



Civil Resolution Tribunal

Date Issued: March 4, 2020

File: SC-2019-006541

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Yilmaz v. ICBC*, 2020 BCCRT 254

BETWEEN:

OZGUR YILMAZ

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA
and Michael Gordon

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This small claims dispute is about liability for a motor vehicle accident.

2. The applicant, Ozgur Yilmaz, says he was improperly held responsible for a hit and run accident on January 17, 2019. Mr. Yilmaz says the respondent, Michael Gordon, fraudulently reported Mr. Yilmaz's vehicle caused damage to Mr. Gordon's vehicle.
3. Mr. Gordon says he parked his vehicle when there was no vehicle in front of him, and when he returned to his vehicle he noticed damage to his front bumper and Mr. Yilmaz's vehicle was parked in front of his. He reported the incident to the respondent insurer, Insurance Corporation of British Columbia (ICBC). ICBC insures both Mr. Yilmaz and Mr. Gordon.
4. ICBC internally concluded Mr. Yilmaz was 100% responsible for the damage to Mr. Gordon's vehicle, partially because it says Mr. Yilmaz failed to fully participate in ICBC's investigation process. In contrast, Mr. Yilmaz says ICBC has not acted fairly in assessing fault for the accident. Mr. Yilmaz seeks \$5,000, an order "absolving" him from any wrongdoing, and an order lowering his insurance premiums to his pre-accident level.
5. The applicant is represented by Shawn Sidhu, legal counsel. The respondents are represented by an ICBC adjuster.

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. 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.

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. 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.
10. In its Dispute Response, ICBC argued it is not a proper party to the claim, and that the claim should be against Mr. Gordon only. I disagree. Mr. Yilmaz alleges ICBC acted unreasonably in investigating the accident and assigning fault, which is a claim against ICBC as his insurer. I find ICBC is a properly named party.

ISSUES

11. The issues in this dispute are:
 - a. Did ICBC breach its statutory obligations in investigating the accident and assessing fault?
 - b. Who is liable for Mr. Gordon's vehicle damage? If not Mr. Yilmaz, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, Mr. Yilmaz as 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 in investigating the accident and assigning fault?

13. As noted above, Mr. Yilmaz says ICBC did not act fairly or reasonably in assigning fault for the accident. Specifically, he says ICBC took Mr. Gordon's "side" with no supporting evidence.

14. To succeed in his claim against ICBC, Mr. Yilmaz must prove on a balance of probabilities that ICBC breached its statutory obligations or its contract of insurance, or both. The issue is whether ICBC acted "properly or reasonably" in administratively assigning sole responsibility against Mr. Yilmaz (see: *Singh v. McHatten*, 2012 BCCA 286).

15. ICBC owes Mr. Yilmaz a duty of good faith, which requires ICBC to act fairly, both in how it investigates and assesses the claim and in its decision about whether to pay the claim (see: *Bhasin v. Hrynew*, 2014 SCC 71 at paragraphs 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).

16. The root of Mr. Yilmaz's claim is that he says ICBC put more weight on Mr. Gordon's evidence than on his, and that ICBC improperly applied section 73 of the *Insurance (Vehicle) Regulation (IVR)*.

17. Section 73 of the IVR says that, among other things, an insured must cooperate with ICBC in the investigation of a claim and must allow ICBC to inspect an insured's vehicle or its equipment at any reasonable time. If an insured fails to comply with section 73, and ICBC suffers prejudice, ICBC is not liable to that insured.
18. Section 74 of the IVR requires that, upon notice of a claim for damages against an insured, ICBC must assist the insured by investigating and negotiating a settlement, and by defending the insured. This means that once Mr. Gordon started his claim with ICBC against Mr. Yilmaz, ICBC was required to investigate and defend Mr. Yilmaz.
19. When Mr. Gordon notified ICBC of the claim, he included photographs taken at the scene, showing damage to his vehicle's front bumper and a vehicle parked in front of his with a bike rack attached to the back. Mr. Gordon and ICBC submit the damage to Mr. Gordon's bumper was caused by the bike rack. There is some dispute as to whether the bike rack vehicle in the photograph belongs to Mr. Yilmaz. I say this because Mr. Yilmaz told ICBC his vehicle was in storage in a parking facility at the time of the accident, and therefore it could not have been involved in the accident. I find that was untrue. I say this because Mr. Yilmaz did not provide any evidence in support of his submissions about his vehicle's location at the time and given the photographic evidence, showing the vehicle's license plate which ICBC says belongs to Mr. Yilmaz. Notably, Mr. Yilmaz does not specifically deny the vehicle shown in the photograph is his.
20. In any event, as part of its investigation, ICBC repeatedly asked Mr. Yilmaz to bring his vehicle in for inspection. However, Mr. Yilmaz refused to do so, without explanation. Due to Mr. Yilmaz's failure to comply with the investigation and ICBC's requests, I find ICBC was unable to properly defend Mr. Yilmaz against Mr. Gordon's claim. Because of ICBC's inability to properly defend Mr. Yilmaz, Mr. Yilmaz was ultimately held responsible for the damage to Mr. Gordon's vehicle. As noted above, Mr. Yilmaz submits it was unreasonable for ICBC to rely on section

73, and that ICBC unfairly “sided” with Mr. Gordon over himself. I disagree. I find Mr. Yilmaz breached section 73 of the IVR, and that due to this, ICBC’s ability to investigate was hampered. To the extent Mr. Yilmaz argues ICBC failed to fulfil its duty to investigate, that argument must fail. I find ICBC acted reasonably when it found Mr. Yilmaz liable for the accident as a result of its investigation of the given evidence and Mr. Yilmaz’s non-compliance with the investigation.

21. While I acknowledge Mr. Yilmaz disagrees with ICBC’s fault assessment, I find he has not shown that ICBC breached its statutory obligations or its contract of insurance. Therefore, I dismiss this aspect of Mr. Yilmaz’s claims.
22. I turn then to my assessment of liability.

Who is liable for the accident?

23. The accident details are referenced above. Mr. Yilmaz says there is insufficient evidence to prove that his vehicle was involved in the accident. Specifically, Mr. Yilmaz’s counsel says it is not clear from the photographs in evidence that the vehicle is Mr. Yilmaz’s. Despite this vague assertion, the photograph clearly shows the vehicle’s license plate, which ICBC determined belonged to Mr. Yilmaz. This is not disputed. Notably in this dispute, without explanation, Mr. Yilmaz failed to provide any evidence about his vehicle, including the make, model, license plate, or any photographs or identifying features. Additionally, ICBC was unable to inspect the vehicle to determine whether it was involved in the January 17, 2019 incident due to Mr. Yilmaz’s failure to comply with its investigation.
24. Mr. Yilmaz submits there is insufficient evidence to hold him liable for the accident, but I find the lack of evidence is a direct result of Mr. Yilmaz’s ongoing refusal to produce such evidence. As noted above, Mr. Yilmaz bears the burden of proving his claim, on a balance of probabilities. I find he has not done so. As a result, I find he is not entitled to a different liability assessment for the accident, and therefore is not entitled to damages. For these reasons, I dismiss Mr. Yilmaz’s claims.

25. Even if I had found Mr. Yilmaz was not responsible for the accident, I would not have awarded his claimed damages in any event. I say this because although Mr. Yilmaz claimed \$5,000 in damages, he did not provide any evidence in support of such a claim. Additionally, for Mr. Yilmaz's claim for "an order absolving [him] of any wrongdoing", which is in essence a declaration that Mr. Yilmaz was not responsible for the accident, I could not have made such an order as the tribunal does not have jurisdiction to award declaratory relief. I would also not have ordered Mr. Yilmaz's premiums be "reduced" to their pre-accident levels, as that is a request for injunctive relief, which is outside the tribunal's small claims jurisdiction.
26. 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 Mr. Yilmaz was not successful, I find that he is not entitled to reimbursement of his paid tribunal fees. Mr. Yilmaz's claim for legal fees as a dispute-related expense is also dismissed, though I note the tribunal generally does not order reimbursement of legal fees in any event.

ORDER

27. I order Mr. Yilmaz's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair