



Civil Resolution Tribunal

Date Issued: June 2, 2020

File: SC-2020-000640

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bowen v. ICBC*, 2020 BCCRT 608

B E T W E E N :

PETER BOWEN

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA,
CHRISTOPHER ADRIAN VAN MEEL and Anthony Buckingham

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This small claims dispute is about an August 12, 2019 motor vehicle collision. The applicant, Peter Bowen, was involved in a collision with a motorcycle owned by the respondent Christopher Adrian Van Meel and operated by the respondent Anthony

Buckingham. Mr. Bowen says that the respondent Insurance Corporation of British Columbia (ICBC) incorrectly determined that he was 75% responsible for the collision. He asks for an order that he is 0% responsible for the accident, that his safe driving record be restored and his deductible refunded. The respondents disagree with the applicant's position.

2. Mr. Bowen is self-represented. The respondents are represented by an ICBC 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. 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.
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 liability,
 - b. Who was liable for the collision, and
 - c. To what extent, if any, is Mr. Bowen entitled to his requested remedies.

EVIDENCE AND ANALYSIS

8. In a civil dispute like this, an applicant bears the burden of proof on a balance of probabilities. 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. Mr. Bowen says that ICBC did not consider evidence about Mr. Buckingham's "erratic driving" prior to the collision or his behaviour afterwards. Mr. Bowen submits that ICBC implied that he somehow colluded with a witness, DH, because they are from the same town and know of each other.
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, an 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 making the decision that the applicant was 75% responsible for the collision, ICBC obtained statements from both drivers

as well as DH. It also reviewed photos of the scene and information about the damage to the vehicles. I find that the evidence does not suggest that ICBC considered the possibility of any relationship between Mr. Bowen and DH when assessing liability for the collision.

12. While I acknowledge that Mr. Bowen disagrees with the result, I find that ICBC acted reasonably in administratively assigning 75% responsibility for the collision to him (see *Singh v. McHatten*, 2012 BCCA 286). Accordingly, I dismiss Mr. Bowen's claim against ICBC.

Who is liable for the collision?

13. The collision occurred at the intersection of 2nd Street and Highway 3 in Grand Forks, British Columbia. Mr. Bowen was southbound on 2nd Street and intended to make a left turn onto Highway 3. Mr. Buckingham was northbound on 2nd Street on the motorcycle. The parties were stopped for a red light, with Mr. Bowen being the first southbound car in line. The motorcycle was the second northbound vehicle, having stopped behind a pick-up truck intending to turn left.
14. According to the evidence, Mr. Bowen could not see the motorcycle behind the pick-up truck. Mr. Buckingham says that he saw Mr. Bowen's vehicle and was aware that it would be turning left.
15. After the light turned green, the pick-up truck and Mr. Bowen commenced their left turns. Mr. Buckingham says he proceeded straight into the intersection, but Mr. Bowen and DH say that Mr. Buckingham swerved into a right-turn lane to pass the pick-up truck. Mr. Bowen stopped his vehicle when he saw the approaching motorcycle. Mr. Buckingham was unable to stop in time, and collided with Mr. Bowen's vehicle.
16. Mr. Bowen says that Mr. Buckingham was entirely responsible for the collision, while the respondents say that the responsibility was appropriately divided between the 2 drivers. Mr. Bowen made submissions about Mr. Buckingham's manner of driving before the intersection and his behaviour after the collision. However, I do

not find that this information is relevant to my analysis. Instead, I will consider the drivers' respective rights and obligations in the context of the *Motor Vehicle Act* (MVA).

17. Although entitled to assume that other drivers will follow the rules of the road, a driver is still obligated to exercise reasonable care and to react to other drivers' failure to follow the rules of the road. This principle applies to both Mr. Bowen and Mr. Buckingham in this situation, and is consistent with section 144 of the MVA, which says that a person must not drive a motor vehicle without due care and attention, without reasonable consideration for other persons using the highway, or at a speed that is excessive relative to the road, traffic, visibility or weather conditions.
18. Section 158(1) of the MVA states that a driver must not cause the vehicle to overtake and pass another vehicle on the right except when the vehicle overtaken is making a left turn. Despite this, section 158(2) says that a driver must not pass on the right when then movement cannot be made safely.
19. Section 174 of the MVA states that a left-turning driver must yield the right of way to traffic approaching from the opposite direction that is in the intersection or so close as to constitute an immediate hazard but, having yielded, the driver may turn the vehicle to the left and the approaching traffic must yield the right of way. A vehicle is an immediate hazard if "it is so close to the intersection when a driver is about to make a left turn that if the turn were made the approaching driver would have to take some sudden or violent action to avoid a threat of a collision": *Raie v. Thorpe* (1963), 1963 CanLII 885 (BCCA).
20. The British Columbia Court of Appeal has held that if a left-turning driver complies with their obligation only to start the turn when no other vehicles are in the intersection or constitute an immediate hazard, then the left-turning driver becomes the dominant vehicle (with the right of way) and approaching vehicles become servient and must yield: *Nerval v. Khehra*, 2012 BCCA 436 at paragraph 33. The court in *Nerval* also said at paragraph 35 that if a left-turning driver says that they

started to turn left when it was safe to do so, then the burden of proving that fact rests with them.

21. Based on the evidence before me, I find that it is more likely than not that Mr. Buckingham did not proceed straight into the intersection, but rather moved to the right to pass the left-turning pick-up truck. The northbound lane on 2nd Street is a single wide lane and, although there are right turn arrows painted on the pavement, there is no painted line indicating 2 separate lanes. The courts have found that these circumstances effectively amount to 2 lanes (see, for example, *MacLaren v. Kucharek*, 2010 BCCA 206 at paragraph 20). Under section 158(2) of the MVA, he had an obligation to ensure that this maneuver was safe.
22. Under section 174 of the MVA, Mr. Bowen had an obligation to ensure that there was no traffic in the intersection or that would constitute an immediate hazard before he made his turn. Following *Nerval*, Mr. Bowen also must prove that, when he started his left turn, it was safe to do so.
23. Although Mr. Bowen says that the motorcycle appeared “out of nowhere”, DH says Mr. Buckingham swerved into the right lane “as soon as the light changed”. I find that Mr. Buckingham was established in the right turn lane and was close enough to be an immediate hazard to Mr. Bowen’s left turn. This is so whether Mr. Buckingham would have turned right or proceeded through the intersection, as there is only 1 lane to turn into on Highway 3.
24. I find that Mr. Bowen has not met his burden of proving that it was safe to commence his left turn such that he became the dominant driver with the right of way. As a result, he was required to yield the right of way to Mr. Buckingham. His failure to do so means that he bears responsibility for the resulting collision. However, I also find that Mr. Buckingham failed to ensure that his passing maneuver was safe, or to drive with reasonable care and attention. Therefore, I find it is appropriate to assess him 25% of the responsibility for the collision.

25. Given my conclusion, Mr. Bowen is responsible for 75% of his \$500 deductible. Even if I had come to a different conclusion, I would have been unable to issue an order for a different fault determination or to restore Mr. Bowen's safe driving record. These are requests for declaratory relief and are outside the tribunal's jurisdiction.
26. 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 Mr. Bowen was not successful, I dismiss his claim for reimbursement of tribunal fees.

ORDER

27. I dismiss Mr. Bowen's claims and this dispute.

Lynn Scrivener, Tribunal Member