



Civil Resolution Tribunal

Date Issued: June 24, 2020

File: SC-2020-001446

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dhesa v. ICBC*, 2020 BCCRT 697

B E T W E E N :

KIRPAL DHESA

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This small claims dispute is about compensation for a vehicle's total loss. The applicant, Kirpal Dhesa (also known as Paul Dhesa), says the respondent insurer,

Insurance Corporation of British Columbia (ICBC), failed to adequately compensate him for his commercial truck. In particular, Mr. Dhesa says ICBC improperly: a) deducted from his total loss payout \$1,260.77 for GST, b) required him to pay a \$500 deductible, and c) caused him to incur \$800 in parking charges while ICBC handled the claim. Mr. Dhesa claims \$2,560.77 in total.

2. ICBC says GST was payable by Mr. Dhesa, given Mr. Dhesa's truck was used and insured as a commercial vehicle. ICBC also says the \$500 deductible was payable because Mr. Dhesa is part owner of the company that damaged his truck and section 72.1 of the *Insurance (Vehicle) Regulation* (IVR) prevents a person from making a third party legal liability claim against a vehicle they own. Further, ICBC says once Mr. Dhesa agreed the truck was a total loss, it acted promptly to assess the claim and so it is not liable for the claimed \$800 in parking or storage fees.
3. Mr. Dhesa is self-represented. ICBC is represented by an employee adjuster.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. 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.
5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
6. 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.

7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Is Mr. Dhesea entitled to payment of \$1,260.77 for GST, which ICBC deducted from his vehicle's total loss payout?
 - b. Is Mr. Dhesea entitled to reimbursement of the \$500 deductible ICBC charged him?
 - c. Is Mr. Dhesea entitled to \$800 in parking charges, on the basis ICBC unreasonably took 4 months to resolve his claim?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Mr. Dhesea bears the burden of proof, on a balance of probabilities. At the outset, I note Mr. Dhesea chose not to submit any evidence or final reply arguments, despite the opportunity to do so. So, I have considered ICBC's evidence and arguments and Mr. Dhesea's brief submissions.
10. On November 20, 2018, Mr. Dhesea's commercial Ford Giraffe truck was "totaled" in an accident, where the truck was parked and damaged by a company Mr. Dhesea partly owned. These facts are undisputed. Mr. Dhesea says ICBC paid \$25,212.37 for the truck's value, but ICBC's file notes show the loss payout as \$25,250.38. Given my conclusion below, nothing turns on this minor discrepancy and below I will simply refer to the sum paid as the "payout".

Truck's value – claim for \$1,260.77 in GST

11. Mr. Dhesa submits that ICBC should have also paid him \$1,260.77 in GST on the payout, because his truck was only partially used for his “company work”. Mr. Dhesa says he was personally GST exempt and so ICBC should pay him the GST. In contrast, ICBC says what matters is the truck’s undisputed commercial use and commercial insurance status.

12. In particular, ICBC says that due to the truck’s undisputed commercial use Mr. Dhesa must claim under “the GST rebate program” through the Canada Revenue Agency (CRA). It is undisputed ICBC told Mr. Dhesa that if he is refused a GST rebate through that process he could then ask ICBC for reimbursement. There is no evidence before me about whether Mr. Dhesa ever sought a GST rebate from CRA.

13. I find the issue of whether Mr. Dhesa is entitled to a further \$1,260.77 for his truck is outside the CRT’s jurisdiction. In particular, section 176 of the IVR defines a “coverage dispute” as including a dispute between the vehicle’s owner and the insurer about “the amount payable” for the vehicle’s direct loss. I find Mr. Dhesa’s claim for the \$1,260.77 is a coverage dispute, as it relates to the amount payable by ICBC for the truck’s loss. Section 176(2) of the IVR says that subject to section 176(3), unless the parties to the coverage dispute voluntarily resolve it, the dispute “must” be resolved by arbitration under section 177 of the IVR. Section 176(3) says a coverage dispute must not be submitted more than 2 years after the loss, and here the loss occurred less than 2 years ago, on November 20, 2018. The parties have not voluntarily resolved this dispute, given this CRT proceeding. The CRT is not arbitration within the meaning of section 177 of the IVR. There is no discretion in the above provisions. So, I find Mr. Dhesa’s claim for the \$1,260.77 must be resolved through arbitration and so the CRT lacks jurisdiction to resolve this claim. Given this, I refuse to resolve this claim under section 11(1)(a)(i) and (1)(e) of the CRTA.

Claim for \$500 deductible

14. Mr. Dhesa submits that when a driver is not at fault their deductible should be waived, but was not done in his case. I infer he argues that he should not have to access his own collision insurance, but rather his company should cover the loss. It is undisputed Mr. Dhesa's own policy's collision coverage required a \$500 deductible.
15. Mr. Dhesa does not address the implications of his ownership of the company that caused his truck's damage. As submitted by ICBC, section 72.1 of the IVR falls within Part 6, which deals with third party liability insurance coverage. Section 72.1 says ICBC must not indemnify an insured for loss or damage to property owned or rented by the insured. I agree with ICBC that the effect of this is that Mr. Dhesa was required to access his own collision coverage and pay ICBC the applicable \$500 deductible. Again, this is because section 72.1 precluded his filing a third party claim against himself (as the company's part owner) for the truck's loss. I dismiss Mr. Dhesa's claim for the \$500 deductible.

Claim for \$800 in parking fees

16. Mr. Dhesa claims \$800 in parking fees or storage, for what he describes as a 4-month delay while ICBC investigated his claim.
17. I find the evidence shows that between the November 20, 2018 accident date and late February 2019, a 3-month period, ICBC investigated Mr. Dhesa's claim. In December 2018, ICBC advised Mr. Dhesa the truck's repair estimate was between \$30,000 and \$40,000, with the truck's value at between \$20,000 to \$30,000. ICBC said the vehicle was a total loss. However, at that point, Mr. Dhesa said he would rather have the truck fixed, as the type was hard to find.
18. According to ICBC's file notes, in early January 2019 Mr. Dhesa did not respond to ICBC's follow-up calls asking him what he wanted to do about his truck claim, with ICBC saying it would give him \$25,215.38 as a payout. On February 4, 2019, Mr. Dhesa advised that he was asking around at mechanic shops to see if the truck

could be repaired, but he found there was a 2-month wait. I accept this undisputed evidence.

19. ICBC says the commercial pay parking lot is where Mr. Dhesa admits he always stored the truck in any event. Again, this is undisputed and I accept this evidence. As I have found above, at least until February 4, 2019 Mr. Dhesa was looking into whether the truck could be repaired, which I find was his choice and not ICBC's responsibility. After that, the parties communicated about the GST issue, but the records show ICBC requested the truck's towing on February 15, 2019. ICBC's tow request was only 11 days after Mr. Dhesa agreed to the total loss, a period I find reasonable.
20. Based on the evidence before me, I find Mr. Dhesa has not proved ICBC unreasonably delayed its investigation, given the evidence shows Mr. Dhesa chose to pursue repair but ultimately conceded that was not going to be feasible.
21. Given my conclusions above, I find I do not need to address in detail the value of Mr. Dhesa's claimed damages. I note the only evidence in support was filed by ICBC, a March 15, 2019 receipt for \$800, which on its face says covered the entire period between November 15, 2018 and March 15, 2019. As noted above, the accident occurred on November 20, 2018 and Mr. Dhesa chose to pursue repairs at least until February 4, 2019 and ICBC requested the truck's towing 11 days later. Given these circumstances, I find Mr. Dhesa has not proved a loss related to the truck's storage.
22. For the reasons set out above, I dismiss Mr. Dhesa's claim for the \$800 in parking fees.

Conclusion

23. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to the recovery of their CRT fees. I see no reason to deviate from that practice here. As Mr. Dhesa was unsuccessful, I dismiss his claim for

reimbursement of CRT fees. ICBC did not pay fees. No dispute-related expenses were claimed.

ORDERS

24. I refuse to resolve Mr. Dhesa's claim for \$1,260.77 for his truck's value, under section 11 of the CRTA. I dismiss Mr. Dhesa's remaining claims.

Shelley Lopez, Vice Chair