



Civil Resolution Tribunal

Date Issued: May 12, 2020

File: SC-2019-005546

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Luton v. ICBC*, 2020 BCCRT 522

B E T W E E N :

SHIRLEY LUTON

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA and
JAGMEET BAL

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This small claims dispute is about liability for a March 29, 2018 motor vehicle collision. The applicant, Shirley Luton, is the owner of a vehicle that was being driven by a family member, ET, when it was involved in a collision with a truck

driven by the respondent, Jagmeet Bal. Ms. Luton says that the respondent insurer, Insurance Corporation of British Columbia (ICBC) failed to investigate the collision properly and incorrectly determined that ET was responsible for the collision. She asks for a different liability determination and an order that the respondents reimburse her for her \$300 insurance deductible. The respondents disagree with the applicant's position.

2. Ms. Luton and Mr. Bal are self-represented. ICBC is represented by an employee.

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. Some of the evidence in this dispute amounts to a "she 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 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 the decision in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

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.

ISSUES

7. 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. Luton is entitled to damages.

EVIDENCE AND ANALYSIS

8. In a civil dispute like this one, an applicant bears the burden of proof on a balance of probabilities. Each of the parties provided evidence and submissions in support of their respective positions. 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?

9. The applicant's position is that ICBC did not investigate the collision properly. She says that ICBC did not obtain photographs of the damage to Mr. Bal's vehicle. 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 the applicant's claim.

10. 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”.
11. The evidence before me shows that, before deciding who was responsible for the collision, ICBC obtained statements from ET, Mr. Bal, a bus driver, a bus passenger, and a transit supervisor. It also reviewed the damage to Ms. Luton's vehicle. As Mr. Bal's vehicle was licensed in another jurisdiction, ICBC did not have the damage information for it. In a January 9, 2019 Liability Appeal Note, an ICBC manager wrote that she wanted photos of Mr. Bal's truck as, after viewing the damage to Ms. Luton's vehicle, it was “possible it supports” ET's driver's version of events. She said that she believed that the truck's owner hired an independent adjuster who “would/should have taken such photos”.
12. Although there are photos of Mr. Bal's truck from the collision scene, the evidence does not contain photos of the truck damage from an insurer or independent adjuster. I note Mr. Bal's statement that he did not make a claim for damages. Based on the evidence before me, I find that Ms. Luton has not established that the photos described by the manager exist or that ICBC failed to act reasonably in an attempt to obtain them.
13. While I acknowledge that Ms. Luton disagrees with the result, I find that ICBC acted reasonably in administratively assigning 100% responsibility for the collision to ET (see *Singh v. McHatten*, 2012 BCCA 286). Accordingly, I dismiss Ms. Luton's claim against ICBC.

Who is liable for the collision?

14. The collision occurred near the intersection of Knight Street and East 63rd Avenue in Vancouver. ET was driving Ms. Luton's Honda Civic and Mr. Bal was driving a semi truck with 2 trailers. The parties agree that there are 3 southbound lanes in the area. Mr. Bal was in the left lane, ET was in the centre lane, and a transit bus was stopped in the curb lane. There is no dispute that Ms. Luton's vehicle impacted both Mr. Bal's truck and the transit bus. However, the parties do not agree about how the collision occurred.
15. Ms. Luton submits that Mr. Bal attempted to make a lane change into the centre lane while ET was in his blind spot, struck the Civic, and caused it to "ping pong" over to hit the bus. Ms. Luton says that Mr. Bal then moved back into the left lane. In her submission, Mr. Bal caused the collision.
16. Mr. Bal denies that he was responsible for the collision. Mr. Bal says that he was driving in the left lane when he heard a "hitting noise" and stopped his truck. According to Mr. Bal, he did not attempt to change lanes and had no need to change lanes for about 3.5 to 4 kilometres. Mr. Bal stated that he needs approximately 300 metres to change lanes and it is "not a matter of seconds" to move the truck from 1 lane to another. Mr. Bal submitted photos of his truck from the collision scene that show it stopped in the left lane, with the truck and trailers positioned close to the yellow centre line.
17. ET provided 2 statements about how the collision occurred. In an undated statement she provided to ICBC, ET stated that she did not know what had happened, but that she heard a loud noise and her airbags deployed. She stated that it was only after she stopped her car and gotten out that she recognized that the collision had involved an "incredibly large truck" in the left lane. She also stated that she did not realize until later on that she collided with the bus. In a February 15, 2020 statement that Ms. Luton submitted with her evidence, ET provided additional details about the collision. In this second statement, ET stated that, just after East 63rd Avenue, she "saw a white obstacle suddenly appear" in her lane. ET stated that

this object was a truck attempting to move from the left lane into the centre lane. She said she then heard a bang as she impacted the truck, then her airbags went off. ET stated that her vehicle ricocheted into the transit bus and then ping-ponged back and forth between the truck and the bus. ET stated that she was certain that she was in the truck's blind spot, which was why Mr. Bal did not notice her before trying to change lanes.

18. Statements from the driver of the transit bus, a bus passenger, and a transit supervisor provide additional information. The bus driver stated that a silver car crashed into his bus while he was waiting for passengers to board. The driver also stated that Mr. Bal told him that the car had contact with his truck before it hit the bus. The bus passenger stated that he heard a noise behind the bus, then felt and heard a car collide with the bus and then ping pong back and hit the truck. The passenger stated that the truck was in "the farthest lane over" and that it was not moving or maybe had moved a bit ahead after the collision. The transit supervisor did not see the collision, but noted in his statement that the driver told him that the car had been behind the truck and tried to enter the centre lane, striking the rear of the truck and then sliding into the bus. I note that this is not consistent with the driver's report.
19. Taken together, I find that the various statements from the independent witnesses establish that ET's vehicle first hit Mr. Bal's truck, then the transit bus. However, those statements do not establish what led up to the collision.
20. ET first stated that she did not know what happened before the collision, but she later stated that it was caused by Mr. Bal's attempted lane change. Neither Ms. Luton nor ET explained why ET's statement to ICBC contained different information than the statement she provided later in support of Ms. Luton's claims. I prefer the evidence in ET's statement to ICBC because it was recorded closer in time to the collision.
21. Mr. Bal denies that he was attempting to make a lane change, and I find that the evidence before me does not prove otherwise. Further, there is no evidence to

challenge Mr. Bal's statement about the time and distance required to make a lane change, or to explain how his truck could have come to rest parallel to the yellow lane dividing line within a short distance if he had started, then aborted, a lane change. I find that it is more likely than not that the collision occurred as described by Mr. Bal.

22. Ms. Luton also says that Mr. Bal and the bus driver discussed the collision privately and provided false information to ICBC that resulted in ICBC finding ET responsible. ET says that Mr. Bal and the bus driver spoke alone in the bus and, when with her, Mr. Bal spoke in another language while the bus driver answered in English. While this may be so, the bus driver did not offer an opinion to ICBC about the collision's cause. I find that the evidence does not establish that Mr. Bal somehow colluded with the bus driver to provide ICBC with false information.
23. Keeping in mind that Ms. Luton bears the burden of proof, I find that she has not established that she is entitled to a different liability decision. Accordingly, Ms. Luton is not entitled to damages. As such, it is not necessary for me to determine whether Ms. Luton proved the damages she claimed.
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. As Ms. Luton was not successful, I dismiss her claim for reimbursement of tribunal fees. The respondents did not pay fees or claim expenses.

ORDER

25. I dismiss Ms. Luton's claims and this dispute.

Lynn Scrivener, Tribunal Member

