



Civil Resolution Tribunal

Date Issued: May 12, 2020

File: SC-2019-009173

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Awan v. ICBC*, 2020 BCCRT 521

B E T W E E N :

MARIAM AWAN

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA and
STEVEN GRANT ORPILLA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This small claims dispute is about liability for a September 30, 2019 motor vehicle collision. The applicant, Mariam Awan, says that the respondent insurer, Insurance Corporation of British Columbia (ICBC), failed to properly investigate the collision and incorrectly determined that she was 75% liable for it. Ms. Awan says that the respondent, Steven Grant Orpilla was entirely responsible for the collision. She asks for an order that she is 0% responsible and order that the respondents pay her \$3,000 in damages.
2. ICBC says that it is not a proper party to this dispute. Mr. Orpilla disagrees with Ms. Awan's position.
3. Ms. Awan is self-represented. The respondents are represented by an ICBC employee.

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. 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.
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.

ISSUES

8. The issues in this dispute are:
 - a. whether ICBC breached its statutory obligations in investigating the collision and assessing fault,
 - b. who is liable for the collision, and
 - c. whether Ms. Awan is entitled to the claimed \$3,000 in damages.

EVIDENCE AND ANALYSIS

9. In a civil dispute like this one, an applicant bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their submissions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.

Did ICBC breach its statutory obligations?

10. Ms. Awan's position is that ICBC did not investigate the collision properly. She says that ICBC did not do enough investigation, treated her poorly, and did not take her version of events into account. 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 responsibility for a collision to a plaintiff is strictly between the plaintiff and ICBC. On this basis, I am satisfied that ICBC is a proper respondent to Ms. Awan's claim.

11. The British Columbia Supreme Court decision in *McDonald v Insurance Corporation of British Columbia*, 2012 BCSC 283, states at paragraph 249 that an insurer is “not expected to investigate a claim with the skill and forensic proficiency of a detective” and it is not required “to assess the collected information using the rigorous standards employed by a judge “. Instead, the insurer’s duty is to “bring reasonable diligence, fairness, and appropriate level of skill, thoroughness and objectivity to the investigation, and the assessment of the collected information”.
12. The evidence before me shows that, before making a decision about who was responsible for the collision, ICBC obtained statements from both drivers. There were no independent witnesses to the collision. ICBC also considered the location of the collision and the placement of damage on the parties’ vehicles. The evidence does not establish that ICBC discounted Ms. Awan’s version of events, or that the ICBC adjuster defended Mr. Orpilla, while being unfair to her. I acknowledge Ms. Awan’s submission that the tribunal has issued decisions that alter ICBC’s liability assessments, but I do not agree with her suggestion that this fact (or the available evidence) establishes any carelessness by ICBC in this case.
13. While I acknowledge that Ms. Awan disagrees with the result, I find that ICBC acted reasonably in administratively assigning 75% responsibility for the collision to Ms. Awan (see *Singh v. McHatten*, 2012 BCCA 286). Accordingly, I dismiss Ms. Awan’s claim against ICBC.

Who is liable for the collision?

14. At the time of the collision, Mr. Orpilla was driving a vehicle owned by Mary Orpilla. According to the Dispute Response, Ms. Orpilla accepts responsibility for Mr. Orpilla’s actions. Yet, Ms. Orpilla is not a named party to this dispute. However, given my conclusion below, I find that nothing turns on this.
15. The collision occurred when the applicant and Mr. Orpilla were both driving southbound on Nelson Street in Burnaby, British Columbia. They agree that there

are two lanes on Nelson Street but, after the intersection with Imperial Street, it narrows to a single combined parking lane and travel lane.

16. The parties do not agree about how the collision occurred. Ms. Awan says that she was stopped in front of Mr. Orpilla when he hit her from behind. Mr. Orpilla says that Ms. Awan cut him off, and the collision was a side swipe rather than a rear-ender.
17. The evidence contains Ms. Awan's dash cam footage showing the events leading up to the collision. Mr. Orpilla was ahead of Ms. Awan on Nelson Street, and was stopped behind a left-turning driver at the intersection with Imperial Street. Ms. Awan changed into the right lane to go around the stopped vehicles. As she approached the intersection in the right lane, the left-turning driver commenced his or her turn, and Mr. Orpilla's vehicle began to move in the left lane. Both vehicles appear to have entered the intersection just before the light turned from green to amber. Ms. Awan's vehicle moved to the left just as the traffic ahead slowed. As Ms. Awan's vehicle stops, she can be heard saying "what" and then "did you just hit me?".
18. Ms. Awan states that she entered the intersection first and describes Mr. Orpilla as being directly behind her. However, although she was slightly ahead, her description ignores the fact that she did not enter the intersection in the same lane as Mr. Orpilla. I find Ms. Awan could not have been "proceeding straight" or "driving straight" in the "middle of the lane" as she submits. The right lane she occupied after the intersection was a parking lane, and so she had to move her vehicle into the left lane.
19. I find that Mr. Orpilla was established in the left lane, and that Ms. Awan chose to move into the right lane to pass him and the left-turning driver at the intersection. According to section 158(2) of the *Motor Vehicle Act*, a driver of a vehicle must not cause the vehicle to overtake and pass another vehicle on the right when the movement cannot be made safely. This means that the onus was on Ms. Awan to ensure that she could complete her passing maneuver safely and yield to Mr. Orpilla who, as the dominant driver, had the right of way.

20. The parties both refer to the tribunal's decision in *Dubnov v ICBC*, 2019 BCCRT 287, which considered a collision that occurred where a 2-laned roadway merged into 1 wide lane. In that case, which is not binding on me, the vehicle merging into the sole through lane was found 100% responsible for the collision. Mr. Orpilla says that this supports his position. Ms. Awan's submission is that her situation is similar to the other driver in *Dubnov*, KH, where the at-fault driver had an opportunity to not cause a crash but he did anyway. Mr. Awan says that, following this reasoning, she should have no responsibility for the collision. I find that the circumstances in *Dubnov* are distinguishable as KH had the right of way (which Ms. Awan did not) and, as will be discussed below, the evidence does not show that Mr. Orpilla deliberately acted to cause a collision.
21. After the collision, Mr. Orpilla told Ms. Awan that he had not seen her vehicle. He also told ICBC that he thought Ms. Awan had turned right onto Nelson Street from Imperial Street, and that he did not see Ms. Awan's vehicle until it was partially in front of him. While these statements support the conclusion that Mr. Orpilla was not keeping an adequate lookout as he drove through the intersection, I find that it does not establish that he deliberately acted to cause a collision. Although Mr. Orpilla was entitled to assume that other drivers (including Ms. Awan) would follow the rules of the road, he was still obligated to exercise reasonable care and to react to other drivers' failure to follow the rules of the road. I find that, in the circumstances, it is appropriate to hold him 25% responsible for the collision.
22. I also find that it is appropriate to assign Ms. Awan 75% of the liability. As discussed, Mr. Orpilla had the right of way in the left lane as the dominant driver. Ms. Awan, as the servient driver passing on the right, had an obligation to ensure that she made this movement safely. As she did not do so, I find that she bears the majority of the responsibility for the collision.
23. Given my conclusion above, I find Ms. Awan is not entitled to damages. As such, it is not necessary for me to determine whether she has proven the \$3,000 in damages she claims.

24. 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. The successful respondent did not pay fees or claim expenses.

ORDER

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

Lynn Scrivener, Tribunal Member