



Civil Resolution Tribunal

Date Issued: March 25, 2020

File: SC-2019-007698

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Novak v. ICBC*, 2020 BCCRT 335

B E T W E E N :

LUBOS NOVAK

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This small claims dispute is about a July 7, 2019 motor vehicle accident. The applicant, Lubos Novak, says that another driver, NV, made a false insurance claim against him. He says that the respondent, the Insurance Corporation of British Columbia (ICBC), wrongfully accepted NV's claim. NV is not a party to this dispute.

The applicant requests \$3,000 for the insurance claim, although he does not explain why he has requested this amount. The applicant also requests \$50 to “stop proceeding with auto damage claim.” The applicant represents himself.

2. The respondent internally concluded that the applicant was at fault for the accident. The respondent says it is not a proper party to the claim and that NV should be named. The respondent 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. In some respects, this dispute amounts to a “he said, it said” scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.
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 something, pay money or make an order that includes terms or conditions the tribunal considers appropriate.

ISSUES

7. The issues in this dispute are:
 - a. Did the respondent breach its statutory obligations in investigating the accident and assessing fault?
 - b. Is the applicant responsible for NV's vehicle damage? If not, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, the applicant must prove his claim. He bears the burden of proof on a balance of probabilities.
9. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.

Did the respondent breach its statutory obligations in investigating the accident and assessing fault?

10. As mentioned above, the applicant seeks compensation for a false insurance claim. I note that the evidence does not indicate the percentage of the assessment but just that the applicant was responsible for NV's vehicle damage. To succeed against the respondent, the applicant must prove on a balance of probabilities that the respondent breached its statutory obligations or its contract of insurance, or both. The question is whether the respondent acted "properly or reasonably" in administratively assigning liability to the applicant (see: *Singh v. McHatten*, 2012 BCCA 286).

11. The respondent owes the applicant a duty of good faith, which requires the respondent 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 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).
12. In the course of its investigation, the respondent spoke with a witness who said that he saw the applicant back up over NV's vehicle when trying to park his vehicle and then saw the applicant back up over it again when he abandoned the parking attempt. The witness provided pictures of the damaged vehicle and a picture of the applicant's vehicle after it moved and found parking up the street. The witness also told the respondent that the applicant was in the process of moving a fridge in his truck when the incident happened.
13. The evidence shows that the respondent spoke with the applicant on multiple occasions and took measurements of the vehicles to see whether the applicant's truck could have caused the damage, if the events happened as the witness described. ICBC determined that the height of the applicant's trailer hitch lined up with the height of the damage done to NV's vehicle. The applicant says that ICBC refused to measure the vehicles. However, ICBC provided photos showing the vehicles' measurements. I accept ICBC's evidence.
14. The applicant states that he tried to present other evidence to the respondent including witness' statements. He says that ICBC told him that it does not rely on evidence from friends or family members. As noted below, when ICBC contacted the applicant he denied being at the scene. He did not suggest that he had witness' statements of what happened. He also did not provide witness statements to this

tribunal. I find that ICBC did not unreasonably refuse to accept the applicant's witness' statements.

15. The applicant also says he has body shop employees' opinions, but that the respondent refused to accept them. The respondent's notes do not indicate that the respondent refused to accept the applicant's evidence. The applicant has not provided any emails or other supporting documentation showing that he attempted to forward these opinions to the respondent. I again note that the applicant also did not provide any of this evidence to this tribunal. Therefore, I find that ICBC did not unreasonably refuse to consider the body shop employees' opinions.
16. As noted, when the applicant first responded to ICBC he said he was not in the area where the accident occurred. He later acknowledged that he was there helping his son move a fridge. The witness provided a picture of the fridge loaded onto the applicant's vehicle.
17. The respondent apportioned liability based partially on the parties' statements. I acknowledge that the statements ICBC says it received are all hearsay before this tribunal. The tribunal has discretion to admit evidence that would not be admissible in court proceedings, including hearsay. In *Medel v. Grewal*, 2019 BCCRT 596, a tribunal vice chair accepted similar hearsay evidence on the basis that ICBC, as part of its standard procedures when investigating an accident, receives oral reports from witnesses and records those summaries in its file. While tribunal decisions are not binding on me, I agree with that reasoning, and I find that the witness' statements given to the respondent are admissible in this tribunal dispute.
18. The location of NV's vehicle's damages combined with the photos of the applicant's truck at the scene, as well as the witness' statement, led to the respondent finding that the applicant was responsible for the NV's vehicle's damages.
19. Given the overall evidence, I find that the respondent did not breach its statutory obligations or its contract of insurance. The applicant has not proven ICBC's

investigation was unreasonable. I find the respondent acted reasonably in administratively assigning the applicant responsibility for the accident.

20. Having determined that the respondent acted reasonably in its examination of the accident, I turn now to my assessment of liability.

Is the applicant responsible for the NV's vehicle's damage?

21. As noted above, the applicant brought this claim against the respondent only, and not NV, the owner of the other vehicle. In *Kristen v. ICBC*, 2018 BCPC 106 the court said that the proper defendant in an action to determine liability in a motor vehicle accident is the other driver and not ICBC. However, rather than dismissing the claim for not having named the other driver, the court allowed the claimant an opportunity to amend his Notice of Claim and add the other driver as a defendant. I note that the respondent stated in its Dispute Response that NV should be added as a party. The applicant had the opportunity to add NV as a respondent but did not take steps to do so. He also did not indicate why he did not name NV at the outset, particularly when he alleged that NV was making a fraudulent claim.
22. Further, the applicant does not say the \$3,000 was a claim for a refund of a deductible or for insurance premiums paid to ICBC. If the applicant is claiming fraud against NV, it is unclear why ICBC would pay the claimed damages for this tort claim. Since the applicant failed to name NV, when he knew that he should, I find that his claim cannot be successful.
23. I also note that a recent case from this tribunal, *Singh v. Insurance Corporation of British Columbia*, 2019 BCCRT 701, stated that, given the finding that the applicant had not proved his claim, nothing in the dispute turned on the fact that the applicant did not name the other driver. I have reached a similar conclusion on the facts of this dispute. As discussed below, I find that the applicant has not proved on a balance of probabilities that NV made a fraudulent claim and I agree with the respondent's apportionment of liability to the applicant. Because I find there is no change in liability, I ultimately do not need to determine who would have been the

proper party for the applicant to recover damages from, whether the respondent or NV.

24. Turning to the facts in dispute, I find it significant that when the respondent first told the applicant on July 21, 2019 that he was accused of backing up into NV's vehicle, the applicant said that he had no knowledge of the incident. The respondent's conversation notes indicate that the applicant said that he did not even know the location of the street the incident occurred on. The applicant did not dispute the accuracy of these notes.
25. On July 24, 2019, the respondent told the applicant that it had a witness and photos of the applicant's vehicle at that location with a fridge in it. At that point the applicant admitted he was there helping move a fridge but said that he did not feel any impact with another vehicle. He later indicated that the fridge was in his son's house and he had breakfast with him before moving the fridge. I find it significantly negatively impacts the applicant's credibility that he initially stated that he did not even know where the street in question was and then later said he was there for a prolonged period and that his son lives on that street.
26. I also find the respondent's evidence of the trailer hitch's height and the location of NV's vehicle's damage compelling. The respondent provided photos and a statement from their employee who took the pictures showing that the NV's vehicle's damage was at a height of 19 1/2" and the applicant's trailer hitch height was the same.
27. I do not accept the estimator's 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.
28. The applicant says that his vehicle has sensors that would have warned him to stop before backing into another vehicle. He provided a picture of how far away his truck

gets from another vehicle before the sensors go off. I do not find this evidence persuasive. The applicant did not provide any objective evidence that his truck has these sensors or that they were functioning correctly. Further, even if I were to accept that his truck has these sensors, it does not mean that the applicant paid attention to them if he was trying to get into a cramped parking spot, which is the witness' evidence.

29. The applicant also provided his own pictures of the height of his trailer hitch and the height of the NV's vehicle's damage. I find these pictures unconvincing. Unlike the pictures provided by the respondent, the applicant's pictures do not show the tape measure touching to the ground and they are not taken from an angle that I can tell whether the tape measure is bent or standing straight up. I prefer the evidence provided by the respondent.
30. Also, as mentioned, the applicant states that he has witness' statements, but he did not provide them. He also says he has body shop employees' opinions indicating that he could not have caused the NV's vehicle's damage, but he did not provide these either.
31. As noted, the burden is on the applicant to prove on a balance of probabilities that he was not responsible for NV's vehicle's damage. He has not met this burden. Based on the statements, and the location of the vehicles' damage, I find that the applicant is responsible for the NV's vehicle's damage. As a result, I find he is not entitled to a different liability assessment for the incident and he is not entitled to the \$3,000 requested.
32. I also note that even if I had accepted the applicant's claim, I would not have awarded the \$3,000 because the applicant did not provide any evidence as to what the \$3,000 was for. Further, the applicant claimed \$50 to stop the proceedings. This is in essence a request for injunctive relief and outside the tribunal's jurisdiction. Therefore, I would not have awarded this amount either.

33. 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 unsuccessful in his claim, he is not entitled to have his tribunal fees reimbursed. There was no claim for dispute-related expenses.

ORDER

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

Kathleen Mell, Tribunal Member