



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sympovsky v. ICBC*, 2020 BCCRT 527

BETWEEN:

THALITA DA SILVA SYMPOVSKY and MATHEW SYMPOVSKY

APPLICANTS

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and
SIU-LUN LI

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that took place on September 25, 2019 in the underground parking lot of the Metrotown shopping mall in Burnaby, British Columbia.

2. The applicant, Thalita Da Silva Sympovsky, was driving a vehicle jointly owned by her and her spouse, the applicant Mathew Sympovsky, when it collided with a vehicle driven by the respondent, Siu-Lun Li. Ms. Sympovsky and Mr. Li are co-workers.
3. The applicants say Mr. Li did not yield to Ms. Sympovsky when she approached an intersection in the parking lot first, and also that Mr. Li turned left when it was unsafe to do so. In contrast, the respondents say Mr. Li had the right of way, and Ms. Sympovsky failed to yield to him, causing the accident.
4. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures both the applicants and Mr. Li. ICBC internally concluded Ms. Sympovsky was 100% responsible for the accident. However, the applicants say Mr. Li should be found solely at fault. The applicants allege ICBC was negligent in investigating the accident and determining fault against Ms. Sympovsky. They seek \$500, the amount of their insurance deductible, plus \$24.64 for a “tire betterment fee”. ICBC says the applicants had to pay the “betterment fee” because their damaged tire was obsolete, so it had to be replaced with a higher quality tire. ICBC says the applicants are not indemnified for this “betterment”, so they were charged \$24.60, the difference in tire value.
5. The applicants are 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. Here, 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 British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an 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. In resolving this dispute the tribunal may make one or more of the following orders, where permitted by section 118 of the CRTA:
 - a. Order a party to do or stop doing something;
 - b. Order a party to pay money;
 - c. Order any other terms or conditions the tribunal considers appropriate.

ISSUES

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

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicants bear the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

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

12. As noted above, the applicants say that ICBC did not act fairly or reasonably in assigning fault for the accident.

13. To succeed against ICBC, the applicants 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 Ms. Sympovsky (see: *Singh v. McHatten*, 2012 BCCA 286).

14. ICBC owes the applicants 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).

15. The basis of the applicants' claim against ICBC is that they say ICBC acted "disingenuously" because they say it only considered the dash cam footage and not their photographs or statements. They also say ICBC failed to apply the correct law.

16. In contrast, ICBC submits it applied the correct law and made a decision based on the evidence before it, which included statements from Ms. Sympovsky and Mr. Li, as well as the photographs and dash cam footage.
17. In the circumstances, I find ICBC acted reasonably in investigating the accident and assigning fault to Ms. Sympovsky. I find there is no evidence that ICBC did not review all available evidence before it. Additionally, there is no evidence that ICBC only considered the dash cam footage, or that it unreasonably gave more weight to that footage. While I acknowledge the applicants disagree about the applicable law, and ICBC's ultimate fault assessment, I find they have not shown that ICBC breached its statutory obligations or its contract of insurance. Therefore, I dismiss this aspect of the applicants' claims.

Who is liable for the accident?

18. The following facts are undisputed:
 - a. On September 25, 2019 at approximately 7:30am, Ms. Sympovsky and Mr. Li were both driving in the Metrotown parking lot, on the P1 level.
 - b. At the time, Mr. Li was driving westbound in a two-way roadway, between parking areas, with a broken line in the centre distinguishing oncoming traffic. The roadway Mr. Li was traveling on did not provide direct access to the parking stalls.
 - c. At the same time, Ms. Sympovsky was traveling southbound in one of the lanes that is used to access parking stalls and connects with the roadway Mr. Li was on.
 - d. Ms. Sympovsky was attempting to drive directly across Mr. Li's roadway, to continue southbound through the parking lot. Mr. Li was intending to turn left, to travel westbound onto the same parking lane that Ms. Sympovsky intended to continue onto.

- e. While both drivers attempted their manoeuvres, the front right bumper of Mr. Li's vehicle and the front left bumper of Ms. Sympovsky's vehicle collided.
- f. Neither party had a stop sign, stop line, or other traffic sign or device.

19. I have considered the relevant provisions of the *Motor Vehicle Act* (MVA).

- a. Section 1, "definitions", states that a "highway" includes every road, street, lane or right of way designed or intended for or used by the general public for the passage of vehicles, and every private place or passageway to which the public, for the use of parking or servicing of vehicles, has access or is invited.
- b. Section 173, "yield signs", states that when two vehicles approach or enter an intersection from different highways at the same time, and there are no yield signs, drivers must yield the right of way to the vehicle to their right.
- c. Section 175, "entering through highway", says if a vehicle is about to enter a through highway, the driver must yield the right of way to traffic that is already in the intersection or is approaching so closely that it constitutes an immediate hazard.
- d. Section 176, "emerging from alleys", says that a driver about to enter or cross a highway from an alley, lane, driveway, building or private road must yield the right of way to traffic approaching on the highway so closely that it constitutes an immediate hazard.

20. There is no dispute the parking lot roads meet the definition of "highway" under the MVA. However, the parties disagree over which MVA section applies.

21. The applicants say that Mr. Li is responsible for the accident, further to section 173 of the MVA, as they say Mr. Li failed to yield to Ms. Sympovsky, who was to his right at the uncontrolled intersection. Ms. Sympovsky says she thought Mr. Li was slowing down to yield to her, so she proceeded across the roadway and the accident occurred. The applicants say that due to Mr. Li's failure to yield, he is solely responsible for the accident.

22. Meanwhile, the respondents say Mr. Li was traveling on a “main road” while Ms. Sympovsky was on a “feeder road”, which required Ms. Sympovsky to yield to Mr. Li, which she failed to do. As a result, the respondents say Ms. Sympovsky breached sections 175 and 176 of the MVA, and say she is therefore solely responsible for the accident.
23. In support of their position, the respondents rely on *McKenzie v. Insurance Corporation of British Columbia*, [1992] BCJ No 1110. The facts of one of the two accidents in *McKenzie* closely compare to the accident before me. In that accident, Mr. McKenzie was traveling through a parking lot when he was struck by another vehicle. Although the specific details of the accident were not described, Justice Fraser found that Mr. McKenzie was considered to be on a “main road” of the parking lot, while the defendant driver, Ms. Naumann, was emerging from a “parking area” which fed onto the main road. Justice Fraser found the obligation was on Ms. Naumann to ensure her move across the “main road” could be done in safety, which she failed to do. As a result, Ms. Naumann was held solely responsible for that accident.
24. The applicants say *McKenzie* is outdated and should not be followed. Further, they say *McKenzie* conflicts with section 173 of the MVA, and that the legislation must take priority over the common law. I disagree that *McKenzie* conflicts with the MVA. Specifically, I find Justice Fraser’s conclusion on liability is consistent with section 176 of the MVA, which essentially requires a vehicle on a “less used” road (for example, a parking lane) to yield to a vehicle approaching on a “busier” road (for example, a roadway through a parking lot). I find *McKenzie* is still good law, and I am bound by both it and the relevant MVA provisions.
25. Applying the relevant law, I find Ms. Sympovsky entered from a parking lane onto the main parking lot roadway when it was unsafe to do so, and contrary to section 176 of the MVA. The dash cam footage shows Mr. Li slowing down on this main roadway, and then starting his left turn onto the parking access lane. I acknowledge Ms. Sympovsky’s submission that because Mr. Li was slowing down as he

approached her vehicle, she believed he was yielding to her and so she continued on her way. In the circumstances, I find it was unreasonable for her to do so. She did not determine whether her move could be made in safety, which I find it could not, given that Mr. Li's vehicle was so close, constituting an immediate hazard. I find Ms. Sympovsky was negligent and is responsible for the accident.

26. I note the applicants' two additional arguments about liability. First, they say that Mr. Li contravened section 165 of the MVA, for making an improper, sharp left turn. Ms. Sympovsky says Mr. Li turned his vehicle too early, resulting in his vehicle turning into the oncoming lane, instead of the proper lane of travel. The respondents say Mr. Li's left turn positioning is not relevant to the accident and does not impose any liability on Mr. Li. I have reviewed the dash cam footage, and I find it is unclear whether Mr. Li turned into the oncoming lane or not, as the collision occurred before Mr. Li's left turn was complete. The burden is on the applicants to prove Mr. Li breached section 165, and I find they have not done so. In any event, even if I had found Mr. Li turned into the wrong lane, I find that such a move was not a cause of the accident, but rather Ms. Sympovsky's failure to yield the right of way was the sole cause.
27. Next, the applicants say that Mr. Li suggested he was at fault because later that day, he emailed Ms. Sympovsky apologizing and asking how she was doing. As noted above, Ms. Sympovsky and Mr. Li are coworkers. After the accident, Ms. Sympovsky was taken away by ambulance. I find Mr. Li's email was not an admission of liability, but rather an email out of concern for Ms. Sympovsky. In any event, the *Apology Act* states that an apology made by a person cannot be considered when determining fault or liability, and so I place no weight on Mr. Li's email.
28. In conclusion, I find Ms. Sympovsky is 100% liable for the September 25, 2019 accident. As a result, I dismiss the applicants' claims for reimbursement of their deductible and the betterment fee.

29. 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. As the applicants were not successful, I find that they are not entitled to reimbursement of their paid tribunal fees. The respondents did not pay any tribunal fees. Neither party claimed dispute-related expenses.

ORDER

30. I order the applicants' claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair