



Civil Resolution Tribunal

Date Issued: April 16, 2020

File: SC-2019-010926

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wang v. ICBC*, 2020 BCCRT 412

BETWEEN:

XINLONG WANG

APPLICANT

AND:

THE INSURANCE CORPORATION OF BRITISH COLUMBIA and Bill
Basra

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This is a small claims dispute about a motor vehicle collision that occurred on July 26, 2019 (collision).
2. The applicant Xinlong Wang and the respondent Bill Basra were each traveling eastbound on 41st Avenue in Vancouver, British Columbia. Mr. Wang was driving in

the rightmost of two eastbound lanes. Mr. Basra was driving in the leftmost of the two eastbound lanes. Mr. Wang says Mr. Basra changed lanes and collided with his car. Mr. Basra says Mr. Wang was changing lanes and hit his car.

3. The respondent insurer, the Insurance Corporation of British Columbia (ICBC), internally concluded that Mr. Wang and Mr. Basra were each 50% at fault.
4. Mr. Wang says ICBC should have found Mr. Basra 100% at fault and seeks \$3,000 in damages. Mr. Wang did not explain what the \$3,000 is for, except to say that his ICBC “fee” would remain the same under his desired fault determination. Mr. Wang says ICBC breached its statutory obligations in investigating the accident by failing to consider the nature and location of the damage to his car and in assigning fault.
5. ICBC says the proper respondent is Mr. Basra. ICBC responds on Mr. Basra’s behalf, as set out in *Insurance (Vehicle) Regulation* section 74.1.
6. ICBC says this was a lane change collision, where both drivers blamed the other. ICBC says both drivers were held equally responsible because there is an onus for each driver to stay in their own lane, and there was no way to determine which driver was changing lanes. ICBC says its assessment is consistent with the damage evidence.
7. Mr. Wang is self-represented. The respondents ICBC and Mr. Basra are represented by ICBC employee BB.

JURISDICTION AND PROCEDURE

8. 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.

9. 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 “he said, he 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 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. 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.
10. 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.
11. 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

12. 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 the accident? If not Mr. Wang, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

13. In a civil claim such as this, Mr. Wang bears the burden of proof, on a balance of probabilities. While I have read the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
14. On July 26, 2019, Mr. Wang and Mr. Basra were driving east bound on East 41st Avenue in Vancouver.
15. Mr. Wang was driving in the right lane of two eastbound lanes. Mr. Basra was driving in the leftmost of the two eastbound lanes.
16. The parties disagree about which driver was executing a lane change when the collision occurred.
17. There were no independent witnesses. There was no dash cam footage of the collision.
18. On November 4, 2019, ICBC issued a determination that each driver was 50% responsible for the collision.

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

19. As noted above, Mr. Wang seeks an order that he is not responsible for the collision. To succeed against ICBC, Mr. Wang must prove on a balance of probabilities that ICBC breached its statutory obligations or its contract of insurance, or both. The issue against ICBC is whether ICBC acted "properly or reasonably" in administratively assigning 50% responsibility to Mr. Wang (see: *Singh v. McHatten*, 2012 BCCA 286).
20. ICBC owes Mr. Wang 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 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).

21. Mr. Wang says that ICBC did not investigate thoroughly enough when assigning fault to both drivers. In their statements to ICBC, both drivers denied changing lanes. As noted, there was no dashcam footage nor independent witness to the collision.
22. Based on the documentary evidence, I find that ICBC considered both drivers' statements and the damage to both cars to try to determine which version of events was more likely to be accurate. ICBC determined that it could not decide which driver was accurately recounting the details of the collision.
23. Given the overall evidence, I find that ICBC did not breach its statutory obligations or its contract of insurance. I find ICBC acted reasonably in administratively assigning Mr. Wang 50% responsibility for the accident.
24. Having determined that ICBC acted reasonably in its examination of the accident, I turn now to my liability assessment.

Who is liable for the accident?

25. For the following reasons, I dismiss Mr. Wang's claim for a determination that he is not liable for the collision and for damages. As discussed below, Mr. Wang has not proven on a balance of probabilities that Mr. Basra was 100% at fault for the collision.
26. Mr. Wang says Mr. Basra pulled out from behind his car, passed him on the left and then changed lanes to the right, colliding with his car as he continued straight ahead in the lane.

27. Mr. Basra says Mr. Wang changed lanes into his lane on the left, without seeing his car, causing the collision.
28. Mr. Wang says the damage to the right rim of his car proves that he was driving straight ahead in the right lane. I disagree.
29. Having reviewed the photographs of the damage, I am unable to determine which driver changed lanes. No one filed expert opinion in evidence about how to interpret the photographs.
30. Mr. Wang says that, immediately after the collision, Mr. Basra told him that the collision occurred because he had been "driving all night". Mr. Wang did not mention these details in his initial report to ICBC. I find that he mentioned them for the first time in a September 2019 statement but not in his initial July 26, 2019 written statement. If Mr. Basra had said this, I find it likely that Mr. Wang would have mentioned it earlier. I find that Mr. Wang has not proven that Mr. Basra admitted fault for the collision.
31. Section 151 of the *Motor Vehicle Act* (MVA) requires a driver who leaves their lane to yield to others travelling on the road. Put differently, a lane change may only be made over a broken line, when it can be done safely and will not affect another vehicle's travel.
32. Section 1(2) of the *Negligence Act* says that, "if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability must be apportioned equally."
33. One of the drivers made an improper lane change. Based on the evidence, I find it is not possible to determine which one. Based on the *Negligence Act*, I find that Mr. Wang is 50% responsible for the collision.
34. As a result, I dismiss Mr. Wang's claim and find he is not entitled to damages.
35. Mr. Wang claims \$3,000 but does not explain what the \$3,000 claim was for. Mr. Wang provided evidence that he said showed that he suffered anxiety due to the

collision. Even if I had found a different liability assessment, I would have found that Mr. Wang did not prove damages, on the evidence before me.

36. Given my conclusions above, I find Mr. Wang's claims must be dismissed. In accordance with section 49 of the CRTA, and tribunal rules, as Mr. Wang was unsuccessful in this dispute, I find he not entitled to reimbursement of his tribunal fees. No dispute-related expenses were claimed.

ORDER

37. I dismiss Mr. Wang's claims and this dispute.

Julie K. Gibson, Tribunal Member