



# Civil Resolution Tribunal

Date Issued: May 1, 2020

File: SC-2019-007757

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kaushik v. ICBC*, 2020 BCCRT 479

BETWEEN:

MUKUL KAUSHIK

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and LAKHVIR  
SINGH MUNDI

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Kathleen Mell

## **INTRODUCTION**

1. This small claims dispute is about a November 2, 2017 motor vehicle accident. The applicant, Mr. Mukul Kaushik, says that the respondent insurer, Insurance Corporation of British Columbia (ICBC), did not investigate the accident thoroughly. The applicant says that ICBC's internal determination that the applicant was 100% at fault was incorrect. He says that the other driver, the respondent Lakhvir Singh Mundi, is responsible for the accident. Mr. Kaushik requests \$924 which he says he paid when his premiums went up. Mr. Kaushik represents himself.
2. ICBC says that Mr. Mundi is the only proper respondent. ICBC says that Mr. Kaushik rear-ended Mr. Mundi's car at a stop light. ICBC says that it carried out a proper investigation and determined that Mr. Kaushik was 100% responsible for the accident. ICBC provided the same submissions for Mr. Mundi. ICBC and Mr. Mundi are represented by an ICBC organizational contact.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "he said, it said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.

5. 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.
6. 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.
7. In its Dispute Response, ICBC argued it is not a proper party to the claim, and that the claim should be against Mr. Mundi only. I disagree. Mr. Kaushik alleges ICBC acted unreasonably in investigating the accident and assigning fault, which is a claim against ICBC as his insurer. He also argues he should not have to pay ICBC increased premiums. I find ICBC is a properly named party (*Morin v. ICBC, Clark & Berry*, 2011 BCPC 290).
8. The applicant originally requested \$5,000 for the amount of increased premiums he expected to have to pay ICBC. He later changed the amount to \$924, which he says he paid since his premiums went up.

## **ISSUES**

9. The issues in this dispute are:
  - a. Did ICBC breach its statutory obligations in investigating the accident and assessing fault?
  - b. Is Mr. Kaushik responsible for the accident and if not, what is the appropriate remedy?

## EVIDENCE AND ANALYSIS

10. In a civil dispute such as this, Mr. Kaushik must prove his claim on a balance of probabilities. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.

### ***Did the respondent breach its statutory obligations in investigating the incident and assessing fault?***

11. The accident occurred on November 2, 2017. It is undisputed that Mr. Mundi changed from the left lane to the right one in front of Mr. Kaushik. Mr. Mundi then stopped at a red light and Mr. Kaushik hit him from behind. Mr. Kaushik says that Mr. Mundi's lane change and the weather conditions did not allow him enough time to stop. He says that there was a witness but ICBC did not contact her and instead relied on video from the red light camera at the scene. Mr. Kaushik says he is not responsible for the accident and that ICBC did not conduct a proper investigation.

12. To succeed against ICBC, Mr. Kaushik must prove on a balance of probabilities that ICBC breached its statutory obligations or its contract of insurance, or both. The question is whether ICBC acted "properly or reasonably" in administratively assigning liability to the applicants (see: *Singh v. McHatten*, 2012 BCCA 286).

13. ICBC owes the insured Mr. Kaushik 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).

14. In the course of its investigation, ICBC's employee spoke with Mr. Mundi who stated that he changed lanes and was driving for about a minute when he was about to turn right at the intersection. He said that there was a red light so he braked to stop. He says the car behind him, driven by Mr. Kaushik, rear-ended him.
15. ICBC then spoke with Mr. Kaushik who stated that he was driving in the right lane approaching the intersection with his right turn indicator on. He said he was slowing down because there was a red light. He stated that Mr. Mundi then accelerated and entered into the right lane ahead of him. Mr. Kaushik said that there was only one car length before the red light and that he did not think that somebody would come into his lane and he would immediately have to stop. Mr. Kaushik said that he tried to brake but could not stop in time. He also said that he thought that Mr. Mundi was only partially in his lane and not clearly "established" in the right lane.
16. ICBC reviewed the red light camera footage which is in evidence and I will consider below when determining liability. ICBC noted that by the time the camera picked up the parties' vehicles they were both in the right hand lane. ICBC stated that there were 3 to 4 seconds before the collision occurred at the red light. ICBC indicated that both vehicles were going at a "good speed" although it did not define what this meant. It noted that there was a red light so a reasonable person would have started to slow down. ICBC decided that since there were at least 3 to 4 seconds after Mr. Mundi was in the right lane before the collision occurred that Mr. Kaushik clearly struck Mr. Mundi from behind and decided Mr. Kaushik was 100% liable.
17. After ICBC sent its December 12, 2017 determination letter, Mr. Kaushik emailed ICBC and said that he was close to the intersection and was not left enough room to stop. He noted that the video started at 4 seconds before the collision. He said that the road was wet and dark at the time of the accident. He noted that he was driving with appropriate care preparing to stop at the red light but then he had to apply his brakes to avoid the collision and his car skidded due to the wet road conditions.
18. Mr. Kaushik stated he had a witness who was driving behind him and argued that Mr. Mundi was responsible because he made an unsafe lane change. He requested

ICBC contact his witness and that a supervisor review the liability decision. ICBC wrote to Mr. Kaushik on March 15, 2018 and stated that a supervisor reviewed the video footage and agreed that it did not show evidence of an unsafe lane change in the seconds before the accident. ICBC also informed Mr. Kaushik that before the accident an amber light would have been present alerting him to slow down. ICBC stated that Mr. Kaushik did not respond until he got to the intersection and that is why the collision occurred. ICBC did not directly comment on why it did not obtain a witness statement. Mr. Kaushik did not explain why he did not get the witness statement himself.

19. I infer that ICBC did not think it necessary to get the witness statement because it decided the video was determinative and found Mr. Kaushik 100% liable. ICBC submits that under section 162 of the *Motor Vehicle Act* Mr. Kaushik was following too closely and under section 144(1) he was driving without due care and attention without reasonable consideration of other people on the highway and that he was driving at a speed excessive relative to the road, traffic, visibility or weather conditions.
20. Mr. Kaushik provided the tribunal with a January 29, 2020 witness statement that says that the witness observed Mr. Mundi was driving fast and made an unsafe lane change. The witness does not comment on why Mr. Kaushik could not have stopped in time.
21. Given the overall evidence, I find that the respondent did not breach its statutory obligations or its contract of insurance. ICBC thoroughly investigated the accident. I find it reasonable that it accepted the video evidence since it showed the 4 seconds before the accident and at that point Mr. Mundi was fully established in the right lane. The light was red at that point and Mr. Kaushik should have already been braking. I find that ICBC was not obligated to obtain the witness statement when they had clear video evidence of the crucial seconds before the accident. Further, Mr. Kaushik did not explain why he only obtained the witness statement in January 2020.

22. Therefore, I find that Mr. Kaushik has not proven ICBC's investigation was unreasonable. I find ICBC acted reasonably in administratively assigning Mr. Kaushik responsibility for the accident.
23. Having determined that the ICBC acted reasonably in its examination of the accident, I turn now to my assessment of liability.

***Is Mr. Kaushik responsible for the accident?***

24. Having viewed the video, it is clear that Mr. Mundi was established in the right lane when the vehicles were approaching the red light. This was 4 or 5 seconds before the accident occurred, according to the video. I find Mr. Kaushik should have already been braking for the red light even if Mr. Mundi was not ahead of him. Mr. Kaushik submits that he was only a car length away from the intersection when Mr. Mundi "sneaked into" his lane and then braked suddenly. I find this is not what the video shows.
25. ICBC submits that the video footage shows that Mr. Kaushik had time to stop and that Mr. Kaushik travelled about 8 car lengths after entering the frame of the video and before colliding with Mr. Mundi five seconds later. I agree with ICBC that this is what the video shows. I also note that Mr. Kaushik's claim that it was dark and the roads were wet does not support his claim that he was not liable for the accident. As noted above, section 144 (1)(c) indicates that a person must not drive at a speed that is excessive for the visibility or weather conditions.
26. I also do not find the witness statement changes my determination. The witness does not say when exactly Mr. Mundi changed lanes. She also does not explain why Mr. Kaushik could not come to a stop in the 4-5 second interval shown by the video. Further, the witness was driving behind Mr. Kaushik, she did not have the video camera view taken from up high with a timer which shows what actually happened at the intersection.

27. Based on all of the above, I find that Mr. Kaushik is not entitled to a different liability assessment for the accident. For these reasons, I dismiss Mr. Kaushik's claims. Mr. Kaushik is therefore not entitled to reimbursement of his insurance premiums.

28. 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. Because Mr. Kaushik was unsuccessful in his claims, he is not entitled to have his tribunal fees reimbursed. There were no dispute-related expenses claimed.

## **ORDER**

29. I dismiss Mr. Kaushik's claim and this dispute.

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Kathleen Mell, Tribunal Member