



Civil Resolution Tribunal

Date Issued: June 1, 2020

File: SC-2020-000239

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sidhu v. ICBC*, 2020 BCCRT 602

BETWEEN:

CHARN PAUL SIDHU

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and
BRAEDEN ALEXANDER YOUNG

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This small claims dispute is about a car accident. The applicant, Charn Paul Sidhu, and the respondent, Braeden Alexander Young, had a minor collision while Mr. Sidhu was parking in a driveway.

2. The respondent, the Insurance Corporation of British Columbia (ICBC), is the parties' insurer. ICBC internally concluded that Mr. Sidhu was 100% at fault for the collision.
3. Mr. Sidhu says ICBC should have found Mr. Young 100% responsible for the accident. Mr. Sidhu also seeks \$1,500 in damages, although he did not explain what the \$1,500 is for.
4. Mr. Young says he was not at fault in the collision. ICBC says it is not a proper party to the claim.
5. The applicant is self-represented. The respondents are both 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 claim disputes 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. Some of the evidence in this dispute amounts to a "he 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 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. 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. 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.
10. ICBC argues it is not a proper party to the claim, and that the claim should be against Mr. Young only. I disagree. Mr. Sidhu alleges ICBC did not make an appropriate assessment of fault which is a claim against ICBC as Mr. Sidhu's insurer. I find ICBC is a properly named party.

ISSUES

11. 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 Mr. Sidhu, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant must prove his case on a balance of probabilities. I have read all of the parties' evidence and submissions but I will only refer to what is necessary to explain and give context to my decision.

13. Mr. Sidhu and Mr. Young both provided brief telephone statements to ICBC, which are in evidence. There is no other first-hand evidence before me about what happened, such as more detailed statements from Mr. Sidhu or Mr. Young or witness statements.
14. Mr. Sidhu says the accident occurred on April 1, 2019. Mr. Young says the accident occurred on July 18, 2019. However, since my decision does not turn in any way on the date of the accident, I find that it is unnecessary to resolve this difference.
15. The accident occurred on 183rd Street in Surrey, BC. Mr. Sidhu was parking in a driveway connected to the street. Mr. Sidhu says he was backing into the driveway from the southbound lane of the street. Mr. Sidhu says that Mr. Young was driving fast southbound on 183rd Street. Mr. Sidhu says Mr. Young attempted to drive around Mr. Sidhu's car but he collided with Mr. Sidhu's bumper.
16. Mr. Young says he was driving southbound on 183rd Street and he saw Mr. Sidhu's car backing into a driveway from the same lane. Mr. Young says he slowly drove around Mr. Sidhu's car which was partially in the driveway and partially in the southbound lane. Mr. Young says that when he drove around Mr. Sidhu's car, Mr. Sidhu drove forward and collided with the rear passenger-side area of Mr. Young's car.
17. ICBC assessed Mr. Sidhu 100% at fault.

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

18. As noted above, Mr. Sidhu seeks an order that he is not responsible for the collision. To succeed against ICBC, Mr. Sidhu must prove on a balance of probabilities that ICBC breached its statutory obligations or its contract of insurance, or both. The claim against ICBC is whether ICBC acted "properly or reasonably" in administratively assigning 100% fault to Mr. Sidhu (see *Singh v. McHatten*, 2012 BCCA 286).

19. ICBC owes Mr. Sidhu 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 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 Corporation of British Columbia*, 2012 BCSC 283).
20. Based on the submitted evidence, I find that ICBC considered both drivers' statements. However, Mr. Sidhu says that ICBC did not consider an independent witness statement.
21. In particular, in his telephone interview, Mr. Sidhu said that there was an independent witness to the collision. In his statement, Mr. Sidhu said that, while he was parking in the driveway, a resident from that property was guiding him. Mr. Sidhu said that this witness was independent because he just met him.
22. Mr. Sidhu says that ICBC refused to allow the witness statement. I note that an independent witness statement was not provided as part of ICBC's claim documents. ICBC did not dispute Mr. Sidhu's allegation that they did not consider the witness statement. ICBC also did not provide an explanation why the witness statement was not considered. Since this allegation was not disputed, I am satisfied that ICBC did not consider a statement from the potential independent witness.
23. I find that the extent of ICBC's obligation to reasonably investigate an accident varies with the severity of the accident. In this accident, there were no injuries and relatively little vehicle damage. However, even in a minor collision such as this, I find it was not reasonable or appropriate for the adjuster to not consider an independent witness statement.

24. That said, I find that Mr. Sidhu has not shown that this breach of ICBC's obligations had any consequence. Although Mr. Sidhu says that he has a statement from the potential witness, Mr. Sidhu has not provided it. Therefore, I am unable to determine whether this person had any relevant observations or recollections favorable to Mr. Sidhu which may have changed ICBC's assessment of fault.
25. In his submissions, Mr. Sidhu asked this tribunal whether the witness statement was admissible and he said that he would provide the statement if it was. However, the tribunal cannot advise the parties whether evidence is admissible. Rule 1.7 of *CRT Rules* says the parties are responsible for providing evidence to support their claims. As stated above, Mr. Sidhu has the burden to prove his claims. I find that Mr. Sidhu has not proved that ICBC's failure to consider the independent witness statement caused ICBC to make an improper finding of fault.
26. In the absence of the independent witness statement, ICBC determined that Mr. Sidhu drove his car forward into the street and collided with Mr. Young's car. I find it was reasonable for ICBC to decide that, based on parties' telephone statements, Mr. Young's description of the accident was more likely than Mr. Sidhu's.
27. Based on this assessment of parties' statements, ICBC determined that Mr. Young had the right of way because Mr. Sidhu was backing into the driveway and Mr. Young was the dominant vehicle on the street. I find that ICBC's assessment is consistent with section 176(1) of the *Motor Vehicle Act* (MVA) which says a vehicle entering a road from a driveway must yield to approaching traffic. I find that ICBC made a reasonable assessment of fault.
28. In addition, Mr. Sidhu has not proved that he has suffered any loss from a breach of ICBC's obligations. Mr. Sidhu requests damages of \$1,500 but he has not provided any explanation what those damages are for or how the claimed damages were calculated.
29. Therefore, I dismiss the Mr. Sidhu's claim against ICBC. I turn now to my liability assessment.

Who is liable for the accident?

30. Mr. Sidhu and Mr. Young give conflicting descriptions of the collision mechanics. Mr. Sidhu says that Mr. Young drove into Mr. Sidhu's car while Mr. Sidhu was backing into the driveway. Mr. Young says that Mr. Sidhu drove forward into Mr. Young's car. Neither party provided any relevant evidence to support their position.
31. Mr. Sidhu provided a diagram showing how he says the collision occurred. I do not find this diagram helpful in determining fault. The diagram merely restates Mr. Sidhu's submissions in visual form.
32. Mr. Sidhu also provided photographs showing the accident's location. However, I find these photographs unhelpful because they do not show the actual cars involved in the accident.
33. As noted above, Mr. Sidhu says that he has a statement from the resident who helped guide his car into the driveway. However, Mr. Sidhu did not provide this witness's statement. The courts have said that an adverse inference can be drawn against a party where, without sufficient explanation, they fail to produce evidence or call a witness expected to provide supporting evidence (see *Port Coquitlam Building Supplies Ltd. v. 494743 B.C. Ltd.*, 2018 BCSC 2146).
34. In this matter, I would expect Mr. Sidhu to provide an independent witness statement as evidence if the statement supported his claim. The central issue in this matter is the direction the cars were moving at the time of the collision and Mr. Sidhu says there was an independent witness. In these circumstances, where the parties have such differing descriptions of the accident, an independent witness's observations would be helpful in determining how the collision happened.
35. Mr. Sidhu did not provide an explanation why he did not provide the witness statement. Mr. Sidhu did say that he would provide the witness statement if it was admissible. However, as discussed above, the tribunal cannot advise the parties. It is the parties' responsibility to provide supporting evidence. I find that Mr. Sidhu has not given a sufficient explanation for failing to provide the witness statement.

36. I find it appropriate to draw an adverse inference against Mr. Sidhu for his failure to provide such an important witness statement. Based on this adverse inference, I find Mr. Young's submissions to be more credible than Mr. Sidhu's. I accept Mr. Young's description of the accident and find that Mr. Sidhu drove his car forward from the driveway and collided with Mr. Young's car while Mr. Young was driving by on the street.
37. As stated above, section 176(1) of MVA says a vehicle entering a road from a driveway must yield to approaching traffic. I find that Mr. Sidhu violated the MVA by driving forward into the street without yielding to Mr. Young's car.
38. I find that Mr. Sidhu is 100% responsible for the collision. As a result, I dismiss Mr. Sidhu's claim and find he is not entitled to damages.

ORDER

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

Richard McAndrew, Tribunal Member