



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Wang v. ICBC*, 2020 BCCRT 123

B E T W E E N :

Lizhang Wang

APPLICANT

A N D :

Insurance Corporation of British Columbia and Ryan Pintes

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This is a small claims dispute about a motor vehicle accident that occurred on November 24, 2016. The applicant, Lizhang Wang, and the respondent, Ryan Pintes, were the drivers involved.

2. The respondent insurer, the Insurance Corporation of British Columbia (ICBC), internally concluded Mr. Wang was 100% at fault for the accident. However, through its Claims Assessment Review (CAR) process, an arbiter concluded in a January 31, 2017 decision that Mr. Wang and Mr. Pintes were instead both 50% liable.
3. Mr. Wang disagrees with the arbiter's and ICBC's decisions. He says Mr. Pintes is 100% liable for the collision and seeks reimbursement of \$2,380.20 for repair costs and increased insurance premiums totaling \$1,310.00 for the years of 2017, 2018 and 2019.
4. In its Dispute Response ICBC agreed with the arbiter's decision of divided liability. However, ICBC now says Mr. Wang is 100% at fault. Mr. Pintes agrees and explicitly adopts ICBC's position in his Dispute Response.
5. XC, a friend or acquaintance, represents Mr. Wang. An adjuster represented ICBC. Mr. Pintes is self-represented.

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. In the circumstances 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.

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. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders:
 - 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.

ISSUES

10. 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. what remedy, if any, is appropriate.

BACKGROUND AND EVIDENCE

11. In a civil claim such as this, the applicant Mr. Wang bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions necessary to give context to my decision.
12. As background, on September 13, 2019, I issued a preliminary decision. I found that I was unable to assess liability for the accident without Mr. Pintes as a party to this dispute.

13. On November 14, 2019, I issued a second preliminary decision. After considering submissions from the parties, I ordered that Mr. Pintes be added as a respondent to this dispute. I have amended the style of cause above accordingly. Mr. Pintes filed a Dispute Response and the parties subsequently had the opportunity to further exchange evidence and submissions. This is my final decision on the merits of this dispute.
14. On November 24, 2016, Mr. Wang was driving eastbound on Great Northern Way when he collided with Mr. Pintes' vehicle. The parties dispute the facts of the collision.
15. Mr. Wang says the following:
 - a. At the time of the collision Mr. Wang was 40 to 50 meters away from the intersecting street of Glen Drive.
 - b. Mr. Wang says that area of Great Northern Way had two eastbound lanes and a parking/curb lane to his right. He was in the lane beside the parking lane.
 - c. I note that the photos in evidence show the parking lane is not actually a demarcated lane. I find that there are only 2 demarcated lanes, and the demarcated lane closest to the curb is large enough to accommodate parked vehicles. However, I will refer to the parking/curb area as the parking lane as the parties have used this term in their submissions.
 - d. There were no cars in the parking lane. Mr. Wang decided to move into the parking lane in order to park next to the curb.
 - e. Mr. Wang says Mr. Pintes was in the leftmost lane. After Mr. Wang was established in the parking lane, Mr. Pintes changed lanes into the lane next to the parking lane, and then attempted to pass Mr. Wang's car. Mr. Pintes cut in front of Mr. Wang into the parking lane without signaling.

- f. Mr. Pintes struck Mr. Wang's vehicle, damaging the front driver side of Mr. Wang's vehicle, above his tire, leaving a dent. He says Mr. Pintes was hit on the rear passenger side of his vehicle.
 - g. Mr. Pintes kept driving. Mr. Wang followed Mr. Pintes and they both eventually stopped to exchange information.
16. Mr. Pintes' evidence comes largely from a November 26, 2016 email to ICBC that attached a diagram. He wrote the following:
- a. He was driving down Great Northern way. He intended to turn right two blocks after the intersecting street of Glen Drive.
 - b. The diagram shows Mr. Pintes travelling directly ahead of Mr. Wang in the demarcated lane closest to the curb and Mr. Wang is shown trying to enter the adjacent parking lane.
 - c. Mr. Pintes explained in the email that Mr. Wang tried to enter the parking lane in order to make a right turn at the upcoming intersection. However, the parking lane was not large enough to accommodate Mr. Wang's vehicle.
 - d. In trying to "squeeze" into the parking lane, Mr. Wang scraped his passenger-side wheels against the curb. He also hit Mr. Pintes' vehicle.
 - e. The diagram shows Mr. Wang's driver side wheel area hitting Mr. Pintes' rear passenger side area.
17. Mr. Wang provided photos and a December 12, 2016 repair estimate for Mr. Pintes' vehicle. This evidence shows Mr. Pintes' entire rear bumper was undamaged. It also shows that Mr. Pintes' passenger side rear door sustained damage, close to the wheel. Mr. Wang also provided a photo and a December 12, 2016 repair invoice that documents damage to the front driver side of Mr. Wang's vehicle, predominantly above the wheel well.

18. Which version of events is accurate? I find this situation is essentially an evidentiary tie. The two stories conflict. It is undisputed that no independent witnesses saw the accident and no emergency personnel attended at the scene.
19. Although not binding, I have also considered the arbiter's January 31, 2017 decision. The arbiter found both drivers 50% liable. The arbiter concluded that, based on Mr. Pintes' version of events, it was not possible for his passenger side rear door to be damaged without damaging the right rear bumper. The arbiter therefore doubted Mr. Pintes' account of the collision. However, I disagree, as I find it plausible that Mr. Wang could have sideswiped that area by driving beside Mr. Pintes, while "squeezing" into the parking lane. This is consistent with Mr. Pintes' version of events.
20. With that in mind, I will now turn to the issues in this dispute.

Issue #1. Did ICBC breach its statutory obligations?

21. As noted above, ICBC internally found that Mr. Wang was 100% liable for the accident. Mr. Wang appealed ICBC's liability decision through the CAR process and was found only 50% liable for the accident.
22. To succeed in his claim against ICBC, Mr. Wang must prove on a balance of probabilities that ICBC breached its statutory obligations or its insurance contract, or both. The question is whether ICBC acted "properly or reasonably" in administratively assigning 50% liability to Ms. Grewal: *Singh v. McHatten*, 2012 BCCA 286. ICBC'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": *McDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283.
23. Mr. Wang says that ICBC acted in bad faith in conducting its investigation. He says that ICBC's adjuster and the arbiter both found him at least partially liable to save ICBC money.

24. I find that ICBC conducted a reasonably diligent investigation and fair assessment of the available information. The evidence shows it obtained written statements and photos of the accident scene from both Mr. Wang and Mr. Pintes. Their stories conflicted. It is undisputed that no independent witnesses saw the accident and no emergency personnel attended at the scene.
25. In his reply arguments, Mr. Wang requested ICBC to provide a “complete and original telephone report record”. Mr. Wang raised this point late. I do not find it necessary as ICBC provided a summary of Mr. Wang’s and Mr. Pintes’ reported versions of the collision. It is also unclear why the record would be helpful or if such a record exists.
26. As to ICBC’s assessment of liability, section 158(2) of the *Motor Vehicle Act* (MVA) says that a driver of a vehicle must not overtake and pass another vehicle on the right when the movement cannot be made safely. In its submissions ICBC says that it held Mr. Wang 100% liable because he breached section 158(2). It concluded that Mr. Wang was unsafely passing traffic on the right by driving down the parking lane.
27. The arbiter assessed liability differently from ICBC’s initial determination. As noted above, the arbiter concluded that the damage to the vehicles was inconsistent with Mr. Pintes’ version of events. However, the arbiter also concluded that Mr. Wang drove in the parking lane “in a manner for which it was not intended”. By doing so he would have blocked any vehicles turning right at Glen Drive. The arbiter therefore assigned liability equally between Mr. Wang and Mr. Pintes at 50% each.
28. I note that ICBC says it made a “clerical error” by not reimbursing Mr. Wang 50% of his vehicle’s repair estimate at the time the arbiter made the determination of 50% liability for Mr. Wang in January 2017. ICBC says it was unaware of this oversight until Mr. Wang applied for dispute resolution and withheld payment pending resolution of this dispute. ICBC says it based its insurance premium adjustments based on Mr. Wang being 50% liable for the collision. I take from this that ICBC has essentially implemented the finding of 50% liability and will make the repair payment if this dispute is dismissed.

29. I find that ICBC had a reasonable basis for its initial determination of liability. Although it has withheld Mr. Wang's reimbursement for repairs pending resolution of this dispute, there is no evidence that ICBC otherwise refused to accept the arbiter's conclusions. There is no indication that ICBC or the arbiter acted unfairly or in bad faith to save money. The fact that the liability assessment changed in Mr. Wang's favour (though not to the degree he wishes) through the CAR process suggests there was no bad faith. I find that ICBC acted reasonably in administratively assigning partial liability to Mr. Wang.
30. Mr. Wang also provided a copy of an April 11, 2017 letter, in which ICBC advised it had paid out \$1,311.96 in relation to the November 2016 accident. ICBC asked him to repay this amount to prevent the accident from affecting his insurance premiums.
31. In his arguments, Mr. Wang says that, because the arbiter found him only 50% liable, ICBC should have only asked him to repay \$911.27. This is half of the cost of Mr. Pintes' repairs of \$1,822.53, as documented in a November 25, 2016 repair invoice.
32. Mr. Wang did not pay this amount or include it as a claim in his Dispute Notice. He did not point to any contract term or legislation to support his argument that the \$1,311.96 amount was wrong. I am unable to conclude from the letter that ICBC breached any statutory obligations or its contract of insurance. The remaining evidence, discussed above, does not show any such breach.
33. I dismiss this aspect of the applicant's claim.

Issue #2. Who is liable for the collision?

34. Mr. Wang says Mr. Pintes unsafely changed lanes without signaling, causing the accident. Section 151(a) of the MVA says that a driver must not drive from one lane to another unless the movement can be made safely, without affecting the travel of another vehicle. MVA section 151(c) also says that the driver must first signal before changing lanes.

35. ICBC and Mr. Pintes say Mr. Wang tried to pass Mr. Pintes on the right, causing a collision. They say Mr. Wang breached MVA section 158(2), discussed above.
36. Mr. Wang and Mr. Pintes each present versions of events that suggest the other is 100% at fault. I have found that that situation is an evidentiary tie. As noted above, Mr. Pintes has the burden of proof. I find that Mr. Pintes has not proven his claim. I therefore do not order any change in the assessment of liability as it currently stands, being 50% liability for Mr. Wang and 50% liability for Mr. Pintes for the collision on November 24, 2016.
37. Based on ICBC's submissions, ICBC did not initially pay for Mr. Wang's repairs because Mr. Wang does not have collision coverage with ICBC, and ICBC found him 100% liable. ICBC says it has since implemented the arbiter's decision, save for partial reimbursement of Mr. Wang's repairs, pending the results of this dispute. As part of its implementation, ICBC adjusted Mr. Wang's insurance premium based on 50% liability.
38. Given the above, I dismiss this claim.

TRIBUNAL FEES AND EXPENSES

39. 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.
40. The respondents are the successful parties. They do not claim tribunal fees or dispute-related expenses. I therefore do not order any.

ORDERS

41. Mr. Wang's claims, and this dispute, are dismissed.

David Jiang, Tribunal Member