Civil Resolution Tribunal

Indexed as: *Ross v. ICBC*, 2020 BCCRT 464

B E T W E E N :

DANIEL ROSS

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA and
ANDREW MOORE

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:	Kristin Gardner

INTRODUCTION

1. This small claims dispute is about fault for a motor vehicle accident. The applicant, Daniel Ross, says he was improperly assessed fault for a July 27, 2019 accident that occurred between him and the respondent, Andrew Moore (the accident). The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures both

Mr. Ross and Mr. Moore. After investigating the accident, ICBC held Mr. Ross 100% at fault.

2. The applicant acknowledges that he is likely at least partly at fault for the accident but does not propose a specific split in liability between him and Mr. Moore. He says Mr. Moore should bear more of the responsibility. Based on a finding that Mr. Moore is 100% liable, the applicant claims $4,500 for increased insurance premiums over the next 10 years, and $500 for the discounted value of his vehicle due to the damage caused from the accident.

3. The applicant is self-represented. The respondents 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 "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. I also note that 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.

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.

ISSUE

8. The issue in this dispute is who is liable for the accident, and, if not the applicant, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Mr. Ross bears the burden of proving his claim on a balance of probabilities. 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.

10. As a preliminary matter, I will address ICBC's submission that it is not a proper respondent to the applicant's claims. A key issue in this dispute is whether ICBC acted reasonably in assigning full responsibility for the collision to the applicant. 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 the plaintiff is strictly between the plaintiff and ICBC. On this basis, I find that ICBC is a proper respondent to the applicant's claim.

ICBC's liability assessment

11. ICBC owes the applicant a duty of good faith, which requires ICBC to act fairly, both in how it investigates and assesses the claim and as to 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 Corp. of British Columbia*, 2012 BCSC 283. I find ICBC has done so, as discussed further below.

12. Many of the underlying facts are not disputed. On July 27, 2019, the parties were driving northbound on Nesters Road in Whistler, British Columbia, in front of the building that houses Nesters Market and other businesses. There are parking stalls on both sides of Nester's Road along this stretch. Both parties were attempting to park in the same stall on the west side of Nesters Road when the accident occurred. The applicant was backing into the stall and Mr. Moore was driving in nose first.

13. The dispute in the evidence is about where the applicant was just before he started to back up. The respondents say that the applicant was stopped in a parking stall on the east side of Nesters Road and backed out of that stall. The applicant denies that he backed out of a stall and says that as he was driving northbound on Nesters Road, he put on his left turn signal and angled his car in the road so that he could reverse into the stall. Briefly, the applicant says Mr. Moore should have anticipated he wanted to back up and park. I discuss under the liability heading below my findings on how the accident happened.

14. ICBC determined that the applicant was solely responsible for the accident because he was backing up. The applicant disputed the liability finding against him and was referred to an ICBC supervisor. The supervisor reviewed the applicant's diagram of

the accident and his statement. The supervisor found that even if he accepted that the accident happened the way the applicant described, he would not change the liability determination because of the high onus on a reversing vehicle.

15. There was no information about the vehicles' speeds. Mr. Moore denied hearing any honking or seeing any signals before the accident. There were no witnesses that could be contacted. I find that the applicant has not proven that ICBC failed to reasonably investigate the accident.

Liability for the accident

16. In this dispute, ICBC relies on both section 193 of the *Motor Vehicle Act* (MVA) that says a person must not reverse their vehicle unless it can be done safely, and section 169 of the MVA that says a person must not move a vehicle that is stopped unless the movement can be made safely and after giving the appropriate signal.

17. While section 193 of the MVA does not impose absolute liability on a driver backing up, it does impose a high standard of care because a driver's visibility is reduced when driving in reverse. The reversing driver must take all reasonable precautions and take the time to look behind him and around him both before and during the time his car is backing up: see *Araujo v. Vincent*, 2012 BCSC 1836.

18. The applicant admits that as he was backing up, he was looking at the stall he was backing into and did not see the respondent's vehicle. The applicant also admits that he was aware that Mr. Moore was driving behind him. He says Mr. Moore was at least 50 feet behind him when he put his left turn signal on and was still "well behind" him after he angled his car and came to a stop. Because the applicant knew that Mr. Moore was approaching but failed to ensure that the respondent would stop and wait for him to park, I find that the applicant did not meet the standard of care of a driver that is backing into a parking stall. Given this, I find that he was negligent.

19. That brings me to the question of whether Mr. Moore also bears any responsibility. The applicant says that Mr. Moore should have seen him and anticipated that he was going to reverse into the parking stall.

20. Nothing turns on whether the applicant was in a stall on the east side of Nesters Road as Mr. Moore says, or angled in the road as the applicant says. Either way, the applicant was reversing without paying sufficient attention to his surroundings. Mr. Moore was not required to anticipate that the applicant might reverse his vehicle without looking for approaching vehicles.

21. I find that Mr. Moore had the right of way and that it was safe for him to turn left into the parking stall on the west side of Nesters Road. Therefore, I find that Mr. Moore does not bear any responsibility for the accident. I find the applicant is 100% at fault and so I dismiss his claims.

Damages

22. Even if I am wrong in my liability assessment, I find the applicant has not proven that he is entitled to the remedy he seeks. He claims $4,500 for increased insurance rates, but he did not provide an invoice or any other evidence of how much more he will pay as a result of this accident. He also provided no evidence that his vehicle is worth less money if he were to sell it. For these reasons, I would have dismissed the applicant's damages claims.

ORDER

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

Kristin Gardner, Tribunal Member