



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Trenaman v. ICBC*, 2020 BCCRT 699

BETWEEN:

CLAYTON TRENAMAN

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and

BRENDA GAY-LYNN SCOTT

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred on October 15, 2019 (accident) between the applicant, Clayton Trenaman, and the respondent, Brenda Gay-Lynn Scott. The respondent Insurance Corporation of

British Columbia (ICBC) insures Ms. Scott. At the time of the accident, Mr. Trenaman's vehicle was uninsured.

2. ICBC internally concluded that Mr. Trenaman was 100% at fault for the accident. Mr. Trenaman says ICBC breached its duty in investigating the accident and assigning fault. He seeks a finding that Ms. Scott is 100% at fault for the accident, and \$3,000 in damages to fix his vehicle.
3. Ms. Scott and ICBC say ICBC correctly determined that Mr. Trenaman is 100% at fault for the accident.
4. Mr. Trenaman represents himself. An ICBC employee represents Ms. Scott and ICBC.

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. 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. Most of the argument in this dispute amounts to a "he said, she said" scenario, with each party calling into question the credibility of the other. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required in

all cases where credibility is in issue. I have considered the CRT's mandate of proportionality and a speedy resolution of disputes. I am satisfied that I can assess and weigh the evidence and submissions before me without holding an oral hearing

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 tribunal considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. Who is responsible for the accident?
 - b. Did ICBC breach any duty in investigating the accident and assessing fault?
 - c. Is Mr. Trenaman entitled to a remedy and, if so, what?

EVIDENCE AND ANALYSIS

10. In a civil claim, such as this one, the applicant Mr. Trenaman must prove his claim on a balance of probabilities. Although I have reviewed all the parties' evidence and submissions, I refer only to that which is needed to explain my decision.

The Accident

11. The following facts are not in dispute. Mr. Trenaman was south-bound on Yale Road in Chilliwack and stopped in a light controlled intersection at Hodgins Road, in the left-hand turn lane, waiting to make a left turn. Ms. Scott was driving north-bound on Yale Road, straight through the same intersection in the middle of 3 lanes, with the furthest left being a left-hand turn lane. Mr. Trenaman made his left turn and Ms. Scott's vehicle struck Mr. Trenaman's vehicle. The traffic light's colour at the time of collision is the central issue in dispute.

12. ICBC submitted photos of Ms. Scott's damaged vehicle. Mr. Trenaman submitted one photo of his damaged vehicle. Based on those photos, I find that the front right headlight and corner of Ms. Scott's vehicle struck the right rear corner and panel of Mr. Trenaman's vehicle, behind the rear wheel.
13. Mr. Trenaman says Ms. Scott entered the intersection on a red light and is therefore at fault for the accident. ICBC says Mr. Trenaman must show that Ms. Scott was negligent, otherwise he is at fault for the accident because he was turning left. ICBC says there is no clear evidence of the light's colour at the time of the accident and therefore Mr. Trenaman has failed to prove Ms. Scott was negligent.
14. ICBC provided its file notes as evidence. The notes include "statements" from both drivers and one independent witness (CR), which are telephone notes from ICBC adjusters. There are no written statements of any kind. The telephone notes are not direct evidence but are hearsay.
15. The CRT has the discretion to admit evidence that would not normally be admissible in court proceedings, including hearsay. In *Medel v. Grewal*, 2019 BCCRT 596, a tribunal vice chair accepted similar hearsay evidence on the basis that ICBC, as part of its standard procedures when investigating an accident, receives oral reports from witnesses and records those summaries in its file. Although prior CRT decisions are not binding on me, I agree with and adopt the vice chair's reasoning. I find these statements admissible. I will weigh each statement in my analysis below.
16. I will turn first to Mr. Trenaman's evidence. On the day of the accident Mr. Trenaman told ICBC that his light had turned yellow and was about to turn red and that he wanted to clear the intersection. Two days later Mr. Trenaman told ICBC that he saw Ms. Scott's coming toward him while he was waiting to turn left on a yellow light. He also said Ms. Scott came through the intersection on a red light.
17. Ms. Scott, however, told ICBC that she entered the intersection on a green light when Mr. Trenaman turned left in front of her. A few days later Ms. Scott said that

her light was yellow when she entered the intersection. A few weeks later Ms. Scott said that her light turned yellow as she entered the intersection and that Mr. Trenaman turned left on a red light.

18. I give no weight to Ms. Scott's evidence on the light's colour. Ms. Scott's 3 statements give 3 different answers about the intersection light. I find they are internally inconsistent with no explanation as to why. While the statements take the form of a third party's telephone notes, I expect an ICBC adjuster to accurately record an important but basic fact in an accident investigation, such as the colour of the light. Ms. Scott did not provide any evidence or submission to dispute the accuracy of these notes, although was provided with the opportunity to do so and is represented by ICBC. I find I cannot rely on Ms. Scott's statements.

19. I now turn to evidence of an independent witness, CR, who was standing at a nearby gas station when the accident occurred. The day after the accident CR told ICBC he saw Ms. Scott's light change colour, saw her enter the intersection then saw Mr. Trenaman turn left. CR did not say which colour the light changed to. CR said that he thought Mr. Trenaman's light was red when he made his left turn. Later that same day CR said that the light was red when he looked up at it, but it could have been yellow when the accident occurred. CR said he was not entirely sure about the light's colour at the time of the accident.

20. I find CR is an uninterested, independent witness who saw the accident. I give his statement significant weight. I find that CR did not see the light's colour at the time Ms. Scott entered the intersection, or at the time of the accident. However, I accept CR's statement that Ms. Scott entered the intersection before Mr. Trenaman turned left, particularly as CR was watching the accident scene rather than the lights. I find CR's description of the order of events is reliable.

21. This leaves Mr. Trenaman's evidence about the light's colour. In his submissions Mr. Trenaman says that he turned left on a red light and that this is consistent with his statements to ICBC. I disagree. Mr. Trenaman told ICBC that his light was about to turn red when he cleared the intersection. I accept, and prefer, Mr. Trenaman's

earlier statement to ICBC as it is closer in time to the accident and thus I find it more reliable. I find it more likely that Mr. Trenaman started his turn on a stale yellow light.

22. Mr. Trenaman says that Ms. Scott entered the intersection on a red light, which is consistent with his statement to ICBC. However, he also said that he saw Ms. Scott approaching the intersection on a yellow light. Mr. Trenaman provided no evidence about how far away Ms. Scott was when he saw her, whether she appeared to be slowing down or speeding up, or her estimated speed compared to any other vehicles on the road.
23. As noted above, I accept that Ms. Scott entered the intersection and then Mr. Trenaman started his left turn, based on CR's statement. As I have found that Mr. Trenaman turned left on a stale yellow light, and he turned left after Ms. Scott entered the intersection, I further find that Ms. Scott entered the intersection on a yellow light.
24. Mr. Trenaman says that the damage to the rear panel and corner of his vehicle show that he was hit by Ms. Scott when he had almost completed his left turn. I agree. However, I do not agree that this proves that Ms. Scott entered the intersection on a red light. It shows that Mr. Trenaman had turned almost entirely across the middle lane of traffic and that Ms. Scott had crossed into the intersection before the accident occurred. I find this does not assist me in determining what colour the light was when Ms. Scott entered the intersection.
25. Now that I have established the facts, I turn to the law.
26. Section 174 of the *Motor Vehicle Act* (MVA) says that a driver turning left must yield the right of way to through traffic that is either in the intersection or so close that it is an immediate hazard but, having yielded and given a signal, the driver may turn left and the oncoming traffic must yield the right of way to the left hand turner. I agree with ICBC that the onus is on a left turning driver to prove that they started to turn

left when it was safe to do so (see *Nerval v. Khera*, 2012 BCCA 436 at paragraph 33).

27. A left turning driver can reasonably assume that approaching drivers will obey the rules of the road, unless there is reason to know otherwise (see *Yamakami v. Whitley*, 2012 BCSC 57 at paragraph 38). However, left turning drivers are not entitled to proceed blindly on the assumption that oncoming drivers will obey the rules of the road (see *Henry v. Bennett*, 2011 BCSC 1254 at paragraph 72). I interpret these cases to say that, while a left-hand turner can assume other vehicles will obey the rules of the road, they cannot rely on that blindly and fail to keep a reasonable look out.
28. Section 128(1)(a) of the MVA says that a driver approaching an intersection and facing a yellow light must stop before entering the marked crosswalk unless they cannot stop safely. The onus is on Ms. Scott to prove that she was unable to stop safely in all the circumstances (see *Ziani v. Thede* 2011 BCSC 895).
29. Based on Mr. Trenaman's statement to ICBC, I find he saw Ms. Scott approaching the intersection when his light was still yellow. He provided no explanation why he thought Ms. Scott would stop at the yellow light. As I find Ms. Scott entered the intersection before Mr. Trenaman started his left turn, I find Mr. Trenaman has failed to prove that it was safe for him to start his turn. As a result, he was required to yield the right of way to Ms. Scott and must bear some responsibility for the accident.
30. However, I find that Ms. Scott must also bear some responsibility for the accident, as she failed to stop at the yellow light, and has provided no evidence that it was unsafe to do so. On balance, I find Mr. Trenaman 75% at fault for the accident, and Ms. Scott 25% at fault.

Breach of Duty

31. To succeed against ICBC Mr. Trenaman must prove, on a balance of probabilities, that ICBC breached its statutory obligations, or its insurance contract, or both, to investigate the accident and determine liability. In this case, I must first determine

whether ICBC had any statutory or contractual obligations toward Mr. Trenaman, given that Mr. Trenaman's vehicle was uninsured at the time of the accident.

32. Mr. Trenaman acknowledges that his vehicle insurance had lapsed at the time of the accident. Based on ICBC's insurance policy summary, and its November 4, 2019 letter to Mr. Trenaman, I find Mr. Trenaman did not have valid vehicle insurance with ICBC at the time of the accident.
33. I also find Mr. Trenaman was not insured for this accident under his driver's certificate either. As set out in the *Insurance (Vehicle) Regulations* a driver's certificate of insurance is associated with a valid driver's licence and provides additional insurance coverage in limited situations (see sections 1, 45, and 49). A driver's certificate does not provide insurance coverage for an accident where the insured is driving their own vehicle, such as in this case.
34. Mr. Trenaman's situation differs from a driver who is insured at the time of the accident but is later found to be in breach of their insurance policy. In such cases the courts have found a contractual relationship may still exist between the driver and ICBC, where ICBC treats the driver as an insured or otherwise leads the driver to believe they are insured for the accident (see *I.C.B.C v. Hosseini*, 2006 BCCA 4, at paragraphs 60-65). That is not the case here. Based on ICBC's file notes I find Mr. Trenaman was advised that he was uninsured during his first contact with ICBC.
35. Overall, I find Mr. Trenaman was not insured by ICBC at the time of this accident. As there was no contractual relationship of insurance between Mr. Trenaman and ICBC, I find ICBC had no contractual duty to Mr. Trenaman to act in good faith in investigating the accident and apportioning fault.
36. I now turn to ICBC's statutory duty. The *Insurance (Vehicle) Act* creates a statutory duty for ICBC to assist an insured by investigating and negotiating a settlement where it is necessary (section 74). It also allows ICBC to compromise or settle a claim against an insured (section 76(4)) and gives ICBC exclusive conduct and control of the defence of an action on an insured's behalf (section 74.1). These are

ICBC's obligations and rights in relation to an insured. I find these rights and obligations do not apply to Mr. Trenaman as he was not insured by ICBC at the time of the accident. Therefore, I find ICBC had no statutory duty to Mr. Trenaman in how it investigated the accident or apportioned liability.

37. I find ICBC had no contractual duty or statutory obligation toward Mr. Trenaman in relation to this accident, as he was not insured by ICBC for it. Therefore, I find ICBC did not breach any contractual duty or statutory obligation to Mr. Trenaman.
38. Even if ICBC did owe a duty to Mr. Trenaman, such as the duty it owes to an insured driver, I find ICBC has met that duty.
39. The issue is whether ICBC acted "properly or reasonably" in assigning responsibility for the accident (see *Innes v. Bui*, 2010 BCCA 322, at paragraph 33). ICBC has a duty to act promptly and fairly when investigating, assessing and attempting to resolve a claim by an insured, and against an insured (*I.C.B.C. v. Hosseini*, 2006 BCCA 4, at paragraph 71). The duty of good faith dictates that an insurer will 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 Corp. of British Columbia*, 2012 BCSC 283, at paragraph 249).
40. The evidence before me shows that, before deciding on fault, ICBC obtained statements from Mr. Trenaman, Ms. Scott and CR. ICBC canvassed nearby gas stations for video footage and asked about dashboard cameras. ICBC found both drivers' statements conflicted with each other and that CR's statement was not determinative of the light's colour when Ms. Scott entered the intersection. ICBC thus determined there was no clear evidence on the light's colour and applied section 174 of the MVA to find Mr. Trenaman at fault for the accident.
41. While I disagree with ICBC's apportionment of fault, I do not find that ICBC acted in bad faith or otherwise breached any duty to act fairly in its investigation. I have weighed the witness statements differently than ICBC did. While my decision is

different than ICBC's, I find ICBC's decision was not an unreasonable one. As such, even if ICBC owed a duty to Mr. Trenaman (which I have found it did not), I find that ICBC met that duty. I dismiss Mr. Trenaman's claim against ICBC for breach of duty.

Remedy

42. Mr. Trenaman seeks \$3,000 in damages to fix his car. Based on his photo in evidence, I accept that Mr. Trenaman's car was damaged in the accident. However, Mr. Trenaman has not provided any submissions or any evidence to support the value of his \$3,000 claim. Parties are told to provide all relevant evidence to the CRT and are given an opportunity to do that. Mr. Trenaman has not submitted any estimate or invoice for repair work, or other evidence supporting his claim for damages. Without this kind of information, I have no basis to quantify the value of damages. As the applicant, the burden is on Mr. Trenaman to prove his claim for damages and he has failed to do so. I dismiss Mr. Trenaman's claim for damages.

43. 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. Trenaman was unsuccessful in his claim for damages, I find he is not entitled to reimbursement of any CRT fees or dispute-related expenses.

ORDERS

44. I dismiss Mr. Trenaman's claims against ICBC. I also dismiss Mr. Trenaman's claims against Ms. Scott, as the claimed damages are unproven.

Sherelle Goodwin, Tribunal Member

