



Civil Resolution Tribunal

Date Issued: June 4, 2020

File: SC-2020-000856

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Warren v. ICBC*, 2020 BCCRT 625

BETWEEN:

RANDALL WARREN and CAROLE WARREN

APPLICANTS

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and SHANE
BISBING

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This small claims dispute is about liability for a motor vehicle collision. The applicant, Randall Warren, and the respondent, Shane Bisbing, each say the other was changing lanes and caused the collision. According to the respondent insurer,

Insurance Corporation of British Columbia (ICBC), Carole Warren is the registered owner of the vehicle Mr. Warren was driving.

2. ICBC internally concluded that it could not determine which driver was at fault and so it assessed each driver 50% responsible for the collision.
3. The applicants seek a declaration that Mr. Warren was not at fault for the collision and they also want ICBC to reinstate their accident free status. The applicants also seek \$500 for the deductible they paid, \$1,100 for Mr. Warren's alleged lost wages, \$1,050 for time spent disputing ICBC's assessment, and \$300 for non-pecuniary damages.
4. The applicants are self-represented. Mr. Bisbing and ICBC are represented by an ICBC employee.

JURISDICTION AND PROCEDURE

5. 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "he said, he said" scenario with both sides calling into question the credibility of the other. Credibility of 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.

7. 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 court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
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.

ISSUES

10. The issues in this dispute are:
 - a. Did ICBC breach its statutory obligations in investigating the collision and assessing fault?
 - b. Who is liable for the collision?
 - c. To what extent, if any, are the applicants entitled to their requested remedies?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicants bear the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
12. The parties agree that the collision occurred on December 9, 2019 near the intersection of Harris Road and Highway 11 in Abbotsford (the intersection). While

the eastbound lane on Harris Road is initially a single lane of traffic, it widens to 3 lanes at the intersection with Highway 11. Lane 1 is a dedicated left turn only lane, lane 2 is a left turn lane and also continues eastbound through the intersection, and lane 3 is a dedicated right turn only lane. There is a set of railway tracks that run across Harris Road before reaching the intersection. Harris Road reverts back to a single lane for eastbound traffic once the intersection is cleared.

13. Mr. Warren and Mr. Bisbing were driving eastbound on Harris Road. Mr. Bisbing was driving a truck and in front of Mr. Warren. Mr. Warren says as they approached the intersection, Mr. Bisbing's vehicle moved to the left into lane 1 while Mr. Warren continued eastbound in lane 2. Mr. Warren says he overtook Mr. Bisbing's truck and as he passed it, he could see Mr. Bisbing was merging into lane 2. He says although he honked his horn, Mr. Bisbing's truck struck Mr. Warren's driver's side rear quarter panel. He says following the collision, Mr. Bisbing drove past him and stopped in front of him before the railway tracks.
14. In contrast, Mr. Bisbing denies that he was in lane 1. He says he remained in lane 2, since he intended to turn left onto Highway 11. He says he was driving at 40 km/hour at the time of the collision. He says Mr. Warren moved to lane 3 and passed him on the right. He says Mr. Warren honked his horn and was shouting. He says Mr. Warren then attempted to cut in front of him and struck the front passenger side bumper on his truck. Mr. Bisbing says the collision occurred approximately 10 to 15 feet before the railway tracks. He also says he came to a stop immediately after the collision and Mr. Warren backed up his vehicle and parked behind his truck. Mr. Bisbing also says Mr. Warren initially stated Mr. Bisbing was at fault but then after walking back to the where the right turn lane started Mr. Warren, "changed his tone".
15. The parties agree Mr. Warren's vehicle sustained damage to the driver's side rear quarter. The parties did not provide any photos or evidence of damage to Mr. Bisbing's truck.

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

16. ICBC says it was unable to determine which driver encroached into the other's lane. It says the drivers' descriptions of how the collision occurred were equally plausible and so it assessed each driver 50% responsible for the collision. Mr. Warren says ICBC did not properly investigate the collision because none of ICBC's employees examined the intersection in person. He also says ICBC did not consider his calculations which he says showed Mr. Bisbing's version of events was impossible.
17. ICBC says Mr. Bisbing's version is plausible because there was enough space for 3 vehicles side by side across Harris Road before the railway tracks. ICBC also says it reviewed Mr. Warren's scene photos and they did not prove or disprove Mr. Bisbing's account of the collision.
18. 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 Mr. Warren (see: *Singh v. McHatten*, 2012 BCCA 286).
19. 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). I find ICBC has not done so in this case. My reasons follow.

20. I find the standard of proof ICBC may have used to assess how the collision occurred was incorrect. In a January 7, 2020 note prepared by PH, an ICBC employee, she stated that she advised Mr. Warren that Mr. Bisbing's version was possible based on Google maps and the width of the road. ICBC's assessment should be based on a balance of probabilities (see *Sherrell v. Insurance Corporation of British Columbia*, 2019 BCSC 103 at paragraph 48).
21. I also find ICBC failed to consider the plausibility of Mr. Bisbing's statements in light of the aerial satellite photos of the intersection. The photos show that Harris Road widened to 3 lanes before the railway tracks. The aerial photos also showed a maximum of 4 vehicles could fit in the right turn lane from where it started to the railway tracks. After accounting for the fact that Mr. Bisbing says the collision occurred at least 10 to 15 feet from the railway tracks, I find ICBC did not consider whether Mr. Warren would have had sufficient distance to overtake Mr. Bisbing in the right turn lane and cut in front of him within less than 4 car lengths.

Who is liable for the collision?

22. Based on the aerial and street view satellite photos of the intersection and the drivers' statements, I find that Mr. Bisbing's version of the collision is not plausible. I agree with Mr. Warren that there was insufficient room for him to overtake Mr. Bisbing's vehicle on the right after accounting for the fact that Mr. Bisbing stopped at least 10 to 15 feet before the railway tracks. I find the right turn lane was not long enough for Mr. Warren to enter into it, overtake Mr. Bisbing's truck, and then merge in front of Mr. Bisbing 10 to 15 feet from the railway tracks. Actually, since Mr. Bisbing says he stopped 10 to 15 feet from the railway tracks, I find the collision would have occurred a little further back to account for the distance Mr. Bisbing would have travelled before he could decelerate from 40 km/h and come to a complete stop.
23. I also find it unlikely that after the collision Mr. Warren would have reversed his vehicle, pulled around Mr. Bisbing's truck, and parked behind Mr. Bisbing. I prefer

Mr. Warren's statement that following the impact, Mr. Bisbing continued past Mr. Warren before he stopped his truck.

24. Based on my reasons, I find on a balance of probabilities that Mr. Bisbing was 100% responsible for the collision.

Remedies

25. As mentioned above, Mr. Warren seeks a declaration that he was not at fault for the collision and wants ICBC to reinstate his accident free status. He also seeks \$500 for the deductible he paid, \$1,100 for lost wages, \$1,050 for time spent disputing ICBC's assessment, and \$300 for non-pecuniary damages. My findings are as follows.

Injunctive relief

26. The tribunal is often asked for an order that ICBC reverse or otherwise change its finding of fault. Sometimes the request is put differently, such as a request for an order that the tribunal declare the applicant is 0% responsible for the accident, or that someone else is 100% at fault. Here, the applicant asks for a declaration that he was not at fault, and for ICBC to reinstate his accident free status.
27. Ordering someone to do something, or to stop doing something, is known as "injunctive relief". This includes an order for ICBC to revise their internal fault assessment. It also includes an order for ICBC to not increase future insurance premiums. An order declaring who is responsible for the accident, is known as "declaratory relief". Both injunctive relief and declaratory relief are outside the tribunal's small claims jurisdiction, except where section 118 of the CRTA permits it. The applicant has brought this dispute under the tribunal's small claims jurisdiction over debt or damages. There are no relevant CRTA provisions here that would permit me to grant the injunctive and/or declaratory relief sought by the applicant.

Deductible

28. The applicants provided an invoice from an autobody repair shop for repairs to their car. Although it is undated, it shows the claim was opened on December 10, 2019. Since ICBC did not dispute the invoice or whether the applicants paid it, I accept that it is for the repairs caused by the collision.
29. According to the invoice, the repairs cost \$1,840.61 and the insured's portion was \$1,000.00. I infer that means the deductible was \$1,000. Since ICBC assessed the applicants to be 50% responsible, I infer their portion of the deductible was \$500. ICBC has not disputed the amount the applicants are seeking for the deductible. Given my findings above about liability, I find ICBC must refund the deductible to the applicants. I order ICBC to repay the applicants \$500 for the deductible for this collision.

Stress and anxiety

30. Mr. Warren bears the burden of establishing his claim for stress and anxiety. However, he did not provide any evidence in support of his claim for mental distress such as medical records or statements from family members or friends who witnessed his distress.
31. There are some situations, known as "peace of mind" contracts, where damages are allowed for disappointment, mental distress, inconvenience or upset, such as a lost holiday or for damaged wedding photography. However, I find this is not one of those situations. While I accept that Mr. Warren was frustrated with how ICBC handled the applicants' claim, I find that is insufficient to warrant compensation. Similar to *Talbot v. Gill dba Lloyd's Drycleaners*, 2019 BCCRT 366, a decision not binding on me but which I find persuasive, I find Mr. Warren has not proved that his mental distress in this case was serious or prolonged. Given the overall evidence, including the lack of evidence supporting Mr. Warren's claim for mental distress, I find he is not entitled to compensation for stress and anxiety.

Wage loss

32. Mr. Warren says he suffered from benign paroxysmal positional vertigo (BPPV) caused by the stress and anxiety of addressing the liability issue with ICBC. He says he is a pilot and was unable to work due to his condition.
33. Mr. Warren provided a doctor's note dated March 20, 2020. While the note confirmed that Mr. Warren had BPPV, the doctor did not provide an opinion about its cause, how long it lasted, or if it prevented Mr. Warren from working. Mr. Warren also provided an abstract from a 2006 study entitled "Life Events and Benign Paroxysmal Positional Vertigo: A Case-Controlled Study" to support his claim, I find that Mr. Warren has not proved that his wage loss was caused by BPPV and I dismiss his claim.

Time spent

34. The tribunal does not generally award compensation for time spent on a dispute. Additionally, tribunal rule 9.5(5) (effective January 1, 2020) states that "time spent" is generally not compensable except in extraordinary circumstances, which is consistent with previous tribunal decisions. This is not an extraordinary circumstance. I dismiss the applicants' claim for compensation for time spent.

TRIBUNAL FEES, EXPENSES, AND INTEREST

35. The *Court Order Interest Act* applies to the tribunal. The applicants are entitled to pre-judgement interest on the \$500 deductible from December 15, 2020, the date I infer the applicants paid the repair shop, to the date of this decision. This equals \$4.59.
36. 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. I see no reason in this case not to follow that general rule. Since the main issue in dispute was the liability assessment, I find that even though the applicants were largely unsuccessful with their other claims, it is unlikely ICBC would have reversed its liability finding before this decision was issued.

Hence, I find the applicants are entitled to reimbursement of \$125 in tribunal fees from ICBC. The applicants did not claim dispute related expenses.

ORDERS

37. I order that Mr. Bisbing is 100% liable for the December 9, 2019 collision.
38. Within 14 days of the date of this order, I order the respondent, ICBC, to pay the applicants a total of \$629.59, broken down as follows:
 - a. \$500 as reimbursement for the insurance deductible,
 - b. \$4.59 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 for tribunal fees.
39. The applicants are entitled to post-judgment interest, as applicable.
40. Under section 48 of the CRTA, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
41. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
42. Under section 58.1 of the CRTA, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only

be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Rama Sood, Tribunal Member