



Civil Resolution Tribunal

Date Issued: June 12, 2020

File: SC-2020-001226

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Young v. ICBC*, 2020 BCCRT 659

BETWEEN:

MR. BEVERLY YOUNG

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and

JOHN DOE

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This small claims dispute is about insurance coverage for vehicle damage. The applicant, Mr. Beverly Young, says the respondent insurer, Insurance Corporation of British Columbia (ICBC), arbitrarily determined that his vehicle damage was not from a hit and run. The applicant seeks \$1,500 from ICBC.

2. Although the applicant did not identify John Doe's role in this dispute, I infer this respondent was included to represent the unidentified owner of the vehicle that the applicant says struck his vehicle.
3. ICBC says their estimators' evidence shows the damage was the result of a single-vehicle collision.
4. The applicant is self-represented. ICBC is represented by an employee.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT 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.
7. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. whether ICBC reasonably assessed how Mr. Young's vehicle was damaged, and
 - b. whether Mr. Young's vehicle was damaged in a hit and run.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, Mr. Young must prove his claim, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
11. Mr. Young says his vehicle's front passenger bumper was damaged in a hit and run collision. While he does not know exactly when and where it happened, he believes it was in a parking lot between November 19, 2019, the last date he recalled not seeing damage, and November 23, 2019, the date he discovered the damage. Mr. Young says that he went shopping and parked his vehicle in a parking lot several times from November 19, 2019 to November 23, 2019. Mr. Young denies he was in a single vehicle collision during that time. He also denies he was in the vehicle when it was damaged. Photos of Mr. Young's vehicle showed chipped paint and horizontal scratches on the front passenger lower bumper. There were also scuff marks on the lower spoiler. There did not appear to be any dents in the bumper.
12. Mr. Young reported the damage to ICBC under section 24 of the *Insurance (Vehicle) Act (IVA)*. Section 24 of the IVA describes remedies available for hit and run accidents. By definition, a "hit and run" involves a second vehicle. ICBC provided 4 statements from its estimators who examined Mr. Young's vehicle. I summarize their statements as follows:
 - a. On November 28, 2019, EW, an express valet estimator, noted there was no vehicle paint transferred to Mr. Young's vehicle. He also stated the damage

was consistent with striking an abrasive object and that the damage was too low to be vehicle-to-vehicle impact.

- b. On December 4, 2019, DA, a claims centre estimator, examined Mr. Young's vehicle and stated the damage appeared to stop at a straight line. He speculated that the driver might have taken a corner too tightly, "scrubbed" against some object, and then stopped suddenly. He also commented that the height of the damage made it difficult to say it was from vehicle contact.
 - c. On December 31, 2019, JB, a material damage manager, viewed photos of Mr. Young's vehicle and noted the height and coarseness of the scratches and that they stopped at a vertical line. He stated the damage was not consistent with vehicle-to-vehicle impact or from a shopping cart as suggested by Mr. Young. JB stated that the driver may not have felt the impact. JB did not inspect Mr. Young's vehicle.
 - d. ICBC notified Mr. Young of its decision on January 21, 2020 that his claim was denied. On February 14, 2020, LK, a material damage operations manager, reviewed ICBC's file and photos and agreed that there was no evidence of vehicle-to-vehicle damage. Based on the location of the damage, he stated it could not possibly be caused by contact with another vehicle. He also noted there was similar type of damage on the right side front license plate bracket at a similar height. LK did not inspect Mr. Young's vehicle.
13. Based on their assessments, ICBC determined the damage was not caused by vehicle-to-vehicle impact and denied Mr. Young's section 24 claim.

Did ICBC fairly investigate and assess the damage to Mr. Young's vehicle?

14. Mr. Young says ICBC did not properly assess his claim and arbitrarily made its decision. Mr. Young says his claim was initially handled by CC, a claims adjuster, but transferred to a new claims adjuster. He says the new claims adjuster superficially examined the evidence before making her determination. He also says ICBC did not make its decision in a timely manner.

15. ICBC owes the applicant 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 Corporation of British Columbia*, 2012 BCSC 283).
16. I find that the applicant has not established that ICBC breached its statutory obligations or its contract of insurance. Mr. Young did not provide any evidence to show that ICBC acted improperly when a new claims adjuster was assigned to his damage claim. I find the claims adjuster's determination was consistent with statements from ICBC's estimators. I understand that Mr. Young may have developed a rapport with CC. However, based on the evidence before me, I do not agree that ICBC's determination would have been different if CC had remained as the claims adjuster.
17. CC advised Mr. Young in a December 5, 2019 email that it may take up to 4 weeks for ICBC to complete its assessment. It actually took approximately 6 weeks. While I agree that ICBC should comply with any timelines it provides its clients, I find that Mr. Young failed to demonstrate that the 2 to 3 week delay adversely affected how ICBC investigated and assessed his claim.
18. Based on my reasons above, I find that ICBC acted reasonably in investigating this matter and administratively assessing whether the damage to Mr. Young's vehicle was caused by a vehicle-to-vehicle collision.

Was Mr. Young's vehicle damaged in a hit and run?

19. I now turn to whether Mr. Young qualifies for hit and run coverage under section 24 of the IVA. Despite my decision above, Mr. Young must prove on a balance of probabilities that his vehicle was damaged by another vehicle. Based on the evidence before me, I find Mr. Young has failed to meet this burden. My reasons are as follows.
20. Mr. Young says ICBC should favour his statement that he was not involved in a single vehicle collision since he had a 49 year history of safe driving without any at fault claims. While Mr. Young's driving history is commendable, his credibility is not in question. Mr. Young admits that he could not say what caused the damage. I infer this to mean that he could not say whether the damage was from a vehicle-to-vehicle collision. Mr. Young also did not provide any evidence that the damage to his front bumper was caused by another vehicle.
21. JB's statement that since the damage was not severe, the driver may have scraped against an item without feeling the impact reasonably explains how Mr. Young could have damaged the vehicle, yet still not felt an impact. ICBC's damage assessment evidence is not expert opinion evidence under the tribunal's rules, since I do not have the assessor's qualifications before me. However, I find it is the best evidence about the cause of vehicle damage, given that team's role and experience. I also do not have any contrary estimator or expert evidence before me from Mr. Young. Based on the above, I find Mr. Young has not met the burden of proof and I dismiss his claims.
22. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Since Mr. Young was not successful, I find he is not entitled to reimbursement of CRT fees.

ORDER

23. I dismiss Mr. Young's claims and this dispute.

Rama Sood, Tribunal Member