by Mr. Lewis to avoid the collision. The applicant says he had about 1 car length of space to make his lane change, and that, after his lane change, there was then a 3 to 4 car length space between his vehicle and the respondents' truck. He says that he was moving in the curb lane for 1 to 2 seconds before stopping, and the collision occurred 7 to 10 seconds after the lane change.

18. Mr. Lewis' June 7, 2019 statement to ICBC advised that he had no time to stop after the applicant's vehicle cut in front of him. He estimated that the collision occurred 3 to 5 seconds after the lane change. The driver of Vehicle 2 provided a brief statement on June 7, 2019, and stated that the applicant's vehicle changed lanes, the truck "had no room to stop" and he "heard [the truck] honk, heard airbrakes fired/screeches & then heard bang". In a more detailed statement, the Vehicle 2 driver said that he had been driving in front of the respondents' truck for some time,

and had noted that its driver was leaving space (approximately 60 feet) between the vehicles. The driver stated that he saw the applicant "dodge in there at an angle and brake suddenly to get in there". The driver of Vehicle 3 did not provide any information about the position of the vehicles.

19. As noted above, there were 2 bystanders who were independent witnesses. A's informal statement was that she "saw [the applicant's] vehicle change lane [sic], the truck driver did not slow down". According to T's August 7, 2019 statement, she saw the applicant change lanes, and that the truck driver honked but "did not/could not" stop in time. She also offered her view that the applicant "should not cut in front of the truck".

20. The applicant questioned how the driver of Vehicle 2 could judge distances accurately while observing the events through mirrors. However, the applicant did not comment on whether his own observations would have been similarly affected.

21. The applicant says that he has spoken to commercial drivers and Commercial Vehicle Safety and Enforcement personnel who have told him that the circumstances should have resulted in ample space and time to stop a fully loaded tractor trailer, and that air brakes should lock up with hard braking. However, he did not provide a statement or report from these individuals about expected stopping distances or effects from braking attempts. Similarly, I find an ICBC publication on heavy vehicle braking is not determinative of the matter.

22. As referenced above, my assessment of liability is informed by section 151(a) of the MVA, which requires that a lane change be made with safety and not affect the travel of another vehicle. The applicant says the British Columbia Supreme Court's decision in *Robbie v. King*, 2003 BCSC 1553 supports his position. In that case, a rear-end collision that occurred when the plaintiff changed lanes in front of the defendant, and then decreased her speed dramatically in order to make a right turn into a gas station. At paragraph 13, the Court discussed the fact that, as the rear-ending driver, the defendant had the onus to demonstrate that he was not at fault. The court found that the defendant had only partially discharged the onus as he

assumed that plaintiff would proceed with the flow of traffic and did not pay close attention to her vehicle. The Court found that the plaintiff's lane change did not create an immediate hazard, but that her abrupt slowing contributed to the collision. The Court attributed fault 80% to the defendant and 20% to the plaintiff in those circumstances.

23. I find that the circumstances before me are distinguishable. The facts in *Robbie* involved findings that the plaintiff's lane change did not create an immediate hazard and that the defendant was not paying close enough attention. I find that the evidence in this dispute does not support these same conclusions.

24. Whatever the interval between the lane change and collision was, I find that the applicant has not established that Mr. Lewis could or should have been able to stop his loaded truck in the amount of space that was available to him after the applicant made his lane change. I also find that the applicant has not established that Mr. Lewis was distracted or failed to brake or take other steps to avoid the collision. Based on this information, I find that the applicant's lane change created an immediate hazard and affected the travel of the respondents' vehicle, contrary to section 151(a) of the MVA.

25. In summary, while I acknowledge the applicant's view that his lane change was safe and that Mr. Lewis should have been able to avoid the collision, I find that he has not met his burden of proving this on a balance of probabilities such that he would be entitled to a different liability assessment.

26. Even if I had found that the evidence supported a different liability assessment, I would not have awarded the applicant damages. The applicant asked for $5,000 in damages. The parties agree that the applicant did not have collision coverage on his vehicle, and that the claim represents a repair estimate. However, the applicant did not provide a copy of the estimate or any other supporting evidence. As these damages are not proven, I would have dismissed the applicant's claim in any event.

27. 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 his claim for reimbursement of tribunal fees.

ORDER

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

Lynn Scrivener, Tribunal Member