



Civil Resolution Tribunal

Date Issued: April 29, 2020

File: SC-2019-009471

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Devendra v. ICBC*, 2020 BCCRT 465

B E T W E E N :

RAGHAVENDRA DEVENDRA

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA, Aman Ugre,
and Veena Ugre

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about liability for a collision between motor vehicles driven by the applicant, Raghavendra Devendra, and the respondent Aman Ugre. The respondent Veena Ugre is the registered owner of the vehicle driven by Aman Ugre.

2. The applicant disagrees with the internal determination of the respondent insurer, the Insurance Corporation of British Columbia (ICBC), which concluded that he was 100% at fault for the accident. The applicant says ICBC refused to properly investigate the incident, and argues he was 0% at fault. He seeks an order to remove the finding of fault from his ICBC insurance record and return his insurance premiums to their pre-accident levels. The applicant also seeks \$1,200 for increased motor vehicle insurance premiums, a \$300 collision deductible, and \$1,500 for time spent requesting that ICBC management change its liability assessment.
3. The respondents all deny the owner's claims. ICBC says it properly investigated the accident and considered all available information presented to it.
4. The applicant is self-represented in this dispute. The respondents are all represented by the same ICBC employee.
5. For the reasons set out below, I refuse to resolve this dispute under section 11(1)(a)(i) of the *Civil Resolution Tribunal Act* (CRTA). I find it would be more appropriately decided by the BC Supreme Court, given the parallel personal injury action in that court, file number VLC-S-M-1911512 (BCSC action), which is about the same motor vehicle accident.

JURISDICTION AND PROCEDURE

6. 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 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.
7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. This dispute

involves a “he said, they said” scenario in some respects, with each side calling into question the credibility of the other. Credibility of witnesses cannot be determined solely by the test of whose personal demeanour appears to be the most truthful in a courtroom or tribunal proceeding. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In this dispute, keeping in mind that the tribunal’s mandate includes proportionality and a speedy resolution of disputes, I find I am able to assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary. Therefore, I decided to hear this dispute through written submissions.

8. Under section 61 of the CRTA, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or on recommendation by a case manager (also known as a tribunal facilitator). Further, section 11(1)(a)(i) of the CRTA says the tribunal may refuse to resolve a dispute if it considers the dispute would be more appropriate for another legally binding process or dispute resolution process.
9. 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.
10. 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.
11. ICBC says it is not a correct respondent in this dispute, as the claimed losses allegedly result from the other respondents’ negligence. I disagree. The claimed losses include insurance premium changes and an insurance deductible paid for car repairs, as a result of ICBC’s assessment of fault for the accident. I find that naming

ICBC as a respondent, in addition to the other respondents, is not inappropriate in these circumstances. While not binding on me, I find the tribunal decision *HANSEN v. ICBC et al*, 2019 BCCRT 1304 at paragraphs 10 through 14 persuasive, and I find its reasoning is applicable here.

What is the appropriate forum for this dispute?

12. The applicant's claims all relate to ICBC's internal assessment of fault for the accident. The applicant says ICBC's investigation was defective and its assignment of fault was incorrect, which resulted in the applicant being charged additional and increased amounts, and which will result in increased insurance charges in the future. Essentially, the applicant seeks orders that the parties' respective obligations be based on the applicant being 0% liable for the collision.
13. A few days before the applicant filed this dispute with the tribunal, Aman Ugre filed the BCSC action against the applicant, for personal injuries sustained in the same motor vehicle accident. I find that assigning liability for the motor vehicle accident is likely a necessary element of Aman Ugre's personal injury claim.
14. The respondents maintain that the applicant was 100% responsible for the accident. The applicant denies any liability. In light of the parties' disagreement about liability, I find both the tribunal and the BC Supreme Court are effectively being asked to make a liability determination about the same motor vehicle collision. I find this could result in duplication of effort among decision makers, and could even result in different liability findings by the tribunal and the BC Supreme Court. Such outcomes are contrary to the tribunal's mandate of efficient and fair decision-making.
15. As a result, I considered whether the tribunal should refuse to resolve the applicant's claims under section 11(1)(a)(i) of the CRTA, because the dispute would be more appropriately resolved by the BC Supreme Court in the circumstances.
16. I asked the parties to provide additional submissions on the status of the BCSC action, whether it was about the same motor vehicle collision as the tribunal dispute as appeared to be the case, and if so whether I should refuse to resolve the tribunal

dispute under section 11(1)(a)(i). The parties confirmed that the BCSC action is a personal injury claim initiated by Aman Ugre for the same motor vehicle collision, and that the claim has not been resolved.

17. In his response, the applicant agreed that liability was a common issue in the BCSC action and this dispute. However, he argued that the BCSC action did not address his tribunal claims for a different finding of fault in the accident, resulting changes to his insurance premiums and deductible payments, and his time spent interacting with ICBC. However, the applicant did not discuss having his tribunal claims heard by the BC Supreme Court, who may decide to join such claims with the BCSC action.
18. Further, the applicant said ICBC told him it would not change its internal liability determination based on the outcome of the BCSC action, and that the applicant would need to file a separate liability dispute for it, which led him to initiate the tribunal dispute. While ICBC's response said that the BCSC action may not address the applicant's liability dispute to his satisfaction, ICBC did not confirm that the BCSC action would have no impact on its internal liability determination. ICBC took no position on whether it was appropriate for the tribunal to resolve this dispute.
19. The applicant also said the BCSC action would not address his allegations of fraud by ICBC in determining his liability for the accident. As noted, all the applicant's tribunal claims flow from his argument that ICBC incorrectly assigned liability. The relief sought by the applicant is not based on the reasons or method by which ICBC allegedly determined liability incorrectly, just on the allegation that it was incorrect. While I acknowledge the applicant seeks his "day in court" to argue for a different liability finding, the evidence does not show he would only be able to do so at the tribunal and not before the BC Supreme Court. The parties did not identify any barriers to the BC Supreme Court joining the applicant's claims with the BCSC action, should the court decide to do so.
20. I accept that there may be some prejudice to the applicant, in terms of delay and cost, if he begins his tribunal claims again in the BC Supreme Court. However, this

is balanced by the fact the applicant is already participating in the court's process because of the BCSC action. Further, the motor vehicle accident occurred before April 1, 2019, so under CRTA section 134(2)(c) the tribunal cannot hear Adam Ugre's personal injury claims together with the applicant's tribunal claims, but the BC Supreme Court has no such restriction. I note that Mr. Ugre's personal injury claims might also exceed the tribunal limit amount for accident claims.

21. Having considered the evidence before me and the parties' arguments, including their submissions on whether the tribunal should hear this dispute, I find the tribunal should refuse to resolve this dispute. All the applicant's tribunal claims are based on a disagreement about who is liable for the accident. Liability has not been admitted by a party or agreed to by the parties, and the BC Supreme Court has not yet ruled on liability. There is no evidence a settlement has been reached in the BCSC action or that liability is no longer an issue in that proceeding.
22. Therefore, I consider it most efficient, fair, convenient, and appropriate for this dispute to be heard by the BC Supreme Court, which I anticipate will also determine who was liable for the accident. As a result, I refuse to resolve this dispute under section 11(1)(a)(i) of the CRTA.
23. 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. In this case, the tribunal refused to resolve the dispute on its merits, and neither party was successful. In the circumstances of this dispute, I find it is appropriate to refund the applicant's tribunal fees, and for each party to bear its own expenses.

Chad McCarthy, Tribunal Member