



Civil Resolution Tribunal

Date Issued: May 27, 2020

File: SC-2020-000532

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lee v. ICBC*, 2020 BCCRT 579

BETWEEN:

HSIAO JUNG LEE

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and Avtar Gill

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This small claims dispute is about damage to a motor vehicle parked in a mall parking lot. The respondent, Avtar Gill, says the applicant, Hsiao Jung Lee, chipped the paint on his motor vehicle when Ms. Lee opened her driver's side door after parking beside him. Ms. Lee denies that she damaged Mr. Gill's vehicle.

2. The respondent, Insurance Corporation of British Columbia (ICBC), concluded that Ms. Lee was 100% at fault. Ms. Lee says ICBC breached its statutory obligations in investigating the damage's cause and in assigning fault. She seeks a declaration that she was not responsible for the damage. Ms. Lee also seeks reimbursement of the \$300 deductible she paid to ICBC for the damage to Mr. Gill's car.
3. Ms. Lee is self-represented. Mr. Gill and ICBC are represented by ICBC's representative.

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. Did ICBC breach its statutory obligations in investigating the cause of damage to Mr. Gill's car and assessing fault?
 - b. Is the applicant responsible for the damage and if not, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. The parties agree that Mr. Gill was sitting in the driver's seat of his vehicle while parked in a mall parking lot. Ms. Lee pulled into the spot to his right and parked beside him. Mr. Gill says Ms. Lee chipped the paint on the back of his passenger side mirror housing (housing) when she opened the driver's door of her car.
11. Ms. Lee admits her door impacted Mr. Gill's vehicle. However, she denies that her car door could reach Mr. Gill's mirror. Ms. Lee says she slowly opened her car door and the edge of her car door touched the right front of Mr. Gill's car. She denied that it could touch his mirror, or the back of the housing. Later, she also stated that it was not possible to hit the mirror regardless of how she swung her car door. I note that Ms. Lee was incorrect in this statement. A video she provided of her own simulation of the incident clearly showed that when she opened her door, it touched the mirror of the adjacent car.
12. ICBC determined Ms. Lee was responsible for the damage after matching up damage on both cars. ICBC repaired Mr. Gill's car and charged Ms. Lee a \$300 deductible.

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

13. Ms. Lee seeks an order overturning ICBC's 100% liability assessment against her and a full reimbursement of the deductible. To do so, she must prove on a balance of probabilities that ICBC breached its statutory obligations or its contract or insurance, or both. The issue here is whether ICBC acted "properly or reasonably" in assigning 100% liability to Ms. Lee (see *Singh v. McHatten*, 2012 BCCA 286, and *Innes v. Bui*, 2010 BCCA 322 at para. 33).
14. ICBC owes Ms. Lee a duty of good faith, which requires ICBC to act fairly, both in how it investigates and assesses the claim and as to 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 Corp. of British Columbia*, 2012 BCSC 283).
15. I note that ICBC relies on section 203 of the *Motor Vehicle Act* (MVA) which states a person must not open a car door on the side available to moving traffic unless and until it is reasonably safe to do so. I find this section is not relevant since both cars were parked in a parking lot, and not beside moving traffic.
16. I find ICBC acted properly in assessing whether Ms. Lee damaged Mr. Gill's car. In the course of its investigation, an ICBC adjuster, AM, examined both cars separately and found chips on the edge of Ms. Lee's car door that matched up with the chip in the housing. AM noted that the shape and form as well as the measurements matched.
17. Ms. Lee was not satisfied with AM's assessment. In response to her concerns, AM's supervisor, KS, asked Ms. Lee to send further photos of the inside edge of her car

door. After reviewing the claim details, photos from the incident, and photos taken at the ICBC claims centre, KS stated that it was very plausible that the door damaged the housing.

18. Ms. Lee was still not satisfied with ICBC's assessment. In response ICBC arranged for the parties to bring their cars to an ICBC claim centre where ICBC conducted a simulation. While Ms. Lee was present, ICBC parked the cars next to each other and observed that when the door was opened, its edge touched the mirror.
19. The applicant says ICBC did not conduct a proper investigation because when ICBC tried to simulate the incident, it incorrectly angled her car 15 to 20 degrees to Mr. Gill's to show contact was possible. The applicant provided 2 photos of the cars at the time of the incident (site photos) and says the cars were parked nearly parallel to one another in the parking lot. She also provided photos of the cars parked next to each other at ICBC's claim centre (simulation photos). The applicant says ICBC did not consider the site photos when it ran its simulation. I find the positions of the cars in both sets of photos to be reasonably comparable. I find any discrepancies can be attributed to the fact that the 2 sets of photos were taken at different vantage points and angles.
20. In summary, I find that ICBC did not breach its statutory obligations or its insurance contract. As mentioned above, ICBC's investigation has to be reasonable. I find to meet this duty, ICBC does not have to recreate the incident with mathematical precision. I find ICBC acted reasonably in examining the damage to the cars and considering whether the damage to Mr. Gill's car could have been caused by Ms. Lee's car.
21. Having determined that ICBC acted reasonably in investigating the damage to Mr. Gill's car, I turn now to my assessment of liability.

Is Ms. Lee responsible for the damage?

22. As mentioned above, ICBC found Ms. Lee could have damaged Mr. Gill's car based on examining her door edge and testing to see if Ms. Lee's car door could reach the

damaged spot on Mr. Gill's car. Ms. Lee says ICBC's own staff questioned whether her car could have damaged the housing. RJ, who I infer is a technician with ICBC, stated that while it was possible that Ms. Lee's door impacted the housing, he could not say conclusively that the door caused the damage based on the photos. He also noted no marks were seen on the door edge but conceded that it could be that the impact did not leave a mark there. I find RJ was incorrect since photos clearly showed small paint chips on the door edge. For this reason I place little weight on RJ's statement.

23. Ms. Lee conducted her own simulation of the incident. She hired 2 "geodetic engineers specializing in photogrammetry" to measure the distance between the vehicles based on the site photos. She submitted 2 untitled documents showing how the measurements were calculated. I infer that Ms. Lee intended them to be expert reports.
24. Tribunal rule 8.3 provides that expert opinion evidence will only be accepted from a person the tribunal decides is qualified by education, training, or experience to give that opinion, and that an expert must state their qualifications in any written expert opinion evidence. The documents Ms. Lee provided did not contain the name of the authors or their qualifications. As these conditions were not met, I do not accept them as expert evidence.
25. Even if the documents met the rule 8.3 requirements, I find the measurements that were calculated are not reliable. IS, who I infer authored the 1 page document, stated in discussions with Ms. Lee that more photos were needed to provide a direct measurable reference. He also stated that the perspective on the photos Ms. Lee provided was "not that great" and that he could not obtain "any good results" from the photos. He also stated that vertical distances and the mirror angles would be impossible for him to determine and could not be precise. I find these statements brings the accuracy of the measurements in his document into question.
26. The other document was 10 pages and I infer it was authored by DJ. He stated that the image Ms. Lee provided was very difficult to analyse and that he could be

accurate up to 2-3 cm. Also, it appears Ms. Lee and DJ discussed earlier drafts before DJ produced the final document. These earlier versions were not submitted as evidence. I find that DJ's document may have been influenced by Ms. Lee, and as a result may not be independent.

27. Since I do not accept the measurements' accuracy, I do not need to consider the simulation video submitted by Ms. Lee which was based on the measurements.

28. Given my conclusions above, I find Ms. Lee's claims must be dismissed. In accordance with section 49 of the CRTA, and tribunal rules, as the applicant was unsuccessful in this dispute, I find she is not entitled to reimbursement of her tribunal fees. No dispute-related expenses were claimed.

ORDER

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

Rama Sood, Tribunal Member