



Civil Resolution Tribunal

Date Issued: February 7, 2020

File: SC-2019-006459

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Birdi v. ICBC*, 2020 BCCRT 152

B E T W E E N :

AMARJIT BIRDI

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This small claims dispute is about insurance coverage for alleged “hit and run” vehicle damage. The applicant, Amarjit Birdi, says the respondent insurer,

Insurance Corporation of British Columbia (ICBC), unfairly conducted its investigation and wrongly accused him of filing a false insurance claim. The applicant wants ICBC to pay \$4,100.75 for his truck's repairs.

2. The respondent says their estimator's evidence shows the damage was the result of a single-vehicle collision that the driver would have felt or heard. Also, the respondent says it concluded the applicant provided a willfully false statement to ICBC. The respondent says by doing so the applicant breached his insurance coverage, as set out in section 75(1)(c) of the *Insurance (Vehicle) Act* (IVA).
3. The applicant is represented by a non-lawyer family member. The respondent is represented by an employee adjuster.

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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
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, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. whether the applicant filed a false statement to ICBC such that he forfeited any entitlement to insurance coverage, and
 - b. if not, whether the applicant is entitled to “hit & run” vehicle damage coverage from ICBC.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant must prove his claim, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision. I note that despite being given the opportunity to do so, the applicant provided no evidence and no submissions. All I have before me from the applicant are his statements in his initial tribunal application.
10. First, what is ICBC’s duty to the applicant insured? The applicant says ICBC’s investigation was not done thoroughly or fairly and that it reached a false conclusion.
11. ICBC owes the applicant 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.

12. I turn to the relevant chronology. The applicant's vehicle is a large commercial 2006 GMC cube van. On January 29, 2019, by telephone the applicant filed a claim with ICBC reporting that his van had been hit by an unknown vehicle (hit and run) the day before. Because the applicant chose a shop not approved by ICBC for his repairs, an ICBC estimator was required to do an estimate.
13. On February 19, 2019, ICBC's estimator Hei Moon Lim noted that the van's damage did not appear consistent with a hit and run. The estimator noted the damage was only to the upper portion of the truck box by the roof. The estimator added that the damage was "fairly high" to be "vehicle to vehicle", and that there was no other damage anywhere below. The estimator concluded the damage "does look like it was caused by hitting a low clearance stationary object by backing up".
14. On March 11, 2019, the applicant submitted a telephone statement to ICBC, which ICBC documented. It is undisputed the applicant said he used the van regularly for deliveries and was the van's only driver. He wrote that on January 28, 2019 he parked his van in a downtown Vancouver alleyway to do a delivery. He said he was alone and that when he returned to his van 25 minutes later, he did not immediately notice the damage to the "top area of my rear trunk door area" until he arrived at his next delivery stop. The applicant wrote that he believed the damage could only have occurred in the alleyway, and that it was due to a hit and run. The applicant said the next day he reported the hit and run damage to ICBC, noting for them that he did not know who hit his van or how the damage happened. He wrote that he could not have possibly caused the rear trunk door damage himself and that he believed he did not hit anything to cause the damage.
15. On March 19, 2019, a second ICBC estimator, Kim Barron, documented her agreement with Hei Moon Lim's assessment. Next, an ICBC Material Damage manager also documented his agreement with the assessment that there were no signs of vehicle to vehicle impact. The manager wrote that the driver (the applicant)

would have “known, heard, and felt the impact”. ICBC says it was a single vehicle collision.

16. I will deal with the applicant’s entitlement to hit and run coverage first, and then the issue of whether he has forfeited coverage for providing a false statement to ICBC.
17. ICBC says the applicant applied for coverage through the Provincial Hit and Run Fund (Fund). I infer ICBC’s reference to the Fund is to coverage provided under section 24 of the IVA, which describes remedies available for hit and run accidents. ICBC says in order for payment to be made out of the Fund, the damage must be consistent with vehicle to vehicle contact. I agree, as by definition a “hit and run” involves a second vehicle. Since ICBC’s estimator evidence was that there was no such vehicle to vehicle contact, it denied coverage. I do not accept the estimators’ evidence as expert evidence under the tribunal’s rules as their qualifications are not before me. However, I do accept their evidence about the likely cause of the vehicle’s damage, given their role and experience. Notably, I have no contrary estimator or expert evidence before me from the applicant, who chose not to provide evidence despite saying in his tribunal application that he had “sufficient evidence to prove” he did not cause the van’s damage.
18. In summary, I find the applicant’s van damage was the result of a single vehicle collision, which means it was not a hit and run. So, I find the applicant’s claim for hit and run insurance coverage must be dismissed.
19. ICBC also argues that because the applicant said he was the van’s only driver and that he would have felt or heard the collision, the applicant made a false statement in his hit and run application. So, ICBC says he forfeited his own collision coverage under section 75 of the IVA. I agree, given my conclusions above that it was a single vehicle accident that the applicant would have been aware of. The applicant could have provided evidence and submissions, and instead he provided nothing to support his bare assertion that another driver must have damaged his van, when he knew that ICBC’s position was that he caused the damage himself.

20. Finally, in his tribunal application the applicant alleged he was “badgered, belittled, and treated as a criminal from the start” by ICBC and its employees. There is simply no evidence before me to support this serious allegation. ICBC obtained the views of 2 estimators and a Material Damage manager. It took the applicant’s statement. ICBC says the applicant refused to cooperate with its Special Investigation Unit, which is undisputed. The applicant has not explained what else he thinks ICBC should have done in the situation. Based on the evidence before me, I find ICBC acted fairly and reasonably in its investigation. I dismiss the applicant’s claim.
21. Given my conclusions above, I do not need to address the applicant’s damages claim in detail. However, I note that while he claims \$4,100.75, he provided no evidence in support of this figure despite saying he had a quote from a repair company. In contrast, ICBC’s estimate report shows the damage is valued at \$2,315.57, with \$1,912.20 payable if the applicant had been entitled to coverage. As noted, I find the applicant is not entitled to coverage and I dismiss his claim.
22. Under the CRTA and the tribunal’s rules, as the applicant was unsuccessful I dismiss his claim for reimbursement of tribunal fees. No dispute-related expenses were claimed.

ORDER

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

Shelley Lopez, Vice Chair