



Civil Resolution Tribunal

Date Issued: April 16, 2020

File: SC-2019-007907

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Youssef v. ICBC*, 2020 BCCRT 414

BETWEEN:

ALI YOUSSEF and JOY GALBRAITH

APPLICANTS

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about who is responsible to pay for certain vehicle repairs.
2. The applicants Ali Youssef and Joy Galbraith say that the respondent Insurance Corporation of British Columbia (ICBC) refused to reimburse them for repairs to the control arm assembly on their 2006 Chrysler 300 (vehicle). Control arm assemblies

connect a car's suspension to its frame and include bushings and ball joints that provide flexibility. The applicants say these repairs were for damage caused when the vehicle was stolen. The applicants say that several ICBC employees assured them, either verbally or in writing, that they should get the car repaired and expect reimbursement. Having made those assurances, the applicants say ICBC is legally bound to reimburse them. The applicants claim \$1,900, broken down as \$1,670 for repairs, \$230 for gas to drive to and from ICBC and time spent on the dispute.

3. ICBC says that the damage was due to normal wear and tear, not due to the car theft. ICBC says that the claimed damage is excluded under section 5.9(a)(ii)(E) of the *Autoplan Optional Policy*, which says ICBC is not liable for damage caused by wear and tear. ICBC asks that I dismiss the dispute.
4. The applicants are represented by their friend, EA. ICBC is represented by business contact NT.

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 issues in this dispute are:
 - a. whether the claimed damage to the applicant's vehicle is covered by the ICBC insurance policy, and
 - b. whether ICBC misled the applicants into an understanding that they would be reimbursed for repairs to the vehicle's control arm assembly?

EVIDENCE AND ANALYSIS

10. The applicants submit that the burden is on ICBC to prove the claimed damage was not an insurable loss.
11. Although the general burden of proof is on applicants to prove their claims, where an insurer alleges that a loss is captured by an exclusion, the insurer must prove that the exclusion applies. Therefore, I find that ICBC has the burden of proving that the claimed damage falls under the policy's wear and tear exclusion. There is a general legal principle that in insurance contracts, coverage should be interpreted broadly and exclusions should be interpreted narrowly: see *Derksen v. 539938 Ontario Ltd.*, 2001 SCC 72, at paragraph 46.
12. 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.

13. On November 24, 2018, the applicant's vehicle was stolen. The applicants say that Mr. Youssef saw the vehicle being stolen and chased after it on foot. The applicants say the car drove over several potholes during the chase, "quite fast".
14. On November 24, 2018, the applicants made a claim to ICBC. An ICBC employee, LW, gave the applicants the name and direct phone number of the adjuster handling their claim, told them the adjuster would contact them within 7 business days to discuss the claim, and to contact ICBC if the vehicle was recovered to advise of location and area of damage.
15. The stolen vehicle was recovered by police. The applicants collected the vehicle from the impound lot.
16. On November 30, 2018, the handling adjuster, HW, called the applicants. HW noted that they could go to an ICBC express repair shop to have an estimate for repair of a "scratch" on the passenger front of the vehicle. HW advised the applicants to submit their receipts for towing and key replacement.
17. On December 26, 2018, the applicants had the vehicle inspected at Canadian Tire. The mechanic there reported that the vehicle had headlight damage that appeared to be caused by a "severe impact, possibly hit pothole when stolen". The inspection report from December 26, 2018 does not mention tie rod ends or bushing control arm damage. Headlight repairs were completed.
18. On January 30, 2019, a Canadian Tire mechanic reported to the applicants that the tie rod ends and control arm bushings on the vehicle needed replacement because they were showing "damage/wear". I find that this note proves that the parts were damaged due to wear, and not due to the vehicle theft. The vehicle's odometer reading at that time was 71,344 kilometers.
19. The applicants declined the control arm bushings and tie rod end repairs at that time.
20. On February 11, 2019, ICBC reviewed the invoices for repairs to that date.

21. It is undisputed, and I find, that ICBC reimbursed the applicants for a towing fee, key change, headlight repair and scratches to the vehicle's right side.
22. On February 11, 2019, ICBC employee KS noted "R/O SAID SHE HAS TO REPLACE A BUSHING AND TIE ROD AS THEY ARE DAMAGED R/O WILL SEND INVOICES I EXPLAINED TO R/O THAT SHE CAN GO TO A ICBC VENDOR AND THEY CAN TAKE PICS OF THE DAMAGE AND DIRECT BILL ICBC R/O SAID SHE WILL LOO INTO THAT" (quote reproduced as written)
23. Based on this note, I find that the applicants sought to send in invoices for the bushing and tie rod repairs. However, ICBC informed the applicants that they should have their vehicle inspected and photographed by an ICBC vendor, and that repairs could then be direct billed to ICBC. I find that, given this advice, the applicants understood that repairs had to be considered by for ICBC before it would allow reimbursement.
24. On February 26, 2019, the applicant JG paid Kal Tire \$1,670.12 for repairs to the vehicle's control arm assembly, ball joints, tie rods and ends, and wheel alignment. I find that these repairs are the subject to of this dispute. It is undisputed, and I find, that Kal Tire was not an ICBC vendor. I also find that the applicants did not go to an ICBC vendor as advised and did not comply with instructions about how to have the repairs assessed.
25. On March 28, 2019, ICBC received the February 26, 2019 Kal Tire invoice from the applicants.
26. On June 27, 2019, ICBC employee BF spoke with the applicants. Based on BF's note, I find that BF explained that the Kal Tire technicians had determined that the claimed repairs were due to wear and tear, shown by visible cracks in the control arm rubber bushing which indicate wear over time. BF noted the damage was not what would be seen in a sudden impact, which would normally break or bend control arms, for example. BF explained that ICBC would therefore not reimburse the applicants for the claimed damage.

27. On October 3, 2019, ICBC employee CY reviewed the applicants' material damage claim and decided that the control arms had "...not been bent or broken from impact but" had wear to the bushing. CY noted that ICBC's Material Damage Supervisor had contacted Kal Tire personnel to discuss the control arm issue, and Kal Tire had advised that the issue was wear and tear. CY also informed the applicant that it also could not cover the tie rods because nothing was submitted for review.
28. The applicants say that control arms and bushings, also called the "control arm assembly", generally wear out between 90,000 and 100,000 miles. They refer to a product print out which states that the control arm assembly can wear out faster if the vehicle is driven over a large pothole or is involved in a car accident. I find that the product print out does not meet tribunal requirements for admissible expert opinion. I place minimal weight on this evidence, because there is no expert opinion to say that the control arm assembly in the applicants' vehicle likely wore out more quickly due to the theft.

Is the claimed damage excluded under the policy?

29. There is no evidence from any mechanic who examined the vehicle offering an opinion that the claimed repairs were caused by the theft or the way in which the vehicle was driven during the theft.
30. Neither the Canadian Tire nor the Kal Tire mechanical inspections prove that the claimed repairs were due to the theft, or to the thief driving through potholes. Instead, both inspections report, and I find, that the control arm assembly, tie rods and bushings needed repair due to wear and tear. As such, I find the claimed damage is excluded under section 5.9(a)(ii)(E) of the *Autoplan Optional Policy*.

Did ICBC lead the applicants to believe that it would reimburse them for the claimed repairs, such that ICBC must now pay for them?

31. The applicants also submit that ICBC promised to reimburse them for the contested repair work, then reneged on that promise. When a party makes a promise about something and the other party relies on that promise to their detriment, the party

who made the promise may not later decide something to the contrary. According to *Black's Law Dictionary*, this legal principle is called promissory estoppel.

32. I have found that ICBC did not promise to reimburse the claimed repairs. Rather, ICBC asked the applicants to take these proposed repairs for assessment by an ICBC-approved vendor, with photographs to be submitted to ICBC. At that stage, ICBC would decide if the repairs would be reimbursed. The fact that ICBC reimbursed the applicants for earlier repairs does not oblige ICBC to pay for additional, later repairs that were excluded under the policy. Therefore, I find ICBC was not estopped from denying coverage for the claimed repairs.

Conclusion

33. I find the claimed repairs were for “wear and tear”, which is excluded from coverage. As well, I dismiss the applicants’ claim that ICBC was estopped from refusing reimbursement for the claimed repairs.

34. Given my conclusions above, I find the applicants’ claims must be dismissed.

35. In accordance with section 49 of the CRTA, and tribunal rules, as the applicant was unsuccessful in this dispute, I find he not entitled to reimbursement of his tribunal fees. No dispute-related expenses were claimed.

ORDER

36. I dismiss the applicants’ claims and this dispute.

Julie K. Gibson, Tribunal Member