



Civil Resolution Tribunal

Date Issued: January 13, 2020

File: SC-2019-004791

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rashid v. ICBC*, 2020 BCCRT 46

B E T W E E N :

MD HAROON UR RASHID

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA and GSD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about a June 1, 2019 motor vehicle collision. The applicant says that the respondent Insurance Corporation of British Columbia (ICBC) did not properly investigate the collision before wrongly determining that his spouse (who was driving his vehicle) was responsible for it. The applicant says the other driver, the

respondent GSD, caused the collision. The applicant seeks \$800.00, which he says is the cost of repairing his vehicle. The respondents disagree with the applicant's position.

2. The applicant is self-represented. The respondents are represented by an ICBC employee.
3. The respondent GSD is a minor and BKD is his litigation guardian. I have anonymized the published version of this decision in order to protect the identity of the minor.

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. 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.

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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. whether ICBC breached its statutory obligations in investigating the collision and assessing fault,
 - b. who is liable for the collision, and
 - c. whether the applicant is entitled to \$800.00 in damages.

EVIDENCE AND ANALYSIS

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

Did ICBC breach its statutory obligations?

10. The applicant says that ICBC did not investigate the collision properly as it did not take a statement from an unidentified witness, did not "check the car", and did not see the accident location.

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 order to be successful in this aspect of the claim, the applicant must prove that ICBC failed to act “properly or reasonably” in administratively assigning responsibility for the collision to him (see *Singh v. McHatten*, 2012 BCCA 286).
13. Although the applicant states that ICBC did not take a statement from “our witness”, he did not identify this individual or provide information about the witness’ proximity to, or involvement with, the collision. The evidence shows that ICBC spoke to an independent witness, M, on 2 occasions to obtain statements. It is not clear to me whether this is the witness to whom the applicant refers.
14. The applicant also takes issue with ICBC’s investigation of the scene and vehicles. ICBC states that the adjuster viewed a map and images of the scene, as well as images of the vehicles. An ICBC estimator also reviewed the images of the vehicles. I find the applicant has not proven that ICBC routinely attends collision scenes to conduct investigations or that in-person vehicle inspections are required for every claim. I also find he has not proven that ICBC should have done so for this collision.
15. In my view, the evidence shows that ICBC exercised reasonable diligence in investigating the collision. I find that the applicant has not established that ICBC failed to act properly or reasonably, and I dismiss the applicant’s claim in this regard.

Who is at fault for the collision?

16. The collision occurred on 72nd Avenue near the intersection at 128th Street in Surrey. This road has 2 through lanes and, closer to the intersection, widens to include a left-turn lane. The collision occurred near the beginning of the left turn lane.
17. ICBC determined that the collision occurred when the applicant's spouse moved from the through lane into the left-turn lane without signaling. GSD had already moved into the left-turn lane, and was unable to stop in time to avoid a collision. On this basis, ICBC internally assigned liability to the applicant's spouse.
18. The applicant's position is that GSD was responsible for the collision, which he says occurred in the through lane rather than the left-turn lane. The applicant explains that his wife had no reason to turn left at that intersection given her intended destination. According to the applicant, his wife did not enter the left-turn lane and the collision occurred in the through lane when GSD tried to enter the left-turn lane when there was not enough room to do so. He provided images that he says show his vehicle was parallel to the white lines on the roadway and which prove that the collision did not occur in the left-turn lane.
19. In my view, the images provided by the applicant do not establish the location of the collision. Although the applicant says the images show the painted lines on the roadway, I find they are not visible. Further, the white lines the applicant added to the images do not assist in showing the positions of the vehicles in the lanes. I find that the images show that there are 2 lanes of traffic travelling to the right of the collision scene. Given that there are 2 through lanes in that area, I find this suggests that the vehicles involved in the collision were in the left-turn lane.
20. I find that the remainder of the evidence before me supports the conclusion that the collision occurred in the left-turn lane. A dispute response filed by BKD contains GSD's statement that he was "cut off" by the applicant's vehicle as it entered the left-turn lane. The independent witness, M, who was driving 2 cars behind GSD, stated that GSD "went into the left turn lane as soon as it opened up", and the

applicant's vehicle "went to make a lane change from the left straight thru lane into the left turning lane" and collided with GSD's vehicle.

21. An ICBC estimator reviewed images of the vehicles in their post-collision positions. He provided an opinion that, based on the damage to the vehicles, it was likely that the applicant's vehicle changed lanes when GSD's vehicle was in a blind spot.
22. After considering all of the evidence before me, I find that it is more likely than not that the collision occurred in the left-turn lane as a result of an unsafe lane change by the applicant's spouse, contrary to section 151(a) of the *Motor Vehicle Act*. While I acknowledge the applicant's belief that the collision occurred in different circumstances, 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.
23. 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 \$800 in damages to cover his repair costs. However, the applicant did not provide a copy of a repair estimate, an invoice for completed repairs, or any other supporting evidence. As these damages are not proven, I would have dismissed the applicant's claim in any event.
24. 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 unsuccessful, I dismiss his claim for reimbursement of tribunal fees.

ORDER

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

Lynn Scrivener, Tribunal Member