



# Civil Resolution Tribunal

Date Issued: March 10, 2020

File: SC-2019-007789

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *City Haul Disposal Ltd v. ICBC*, 2020 BCCRT 276

**B E T W E E N :**

CITY HAUL DISPOSAL LTD

**APPLICANT**

**A N D :**

INSURANCE CORPORATION OF BRITISH COLUMBIA and  
AELSDEEP MANN

**RESPONDENTS**

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**REASONS FOR DECISION**

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Tribunal Member:

David Jiang

## **INTRODUCTION**

1. This dispute is about a motor vehicle collision. The applicant, City Haul Disposal Ltd, says the respondent, Aelsdeep Mann, struck and damaged its parked truck. The respondent insurer, the Insurance Corporation of British Columbia (ICBC), insures both the applicant and Mr. Mann, and internally determined that the applicant was 100% liable for the collision.
2. The applicant says ICBC should have found Mr. Mann entirely at fault. The applicant seeks \$500.00 as reimbursement for its insurance deductible paid for truck repairs and \$4,397.96 as reimbursement for its increase in insurance rates.
3. The respondents say that ICBC determine liability correctly under the *Motor Vehicle Act* (MVA).
4. The applicant is represented by an employee or principal. Both Mr. Mann and ICBC are represented by an ICBC employee.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.

7. 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.
8. 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**

9. The issue in this dispute is who is liable for the collision, and if not the applicant, what remedies are appropriate.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the arguments and evidence to the extent necessary to explain my decision.
11. The evidence shows the collision between the applicant's and Mr. Mann's trucks occurred on June 7, 2019. ICBC provided a statement from AM, the applicant truck's driver, dated June 12, 2019. It also provided a brief June 7, 2019 statement and longer September 20, 2019 statement from Mr. Mann.
12. According to AM, he backed in and parked the applicant's truck into a commercial loading area. On the driver side, Mr. Mann's truck was parked next to the applicant's truck, also backed in. Mr. Mann had left his truck's motor running idle.
13. AM said that he went to the truck cab to get gloves and left his driver's door open about a foot. He says Mr. Mann's truck was running about 5 minutes. AM went to help his crew. I infer this was away from the truck. He says it is his "guess" that Mr. Mann started driving forward and to the left. As Mr. Mann turned left, AM says the

backend of his truck swung out and clipped the open driver side door of the applicant's truck.

14. AM says Mr. Mann didn't check his mirrors before the impact, but I find this to be speculation on his part, as I find he did not see Mr. Mann pull away.
15. In his statement, Mr. Mann says he had backed into the loading bay to drop off some packages. After doing so, he got into his truck, checked his mirrors, saw the applicant's truck beside him, then pulled forward. As he did so the applicant's truck driver opened his door into Mr. Mann's truck as he drove by.
16. Which version is true? I find that this is essentially an evidentiary tie. Both drivers gave conflicting stories. AM says he left the driver side door open and Mr. Mann unreasonably struck it while it was there to be seen. Mr. Mann says his vehicle was in motion when the applicant truck's door was opened, causing the collision. The surrounding circumstances do not persuade me that one is more likely than the other.
17. The applicant says AM's evidence should be preferred based on corroborating statements from the applicant's other employees, JC and DY, who were present at the time. For the following reasons, I disagree.
18. In JC's December 3, 2019 statement, he says he was in the back of the applicant's truck at the time of impact, arranging things. He says the impact violently shifted the load in the truck and tossed him around. His evidence shows he did not observe the collision or what AM was doing. I find JC's evidence could support either version of events.
19. Similarly, in DY's December 9, 2019 statement, he says he was sweeping in the warehouse at the time. He says that Mr. Mann failed to check his mirrors while pulling away and that even if the applicant truck's door had been closed, Mr. Mann would have struck the driver side door. DY was vague on whether he actually saw the impact or Mr. Mann's alleged failure to check his mirrors. I find he witnessed neither and his evidence could support either version of events.

20. JC and DY note that the Mr. Mann did not immediately stop after the collision and based on the photos in evidence I agree. Mr. Mann's truck is shown stopped and close to a street exit. The applicant suggests Mr. Mann was therefore oblivious to his surroundings or fleeing the scene but I decline to make those inferences, as he did stop and provided his identification to the applicant's employees.
21. In making its determination that the applicant was wholly liable for the accident, ICBC relied on section 203 of the MVA. Section 203(1) says that a person must not open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so. Section 203(2) says that a person must not leave a door open on the side of a vehicle available to moving traffic for longer than is necessary to load or unload passengers.
22. The applicant says that MVA section 203 does not apply as the collision area was a commercial loading zone on private property, where the public cannot park. As evidence, the applicant submitted a photograph of a nearby parking sign stating that only authorized persons could park there, and violators would be towed away.
23. For the following reasons, I disagree and find that MVA section 203 applies to this dispute.
24. MVA section 203 applies to situations where the side of a vehicle is available to "moving traffic". MVA section 119 defines traffic to include a vehicle using a highway to travel. MVA section 1(c) defines a highway to include every private place or passageway to which the "public", for the purpose of parking or servicing of vehicles, has access or is invited.
25. How broad is the term "public"? It is worth noting that MVA section 1(b) defines a highway to include roads designed or intended for or used by the "general public" for the passage of vehicles. Case law shows the term "public" in MVA section 1(c) refers to a broader class of persons than "general public" in MVA section 1(b): *R. v. R.*, 2012 BCPC 3, at paragraph 23.

26. In *Brown v. Johnson et al*, 2019 BCCRT 1261, which is not binding but persuasive, the tribunal concluded that a parking lot, loading bay, and surrounding area met the definition of a highway under MVA section 1(c). In that dispute the applicant parked her vehicle in front of a dumpster near the centre of a loading zone. The applicant said another vehicle backed into her open door. The tribunal found that MVA section 203 applied.
27. In this dispute, I find that the public had access to or was invited to the area of the collision. I conclude the receiving bay and surrounding area meet the definition of a highway under MVA section 1(c). Although the photographed parking sign states only authorized persons may park there, there is no evidence from the owner or controller of the loading area on who authorized persons are. I infer that, at a minimum, authorized persons include individuals dropping off or picking up packages, such as the applicant and Mr. Mann. I find that that this supports the conclusion that the public is invited to or has access to the area. I find this consistent with the case law that shows the term “public” is a term of general application.
28. The applicant provided a picture of the receiving bay, which shows 3 marked parking stalls in front of a raised loading area. I find it clear that the vehicles are intended to park there before loading or unloading, which is what happened here. This fits the MVA definition of a highway as a place or passageway to which the public has access for the purpose of parking vehicles, under section 1(c). As such, MVA section 203 applies to this dispute.
29. The applicant further says section 203 does not apply because the area is a commercial loading zone, with loading and unloading of vehicles occurring at all times. It argues that this changes the “reasonable timeframe” for a door to be open. I disagree that this makes MVA section 203 inapplicable. This argument is about when it is reasonably safe to open a door under MVA section 203, rather than whether that provision applies. I will discuss this below.

30. Having established the applicable law, I must now consider each party's possible explanations for what happened.
31. If I accept AM's evidence, he left his driver side door open about 5 minutes to get gloves and help his crew. I find that, in this scenario, AM left his driver side door open to moving traffic for longer than was necessary to load or unload passengers. I find that this would contravene MVA section 203(2). There is no indication that AM needed to leave the door open in order to prepare for departure.
32. As noted above, the applicant says the "reasonable timeframe" for an open door should be extended as this is a commercial loading zone. I disagree, as the applicant's submissions of heightened vehicle and pedestrian traffic suggest that drivers should take greater care to close their doors. In any event, apart from its own assertion, the applicant did not point to any legislation or evidence that supports its position.
33. If I accept Mr. Mann's evidence, the applicant's truck driver opened the door into Mr. Mann's truck. I find this would contravene MVA section 203(1) as opening a door into a moving truck is inherently unsafe.
34. Under either scenario, the applicant breached MVA section 203.
35. The applicant says Mr. Mann was negligent and should nevertheless be held responsible for the accident because the damage to the applicant's truck door was substantial. It says that, based on the damage, Mr. Mann would have struck the door regardless of whether it was opened or closed. To support its claim, the applicant referred to pictures showing the damaged door and a displaced front left panel that it says popped out from the force of the collision. It also notes that DY's statement is that the impact "violently" shifted the applicant truck's load and tossed DY "around in the back" of the truck.
36. While the damage to the applicant's truck is apparent, I am unable to conclude from that alone that the collision would have occurred due to Mr. Mann's driving, regardless of whether the door was open. I also note that there is no picture of the

shifted load in the truck and DY did not report any injuries, despite being tossed around. Without further evidence, I disagree that Mr. Mann's negligence made the collision inevitable.

37. The applicant also says Mr. Mann failed to properly check his mirrors before pulling forward and turning too sharply left. As noted above, Mr. Mann disagrees. I do not find AM's, JC's, or DY's evidence to be compelling on this point. I conclude the applicant has not proven Mr. Mann negligently failed to check his mirrors.
38. In summary, I conclude that the applicant is 100% liable for the collision of June 7, 2019. Given this, I find the applicant is not entitled to reimbursement of its paid insurance deductible or the \$4,397.96 claimed for increased insurance rates. I note that the applicant did not state whether the \$4,397,96 claim for "increased insurance rates" is for premiums already paid, or for some anticipated future increase. In any event, given my findings above, I find nothing turns on this. I dismiss the applicant's claims.
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. The respondents are the successful parties. They do not claim reimbursement for tribunal fees or dispute-related expenses, so I order none.

## **ORDERS**

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

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David Jiang, Tribunal Member