



Civil Resolution Tribunal

Date Issued: April 15, 2020

File: SC-2019-010385

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kifleyesus v. ICBC*, 2020 BCCRT 406

BETWEEN:

SELAM KIFLEYESUS

APPLICANT

AND:

Insurance Corporation of British Columbia and MICHIL BULABOS

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This small claims dispute is about liability for a September 26, 2019 motor vehicle incident. The applicant, Selam Kifleyesus, says that the respondents, Insurance Corporation of British Columbia (ICBC) and Michil Bulabos, are falsely claiming that she hit Ms. Bulabos with her vehicle. The applicant asks for an order that the respondents stop making false claims and pay her \$1,970.43 in damages.
2. ICBC says that it is not the correct respondent for the applicant's claim. Ms. Bulabos denies that she is making false claims or that she is responsible for the damages sought by the applicant.
3. The applicant is self-represented. ICBC and Ms. Bulabos are represented by an ICBC 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. Some of the evidence in this dispute amounts to a "she said, she said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am 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 the decision in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

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, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. whether ICBC breached its statutory obligations in investigating the collision and assessing fault, and
 - b. whether the applicant is entitled to \$1,970.43 in damages.

EVIDENCE AND ANALYSIS

9. 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 positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.
10. As noted above, ICBC's position is that it is not a correct party to this dispute. The British Columbia Court of Appeal held in *Innes v. Bui*, 2010 BCCA 322 that the issue of whether ICBC acted properly or reasonably in making its administrative

decision to assign full responsibility for the collision to a plaintiff is strictly between the plaintiff and ICBC. On this basis, I find that ICBC is a proper respondent to the applicant's claim.

11. The evidence before me shows that, before making the decision that the applicant was at fault for the incident, ICBC obtained statements from both parties and medical information from a physician about Ms. Bulabos' condition. While I acknowledge that the applicant disagrees with the outcome of ICBC's assessment, I find that she has not shown that ICBC breached its statutory obligations in investigating the accident and assessing fault. I find that ICBC acted reasonably in administratively assigning responsibility for the incident to the applicant (see *Singh v. McHatten*, 2012 BCCA 286). Accordingly, I dismiss the applicant's claim against ICBC.
12. The applicant's claim for damages is tied to her liability for the incident. At about 6:30 a.m. on September 26, 2019, the applicant made a left turn into an intersection where Ms. Bulabos was walking in a crosswalk. The applicant says that she stopped her vehicle very close to Ms. Bulabos but did not strike her. The applicant says that she got out of her car and asked Ms. Bulabos if she was okay, and she replied that she was, but "just scared a little bit".
13. Ms. Bulabos reported to ICBC that she saw the applicant's vehicle approaching her and tried to hurry out of the way, but could not avoid being struck. Ms. Bulabos says that the applicant's left front bumper grazed her hip and she fell on her knuckles. She said that, after the incident, she realized that she had pain and became concerned that she might not be able to work. Ms. Bulabos saw a physician and reported the incident to ICBC later that day.
14. Although they apparently did not realize it at the time of the incident, the applicant and Ms. Bulabos worked at the same place. Ms. Bulabos obtained the applicant's phone number from a manager and sent her a text message at 3:40 p.m. on September 26 asking for her "information required by ICBC". The applicant provided the information, and Ms. Bulabos thanked her, noting that it had been "a stressful

day for both of us”. The applicant replied “we both got scared early morning thank God nobody got hurt”.

15. The applicant’s position is that Ms. Bulabos is lying about what occurred between them. The applicant says that she does not have evidence to support her position, but said that her “proof” is that Ms. Bulabos did not ask for her information right away. She suggests that, if her vehicle hit Ms. Bulabos, this is something that would have happened. The applicant also questions how a physician witnessing injuries could prove that they were from a car accident and that it happened that morning.
16. The fact that the applicant stated in a text message that nobody was hurt is not determinative. On balance, I find it unlikely that the applicant would have gotten out of her vehicle to check on Ms. Bulabos after the incident if nothing had happened. I find it significant that Ms. Bulabos sought out the applicant’s telephone number, sent her a text message to obtain her information, attended a medical clinic and made a report to ICBC on the same day the incident occurred. Based on the evidence before me, I find that it is more likely than not that there was some sort of contact between the applicant’s vehicle and Ms. Bulabos in the crosswalk.
17. I find that the applicant has not proven that either respondent has made false statements about the incident. I also find that the applicant has not established a basis for her claimed damages. Accordingly, I dismiss her claim for damages.
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 her claim for reimbursement of tribunal fees.

ORDER

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

Lynn Scrivener, Tribunal Member