



Civil Resolution Tribunal

Date Issued: February 07, 2020

File: SC-2019-007692

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kim v. ICBC*, 2020 BCCRT 150

B E T W E E N :

MINSOO KIM

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This small claims dispute is about insurance coverage for a damaged windshield. The applicant, Minsoo Kim, says that the respondent, Insurance Corporation of British Columbia (ICBC) is refusing to provide coverage for an appropriate

replacement windshield. The applicant asks for an order that ICBC provide him with an original equipment manufacturer (OEM) windshield and cover the \$415.51 difference in cost between that item and an after-market windshield. ICBC says that, because the applicant does not have coverage for OEM parts, it is unable to pay for them.

2. The applicant is self-represented. ICBC is represented by an employee.

JURISDICTION AND PROCEDURE

3. 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.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
5. 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.
6. 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.

ISSUE

7. The issue in this dispute is whether the applicant is entitled to insurance coverage for an OEM windshield at an additional cost of \$415.51.

EVIDENCE AND ANALYSIS

8. In a civil dispute like this one, an applicant bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their respective positions. In addition, the parties agreed to include information that was obtained during the facilitation process. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.
9. Although the details are not clear, the parties agree that the applicant purchased automobile insurance coverage from ICBC, including an optional insurance policy. The optional policy provides coverage for windshield damage that does not result from a collision.
10. The applicant's windshield was damaged by a rock in August of 2019. He had the windshield replaced with an after-market product. This replacement was covered by ICBC, less a \$200 deductible paid by the applicant. The applicant was not satisfied with the replacement windshield, and requested an OEM windshield instead. ICBC advised the applicant that an OEM windshield would not be approved for coverage, and he would have to pay the difference in cost if he wished to have an OEM installed on his vehicle.
11. The applicant acknowledges the optional insurance policy provides for the use of parts of similar kind or quality. However, he submits that an after-market windshield is not of a similar kind or quality as compared to his previous windshield. According to the applicant, the quality differences between his original windshield and the after-market windshield were identified by specialists at 2 different glass shops and are shown in photos he included in his evidence. The applicant's position is that an after-market part is not satisfactory and decreases the market value of his vehicle.

He says that the only reasonable solution is to use an OEM windshield to restore the quality of his vehicle, and asks for an order that ICBC cover this expense.

12. ICBC says that it fulfilled the terms of its contract in providing coverage for an after-market windshield and the applicant is not entitled to coverage for an OEM windshield. According to ICBC, OEM parts are covered only by a different form of insurance coverage (a new car replacement policy) which the applicant did not purchase. In response, the applicant did not dispute that he did not purchase the new car replacement coverage, but says that his policy did not contain any such exclusion or limitation.
13. I find the parties' respective rights and obligations are governed by the terms of the applicant's optional insurance policy. The standard terms of the optional insurance policy address the extent of ICBC's liability for replacement parts. Under the heading "Requirements if loss of or damage to vehicle", section 5(5)(a) states that the "liability of the insurer for payment of indemnity for loss or damage to the vehicle is limited to the amount by which the cost of repairing or replacing the vehicle and its equipment or any part of it with material of a similar kind or quality".
14. In a September 20, 2019 email message, an ICBC Customer Relations Advisor stated that "aftermarket parts used for repairs are equivalent in quality to OEM parts". In order to be successful, I find the applicant must establish that the after-market windshield installed on his vehicle was not of "a similar kind or quality" to an OEM windshield.
15. Documents in evidence indicate that the applicant was not happy with the "finishes" or quality of the replacement windshield. The applicant provided images of the after-market windshield, but did not provide an explanation of what those images show. It is not clear to me whether these images demonstrate any issues with the "finishes" or the quality of the windshield.
16. Although the applicant says that specialists at 2 different glass shops identified quality differences in the after-market windshield installed in his vehicle, he did not

provide a statement from these specialists. Further, the applicant did not provide evidence from another automotive or glass professional to comment on the quality of the after-market windshield installed in his vehicle, the general quality of such products, or the impact of an after-market windshield on the market value of a vehicle. I find that the absence of this evidence is significant as, in my view, the equivalence in quality between OEM and after-market windshields is a matter outside of common knowledge. In other words, expert evidence is required and I have nothing other than the statement from the ICBC Customer Relations Advisor.

17. I acknowledge the applicant's dissatisfaction with the after-market windshield installed on his vehicle. However, I find that he has not proven that the after-market windshield installed on his vehicle was not of "similar kind or quality" to an OEM windshield. Therefore, according to the terms of the optional insurance policy, the applicant is not entitled to coverage for an OEM windshield and I dismiss his claim.
18. 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. As the applicant was not successful, I dismiss his claim for reimbursement of tribunal fees.

ORDER

19. I dismiss the applicant's claims and this dispute.

Lynn Scrivener, Tribunal Member