



Civil Resolution Tribunal

Date Issued: January 28, 2020

File: SC-2019-006292

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Viani v. ICBC*, 2020 BCCRT 106

BETWEEN:

ANTONIO VIANI

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and SONAM
SHAKYA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This is a small claims dispute about an alleged motor vehicle accident. The applicant, Antonio Viani, claims that the respondent Sonam Shakya's vehicle collided with his parked vehicle, which Ms. Shakya denies. Mr. Viani claims that

ICBC improperly assessed the \$300 insurance deductible against him. Mr. Viani also claims that Ms. Shakya is responsible for the damage to his vehicle.

2. Mr. Viani seeks reimbursement of the \$300 deductible plus interest.
3. The respondent insurer, Insurance Corporation of British Columbia (ICBC), internally concluded that Mr. Viani's vehicle was damaged by a vehicle collision. However, ICBC determined that this collision did not involve Ms. Shakya's vehicle. ICBC also says it is not a proper party to the claim.
4. The applicant is self-represented. All respondents are represented by an ICBC adjuster.

JURISDICTION AND PROCEDURE

5. 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*. 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.
6. 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.

7. 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.
8. 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.
9. ICBC says it is not a proper respondent to Mr. Viani's claim. ICBC claims that Ms. Shakya, as the other vehicle's owner, is the only proper respondent. I disagree. This dispute is in part about liability under the insurance contract.
10. In *Morin v. ICBC, Clark & Berry*, 2011 BCPC 290, the claimant brought an action against both ICBC and the driver of the other vehicle involved in a collision. The court held that ICBC had incorrectly charged the claimant a deductible under a "hit and run", when it found the defendant driver's negligence had caused the accident. Therefore, the court determined the claimant was entitled to reimbursement for the deductible he paid. Although ICBC and the other driver were named defendants, the court decided as the claimant had paid money to ICBC, ICBC was the proper party for the claimant to recover that money from.
11. In *Innes v. Bui*, 2010 BCCA 322, the Court of Appeal found that a plaintiff involved in a collision who challenged ICBC's decision about liability for that collision had a claim not based in tort, but rather based in either contract, statute, or both. The court found that the only issue raised by the pleadings in that case was whether ICBC acted properly or reasonably in its administrative decision to assign full responsibility for the collision to the plaintiff. The court said that issue was strictly

between the plaintiff and ICBC, and that the other driver in the collision was not the correct party.

12. Given the *Innes* and *Morin* decisions, I find ICBC is a proper respondent to this dispute.
13. In *Kristen v. ICBC*, 2018 BCPC 106, the court held that it could not assess liability unless the other driver was given an opportunity to present their case. Considering *Kristin*, even though Mr. Viani only claims reimbursement of the \$300 deductible paid to ICBC, I find that it was appropriate to also name Ms. Shakya as a respondent as she may be impacted by a determination of liability.

ISSUES

14. The issues in this dispute are:
 - a. Did ICBC breach its statutory obligations in investigating the accident and assessing the insurance deductible against Mr. Viani?
 - b. Is Ms. Shakya responsible for the accident? If so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

15. 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.

Did ICBC breach its statutory obligations by applying the insurance deductible?

16. Mr. Viani claims that Ms. Shakya's vehicle collided with his parked vehicle on August 31, 2018 and he reported the accident to ICBC as a hit and run.

17. Mr. Viani alleges ICBC improperly instructed him to repair his vehicle without first telling him he would have to pay a \$300 deductible. Mr. Viani argues that if he had been advised that he may have to pay the insurance deductible, he would not have repaired his vehicle at that time.
18. To succeed against ICBC, the applicant must prove on a balance of probabilities that ICBC breached its statutory obligations or its contract of insurance, or both. The issue against ICBC is whether ICBC acted “properly or reasonably” in administratively assessing the \$300 deductible against the applicant (see: *Singh v. McHatten*, 2012 BCCA 286).
19. Mr. Viani claims that ICBC failed in its duty under the insurance contract by improperly applying the insurance deductible.
20. ICBC provided a September 5, 2018 memorandum stating that ICBC sent Mr. Viani a list of Express Valet Repair shops and told him that the \$300 insurance deductible would be applicable. In contrast, Mr. Viani says that ICBC never told him that he would be responsible for an insurance premium.
21. Both parties stated that Mr. Viani took his vehicle to an ICBC Express Valet Repair shop for repairs.
22. Initially, ICBC waived the deductible because Ms. Shakya had not responded to ICBC’s correspondence. However, after Ms. Shakya denied liability, ICBC investigated and examined her vehicle. ICBC then determined that she was not at fault, and assessed Mr. Viani the \$300 deductible based on a hit and run accident.
23. ICBC owes Mr. Viani a duty of good faith, which requires ICBC to act fairly, both in how it investigates and assesses the claim and as to its decision about whether to pay the claim (see: *Bhasin v. Hrynew*, 2014 SCC 71 at paras. 33, 55 and 93). As noted in the Continuing Legal Education Society of BC’s *‘BC Motor Vehicle Accident Claims Practice Manual’*, an insurer is not expected to investigate a claim with the skill and forensic proficiency of a detective. An insurer must bring “reasonable diligence, fairness, an appropriate level of skill, thoroughness, and objectivity to the

investigation and the assessment of the collected information” (see: *McDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283). I find ICBC has done so, as discussed further below.

24. Mr. Viani and ICBC have provided conflicting evidence about the information that ICBC provided about the insurance deductible. However, since ICBC’s submissions are corroborated by their contemporaneous September 5, 2018 memorandum, I find it is more likely than not that ICBC did advise Mr. Viani of the \$300 deductible before he made the repairs.
25. Further, I find that the applicant has not established that ICBC has breached its statutory obligations or its contract of insurance by initially waiving the insurance deductible and then re-asserting the deductible. Mr. Viani has not provided any evidence to establish that ICBC acted improperly when it reassessed the deductible after new information became available. I find that ICBC acted reasonably in investigating this matter and administratively assessing the insurance deductible.
26. Having determined that ICBC acted reasonably in its assessment of the insurance deductible, I turn now to my assessment of liability.

Is Ms. Shakya liable for the accident?

27. Mr. Viani stated that he saw Ms. Shakya’s vehicle angle parking on the passenger side of his vehicle as he was approaching from about 30 feet away. Mr. Viani stated that the Ms. Shakya’s vehicle was going back and forth trying to park.
28. Mr. Viani stated that an individual got out of the respondent’s vehicle and bent over to look at her front driver fender. Mr. Viani stated that this person looked at him and her eyes were “as big as saucers” and she ran away.
29. Mr. Viani stated that he inspected both vehicles and he noted damage to the other vehicle at the front driver fender and damage to his vehicle at the rear passenger fender.

30. Mr. Viani stated that he measured the height of the damage using his leg and the height matched. Mr. Viani also provided photographs showing his own measurements of the height of the alleged damage to his vehicle. However, the tape measure does not appear to be straight and the photographs are blurry.
31. Mr. Viani provided photographs of Ms. Shakya's vehicle at the scene of the alleged accident which appeared to show minor scuffing or scratching to the respondent's vehicle above the front driver's side wheel well.
32. Mr. Viani provided photographs dated September 10, 2018 from the auto repair shop which appeared to show minor abrasions to the rear quarter panel and mud flap area of Ms. Shakya's vehicle between approximately 27 inches and 31.5 inches.
33. ICBC had an estimator and a Material Damage Manager examine the vehicles and they noted that Ms. Shakya's vehicle had damage between the heights of 25 inches and 28.25 inches whereas Mr. Viani's vehicle had damage between the heights of 27.25 inches and 31.5 inches. Based on differences in the height of the damage, ICBC concluded that respondent's vehicle did not cause the applicant's vehicle's damage.
34. Although the applicant argues that the damage to vehicles match, I do not find the applicant's measurement to be reliable. I am not satisfied that Mr. Viani's use of his leg to measure the height of the damage at the scene was sufficiently accurate. Furthermore, in the photographs of the measurements Mr. Viani produced, the tape measure does not appear to be straight and the photographs are blurry.
35. I find that Mr. Viani has failed to provide sufficient evidence to prove that Ms. Shakya's vehicle collided with his vehicle. There were no witnesses to the alleged accident and I accept ICBC's evidence that the vehicle damage does not match.
36. Given my conclusions above, I find that Mr. Viani has not provided sufficient evidence to prove that Ms. Shakya is responsible for the damage to his vehicle. I dismiss his claim.

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. I see no reason in this case not to follow that general rule. The applicant was unsuccessful in this dispute and so is not entitled to reimbursement of tribunal fees or dispute-related expenses. The respondents did not pay tribunal fees or claim dispute-related expenses.

ORDER

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

Richard McAndrew, Tribunal Member