



Civil Resolution Tribunal

Date Issued: May 11, 2020

File: SC-2019-009843

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chan v. ICBC*, 2020 BCCRT 517

BETWEEN:

PK CHAN

APPLICANT

AND:

Insurance Corporation of British Columbia and Ramneet Basraon

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred on October 4, 2018, on Highway 99 northbound, just before the Oak Street bridge.

2. The car driven by the applicant, PK Chan, collided with the car driven by the respondent, Ramneet Basraon. The car's owner, a corporation, is not named in this dispute. The respondent insurer, the Insurance Corporation of British Columbia (ICBC), internally concluded the applicant was 100% liable for the accident. The applicant claims \$1,548.35, which I infer is for vehicle repairs, and he also seeks an order declaring that he is not 100% responsible for the accident.
3. Mr. Chan says Ms. Basraon is responsible because he says she made a lane change that caused the accident. Mr. Chan originally told ICBC the collision occurred when his own lane change was either complete or 80% complete, but he says he later corrected this to say his lane change was complete. Mr. Chan says ICBC unfairly relied on his original statement and failed to investigate the accident properly to determine how it happened.
4. The respondents say there is no evidence Ms. Basraon changed lanes, and as noted Mr. Chan originally admitted he had recently changed lanes. The respondents say Mr. Chan should be 100% liable because he failed to comply with section 151 of the *Motor Vehicle Act* (MVA), which says a driver can change lanes only if safe to do so.
5. Mr. Chan is self-represented. The respondents are represented by an ICBC adjuster.

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 *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.

7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, while there is some conflict in the evidence about who did what, 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 BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.
8. 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.
9. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.
10. In the Dispute Notice, the respondent ICBC was named only as "ICBC", rather than its full name "Insurance Corporation of British Columbia". Since there is no dispute about this, I amended the style of cause above to reflect ICBC's full name.
11. Next, in its Dispute Response, ICBC argued it is not a proper party to the claim, on the basis the claim should be only against 3 individuals, Ms. Basraon, her car's registered owner, and the car's principal driver. I disagree. Mr. Chan alleges ICBC acted unreasonably in investigating the accident and assigning fault, which is a claim against ICBC as his insurer. I find ICBC is a properly named party.

ISSUES

12. The issues in this dispute are:
- a. Did ICBC breach its statutory and contractual obligations investigating the accident and assessing fault?
 - b. Who is liable for the accident? If not the applicant, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

13. In a civil claim such as this, the applicant Mr. Chan bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
14. As noted above, the October 5, 2018 collision occurred Highway 99 northbound, just before the Oak Street bridge. There are no third-party witness statements and no dash cam footage.
15. In the accident's general area approaching the bridge, there are 4 northbound lanes. In this decision, I will refer to the most easterly lane as lane 1, and the most westerly as lane 4. I say this in part because I note Mr. Chan's description of the lanes' order from west to east varies in his evidence and statements to ICBC. In particular, in his diagram given to ICBC, he identified the most westerly lane as lane 4, but in his first statement to ICBC he said, "lane 1 is the left most lane".
16. The parties agree Mr. Chan's vehicle sustained damage to the driver's side rear fender, above the wheel. The parties also agree Ms. Basraon's vehicle sustained damage on the passenger side's front corner area.
17. Mr. Chan says he entered the highway from the Shell Road onramp, into lane 2. He says he then successfully and safely completed a lane change into lane 3, between two other vehicles. Mr. Chan now submits that after his lane change was complete,

Ms. Basraon changed lanes from lane 4 into lane 3, colliding with his vehicle. Mr. Chan is consistent in his evidence that he did not see Ms. Basraon's vehicle before the impact.

18. However, in Mr. Chan's earlier statement to ICBC he undisputedly said that his lane change was either complete or 80% complete, and that he heard a horn and felt the impact. As discussed below, Mr. Chan says ICBC should prefer his later corrected version that his lane change was complete.
19. Mr. Chan also says Ms. Basraon admitted to him at the time of the accident that she was making a lane change from the lane 4 to lane 3. He says Ms. Basraon asked him if he had heard honking by the other driver who yielded to her, who Mr. Chan says was behind him in lane 3 after he completed his lane change. However, Ms. Basraon says she had been in the same lane for a long time when the accident occurred and denies making any recent lane change. Ms. Basraon says she honked at Mr. Chan, because he was changing into her lane.
20. So, the question of which driver changed lanes is at the heart of this dispute. ICBC says that Mr. Chan's vehicle damage is consistent with a side impact that occurred before Mr. Chan's lane change was fully complete.

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

21. As noted above, ICBC internally concluded Mr. Chan was 100% responsible for the accident on the basis he was changing lanes at the time of impact, whereas the other driver Ms. Basraon had not changed lanes. ICBC's Claims Assessment Review process confirmed this liability assessment.
22. As noted above, Mr. Chan says that ICBC failed to defend him and acted unfairly in assigning fault for the accident. Specifically, Mr. Chan says Ms. Basraon did make a lane change and that ICBC unfairly believed her over him. He also says ICBC selectively preferred his original statement about possibly having only 80% completed a lane change over his later "corrected" statement that his lane change

was complete. Mr. Chan also says ICBC failed to verify where the accident occurred.

23. To succeed against ICBC, Mr. Chan must prove on a balance of probabilities that ICBC breached its statutory obligations or its contract of insurance, or both. The issue is whether ICBC acted “properly or reasonably” in administratively assigning sole responsibility for the accident against Mr. Chan (see: *Singh v. McHatten*, 2012 BCCA 286).
24. ICBC owes Mr. Chan 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 paragraphs 22, 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: *MacDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283).
25. Based on ICBC’s claim file notes, Ms. Basraon did not consistently describe the lane she was in, since sometimes it is noted she said she was in “L3/3” and elsewhere that she was in “L4/4”. However, on balance I find ICBC reasonably concluded that Ms. Basraon had not changed lanes recently before the accident happened. I say this because whether she was in L3/3 or L4/4, I find the evidence shows she said she had been in the same, most westerly, lane for a long time before the accident. Notably, Mr. Chan’s own evidence is inconsistent in labelling the lanes, and I find this may have contributed to confusion as ICBC’s claim investigation progressed.
26. ICBC submits it acted reasonably in determining fault based on the two drivers’ statements, and that no additional evidence was presented to it. In the circumstances, ICBC says it was left with one driver who denied changing lanes (Ms. Basraon), and the other (Mr. Chan) who admitted to doing so and who at least

originally indicated his lane change may not even have been complete. As a result, ICBC found Mr. Chan solely at fault for changing lanes when it was unsafe to do so. I find ICBC's conclusion was reasonable, for the following reasons.

27. Mr. Chan submits that when he gave his initial statement to ICBC, he was "under the influence" of what Ms. Basraon told him, and that he later corrected that statement because he "should not be influenced" by Ms. Basraon's statement. I do not understand how Ms. Basraon would cause Mr. Chan to give ICBC inaccurate evidence about how the accident occurred. Based on ICBC's file notes, Mr. Chan's first report to ICBC was that he did not know what lane Ms. Basraon was in, since ICBC noted his description of her location as "1?of4". In any event, initially Mr. Chan said his lane change was either complete or 80% complete. In follow-up statements to ICBC, he said that he believed that "just when" he completed the lane change, he felt the impact. It was only in his later submissions that he says he is certain his lane change was entirely complete at the time of impact.
28. I find ICBC was reasonably entitled to rely on Mr. Chan's earlier evidence, as it was given closer in time to the accident, rather than his later "corrected" version. The transcript in evidence of his original statement supports this conclusion, because it detailed why he thought he might have only been 80% complete in his lane change.
29. Mr. Chan also argues that Ms. Basraon's version of events has been inconsistent, and that this supports his position that ICBC was unfairly prejudiced against him. In particular, he points to Ms. Basraon's statement that she "stayed in [lane] 4/4 **until** Oak Street Bridge" (Mr. Chan's bold emphasis added). Mr. Chan says the "until" implied a lane change close to Oak Street Bridge but ICBC ignored this. I disagree. I find this "until" statement equally consistent with Ms. Basraon explaining that she had been in the same lane for some time at the time of the accident.
30. Overall, I find ICBC's investigation was reasonable. While there is some confusion about lanes in the evidence, this was not a situation of ICBC having entirely conflicting evidence about what happened. Mr. Chan admitted to a recent, possibly incomplete, lane change whereas Ms. Basraon denied ever making a lane change.

Given section 151 of the MVA, I find ICBC reasonably concluded Mr. Chan should be held responsible, since he was the only one who had admitted to making a lane change and that section puts the onus on him as he was admittedly the driver changing lanes.

31. In summary, although I acknowledge Mr. Chan disagrees with ICBC's fault assessment, I find he has not shown that ICBC breached its statutory obligations or failed to properly defend him under the insurance contract. Therefore, I dismiss this aspect of Mr. Chan's claim.

Who is liable for the accident?

32. As discussed above, I find that Mr. Chan's evidence given closer in time to the accident is more reliable than his later submission. In other words, I find it more likely that he had made a recent lane change. I also find that he has not proved it is more likely than not that Ms. Basraon had made a lane change, and Mr. Chan bears the burden of proof in this dispute.
33. Given section 151 of the MVA requires lane changes be made only when it is safe to do so, I find Mr. Chan has not proved he is not 100% responsible for the accident. I find his claim must be dismissed.
34. I note that I would have dismissed Mr. Chan's claims in any event. I say this because I cannot grant declaratory relief under section 118 of the CRTA, which is what an order requiring ICBC to change its fault assessment would be. I also have no proof in support of Mr. Chan's \$1,548.35 damages claim, such as a vehicle repair invoice or quote.
35. Under section 49 of the CRTA, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. Neither party claimed reimbursement of tribunal fees or dispute-related expenses, and so I make no order about them.

ORDER

36. I order the applicant's claims and this dispute dismissed.

Shelley Lopez, Vice Chair