



Civil Resolution Tribunal

Date Issued: January 30, 2020

File: SC-2019-007221

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Linxus Travel Ltd v. ICBC*, 2020 BCCRT 118

BETWEEN:

LINUXUS TRAVEL LTD

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and COAST
MOUNTAIN BUS COMPANY LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This is a small claims dispute about a motor vehicle accident that occurred on April 20, 2019. A coach bus owned by the applicant, Linxus Travel Ltd (Linxus), was southbound on MacKay Avenue before Kingsborough Street in Burnaby, British Columbia when it collided with a transit bus owned and operated by the respondent,

Coast Mountain Bus Company Ltd. (CMBC). The respondent, Insurance Corporation of British Columbia (ICBC), insures both Linxus and CMBC, and internally found Linxus 100% responsible for the accident.

2. Linxus says CMBC should be held 100% responsible for the accident because of careless driving and turning over a solid white line. It seeks \$2,900, the value of its bus's repairs, plus \$100 and a fault reassessment. As Linxus did not provide any evidence or submissions in support of the \$100 claim, I infer it is a nominal amount based on the request for a fault reassessment. The respondents say Linxus was wholly responsible for the accident for leaving a place of safety without signalling. They also say ICBC already paid \$2,507.49 for Linxus's bus damage, and the only amount Linxus was charged was its \$300 deductible.
3. Linxus is represented by an employee or principal. The respondents are both represented by an ICBC adjuster, Kimberly Halliday.

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. 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.

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. 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

8. The issue in this dispute is who is liable for the accident, and if not the applicant, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. 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.
10. The following facts are undisputed:
 - a. On April 20, 2019, at approximately 5:55 pm, Linxus's coach bus was parked southbound in the right curb lane on MacKay Avenue before Kingsborough Street in Burnaby, BC.
 - b. At the same time, CMBC's transit bus was also in the right curb lane, traveling southbound on MacKay Avenue.

- c. When approaching the coach bus, the transit bus moved from the right-most lane into the middle lane. After passing the coach bus, the transit bus attempted to move back into the right-most lane, to then make a right turn onto Kingsborough Street, to follow its normal bus route.
 - d. While the transit bus was changing back into the right-most lane, the coach bus left its parked position and started traveling southbound in the right curb lane when the accident occurred.
 - e. The right rear side of the transit bus and the left front side of the coach bus came into contact.
11. ICBC determined Linxus was solely responsible for the accident for unsafely moving a vehicle that was stopped, standing or parked, without also signalling an intention to do so, contrary to section 169 of the *Motor Vehicle Act* (MVA). In contrast, Linxus says CMBC is responsible for the accident for unsafely changing lanes over a solid white line, contrary to section 151 of the MVA. Linxus says the transit bus was attempting to illegally make a right turn from the middle lane. For the reasons that follow, I dismiss Linxus's claims.
12. First, I find Linxus breached section 169 of the MVA. It is undisputed that the Linxus bus was parked for at least 1 hour outside a nearby hotel, in an area of MacKay Avenue that only allows "tour bus" stops. That is, no other vehicles are permitted to stop on that stretch of MacKay Avenue, but it is otherwise a travel lane. Although Linxus initially reported to ICBC that its driver signalled his intention to rejoin the flow of traffic, video evidence from the multiple locations on the transit bus does not show the coach bus's signal activated. Notably, the driver's subsequent statement, made approximately 7 months later, is silent on whether he turned his signal on. In any event, the driver said he had moved his coach bus forward 3 to 5 meters from its initial parking spot when the transit bus unsafely passed in front of it, causing the collision. From my review of the video evidence, I disagree. The video shows the transit bus passing the coach bus and starting its movement back into the right-most lane. It is also undisputed that the transit bus operator signalled his intention to

move back into the right-most lane. At the time the transit bus started its lane change into the right lane, the coach bus is seen to be stationary with its brake lights on. Based on the timing in the video, the coach bus started its forward motion after the transit bus had already started its lane change. Further, the transit bus appears to almost complete its lane change by the time the collision occurs. I find Linxus's driver moved the coach bus from a parking position when it was unsafe to do so, and without signalling his intention to do so, both contrary to section 169 of the *Motor Vehicle Act*.

13. Linxus says that CMBC is responsible for the accident because its bus crossed over a solid white line, contrary to section 151 of the *Motor Vehicle Act*. Section 151(a) says that a driver must not move from one lane to another unless the movement can be done with safety and will in no way affect the travel of another vehicle. Section 151(b) says that a driver must not drive a vehicle from one lane to another if it requires crossing a solid line. While I understand Linxus's position that the transit bus crossed over the solid line in front of the coach bus contrary to section 151(b), I find that manoeuvre was not the primary cause of the accident. Although the transit bus crossed the solid line, the uncontested evidence is that it had signalled its intention to do so and I find the transit bus had nearly completed its lane change and was there to be seen (see: *Bilanik v. Ferman*, 2014 BCSC 732). The applicant provided no explanation for its failure to see the transit bus when it started moving its bus from its parked position.
14. In the circumstances, I find the evidence shows that the transit bus driver acted reasonably in passing the coach bus and changing lanes into the right-most lane. I find the Linxus coach bus driver improperly left a point of safety, while the transit bus had nearly completed its lane change, causing the accident. As a result, I find Linxus was 100% responsible for the accident, and is therefore not entitled to a different fault assessment and is not entitled to damages. I dismiss Linxus's claims.
15. Even if I had found CMBC responsible for the accident, I would not have ordered Linxus's claimed damages. As noted above, Linxus did not pay \$2,900 for its

vehicle damage, but rather its damages would have been limited to the \$300 deductible it paid. Additionally, no evidence or submissions were provided in support of the \$100 claim.

16. 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 Linxus was not successful, I find it is not entitled to reimbursement of its tribunal fees. No dispute-related expenses were claimed.

ORDER

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

Andrea Ritchie, Vice Chair