



# Civil Resolution Tribunal

Date Issued: January 23, 2020

File: SC-2019-007251

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Saiedi v. Dayal*, 2020 BCCRT 81

BETWEEN:

MOHAMMAD REZA SAIEDI

**APPLICANT**

AND:

HARPREET SINGH DAYAL

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

### INTRODUCTION

1. This is a small claims dispute about a motor vehicle accident that occurred on August 11, 2019.

2. The applicant, Mohammad Reza Saiedi, and the respondent, Harpreet Singh Dayal, were each driving northbound on SW Marine Drive near West 72nd Avenue in Vancouver, British Columbia when they were involved in an accident.
3. The applicant says the respondent moved into his lane and struck his vehicle on the rear passenger side door. In contrast, the respondent says the applicant changed into his lane, striking his front driver's side quarter panel and bumper.
4. The parties are both insured by the Insurance Corporation of British Columbia (ICBC). ICBC assessed each party 50% fault for the accident. The applicant says the respondent is 100% responsible for the accident. Initially, the applicant sought \$1,705, the amount he says ICBC is charging him for repairs to his vehicle, plus \$1,200 for his time spent dealing with this dispute. In his submissions, the applicant increased these amounts to \$1,995.04 for vehicle repairs and \$2,800 for his time.
5. The applicant is self-represented. The respondent is 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. 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 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. 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 responsible for the accident and, if not the applicant, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

11. In a civil claim such as this, the applicant bears 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. It is undisputed that at around 4:10 am on August 11, 2019, the parties were each driving northbound on SW Marine Drive in Vancouver, near West 72nd Avenue.
13. The applicant says that he was initially in the middle northbound lane, and that the respondent was exiting a gas station to his right, and unsafely turned right, partially into the right-most lane and partially into the middle lane. In response, the applicant says he moved his vehicle into the left-most lane.
14. Then, the applicant says, the respondent appeared to want to make a U-turn to head south on SW Marine Drive to drive to his work, and therefore moved his vehicle into the left-most lane, without checking his mirrors or blind spot, and collided with the applicant's vehicle. In contrast, the respondent says he pulled out of the gas station into the middle lane of SW Marine Drive, and continued in the middle lane until the applicant moved from the left lane into his lane, colliding with the respondent's vehicle. The respondent says he intended to turn right on to West 71st Avenue to get to work, so had "no reason" to move his vehicle into the left lane. In relation to the respondent's intention to turn right or make a U-turn, there is an evidentiary tie. There is no persuasive evidence either way, as I note the respondent's work location supports either a U-turn or a right turn.
15. In support of his position of what happened, the applicant provided adjuster notes from a statement given to ICBC by a witness, LN, and CCTV footage from a nearby business. He also provided various diagrams he prepared which, admittedly, were not to scale.
16. LN's statement is hearsay. The tribunal has discretion to admit evidence that would not be admissible in court proceedings, including hearsay. In a previous decision, *Medel v. Grewal*, 2019 BCCRT 596, I accepted similar hearsay evidence on the basis that ICBC, as part of its standard procedure when investigating an accident, receives oral reports from witnesses and records those summaries in its file as part of its routine business practice. That is what has been produced here, a copy of the adjuster's notes from an oral report from LN. I find the reasoning in *Medel* applies here, and I find LN's statement is admissible.

17. It is recorded in ICBC's notes that LN did not see the collision occur, but saw the position of the vehicles after the accident from their apartment window, 3 floors up. That is, they said when they saw the vehicles, both were facing northbound on SW Marine Drive, with the applicant's vehicle facing straight in the left-most lane, and the respondent's vehicle facing straight in the middle lane. The applicant says the position of the vehicles, as evidenced by LN's statement, shows that his version of the accident is correct. I disagree. LN did not see the accident, only the vehicles after the accident occurred. LN said both vehicles were in their own lanes, facing forward. I find LN's report of the vehicle positions after the fact does not show that either vehicle crossed into the other's lane, nor does it show whether the respondent intended to make a U-turn. As such, I find LN's statement is of no assistance in determining liability for the accident.
18. Similarly, with the video footage, again, the actual collision cannot be seen. What is seen is the bottom halves of the two vehicles pulling over, after the collision. The applicant says the way the vehicles pulled over is consistent with his version of the accident, not the respondent's. However, the video is dark and, as noted, did not capture the accident. The majority of the two vehicles are off screen. I find the position of the vehicles in the video is equally consistent with either parties' version of events. I find the video footage is also of no assistance in determining liability.
19. Faced with conflicting evidence from the parties about who changed lanes, in the circumstances here it is impossible to know with certainty how the accident truly happened. As noted above, the burden is on the applicant to prove on a balance of probabilities that the respondent was solely responsible for the accident. I find he has not met that burden.
20. As a result, I find the applicant is not entitled to a different liability assessment for the accident, and therefore is not entitled to damages. For these reasons, I dismiss the applicant's claims. Even if I had found the respondent fully liable for the accident, I would not have awarded the applicant's claimed damages in any event. I say this because although he says he owes ICBC for half of his vehicle damage,

there is no evidence he has paid any money to ICBC. If he has not paid any money to ICBC, then the applicant is seeking a declaration that he does not owe ICBC money, and declarative relief is outside the jurisdiction of this tribunal (see: *Evans v. Campbell*, 1993 CanLII 2600 (BCCA) at paragraph 5).

21. Additionally, I would not have awarded the damages claimed for the applicant's "time spent" dealing with this dispute, specifically gathering and preparing evidence and participating in the tribunal's processes. This is not the sort of expense that the tribunal would typically order a respondent to pay, and I would not have done so here. Additionally, new tribunal rule 9.5(5) (effective January 1, 2020) states that "time spent" is generally not compensable except in extraordinary circumstances, which is consistent with previous tribunal decisions. This is not an extraordinary circumstance. Therefore, I would have dismissed this claim in any event.
22. 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 applicant was not successful, I find that he is not entitled to reimbursement of his paid tribunal fees. No dispute-related expenses were claimed.

## **ORDER**

23. I order the applicant's claims, and this dispute, dismissed.

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Andrea Ritchie, Vice Chair