



Civil Resolution Tribunal

Date Issued: June 24, 2020

File: SC-2019-010239

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Satanove v. ICBC*, 2020 BCCRT 698

BETWEEN:

HARRY SATANOVE

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and HONG
YU JI

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred on September 12, 2019 (accident). The applicant, Harry Satanove, rear-ended a vehicle driven by the respondent, Hong Yu Ji and in which Mr. Ji's wife, YJ, was a passenger. The respondent insurer, Insurance Corporation of British Columbia

(ICBC), internally concluded that Mr. Satanove was 100% at fault for the accident. Liability for the accident is not in dispute.

2. ICBC says Mr. Ji and YJ were injured in the accident. It paid for their treatments and settled their personal injury claims. Mr. Satanove says the accident was minor. Mr. Satanove seeks a declaration that Mr. Ji and YJ were not injured in the accident. Mr. Satanove also seeks an order that he be permitted to re-pay ICBC for the cost of repairing Mr. Ji's vehicle so that he can maintain his claims-free status. Mr. Satanove also seeks \$3,000 but he did not state what that amount was for.
3. ICBC says that it has exclusive jurisdiction to assess and settle damage claims arising from motor vehicle accidents.
4. Mr. Satanove is self-represented. ICBC and Mr. Ji are represented by CT, an ICBC 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. Did ICBC breach its statutory obligations in investigating the accident?
 - b. If yes, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, as the applicant, Mr. Satanove must prove his claim on a balance of probabilities. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
11. The parties agree that on September 12, 2019 Mr. Satanove's vehicle was stopped directly behind Mr. Ji's vehicle at the intersection of Oak Street and King Edward Avenue in Vancouver. Mr. Satanove submitted dashcam footage that I infer was taken from inside Mr. Ji's vehicle. It showed Mr. Ji's vehicle stopped at a red traffic light. A car horn honked several times rapidly. Then Mr. Ji's vehicle moved forward slightly, which I infer occurred after it was struck by Mr. Satanove's vehicle. Mr. Satanove admits he struck Mr. Ji's vehicle and also admits he was at fault. The parties agree that repairs to Mr. Ji's vehicle cost \$730.35. The parties did not provide the repair costs, if any, for Mr. Satanove's vehicle.
12. Mr. Ji and YJ both underwent acupuncture treatments after the accident. According to the acupuncturist's notes, Mr. Ji and YJ both experienced back pain after the accident. YJ also experienced headaches, neck and shoulder pain, and poor sleep

quality. Mr. Ji has undergone 26 acupuncture sessions and YJ 24 acupuncture sessions so far. ICBC paid for their treatments. In addition, ICBC settled Mr. Ji and YJ's claim for pain and suffering for \$1,000 each.

13. Mr. Satanove wishes to pay the repair costs for Mr. Ji's vehicle so that he can maintain his accident free status. However, he says ICBC refused to allow him to do so since it approved Mr. Ji and YJ's injury claims. Mr. Satanove says the accident was minor and denies that Mr. Ji or YJ suffered injuries. He says ICBC should not have paid damages for their injury claims on Mr. Satanove's behalf.
14. ICBC says section 74.1 of the *Insurance (Vehicle) Regulation* (IVR) gives ICBC complete discretion to assess and settle claims.

ICBC's assessment

15. ICBC owes Mr. Satanove 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 Mr. Satanove did not prove that ICBC breached its duty. My reasons are as follows.
16. Mr. Satanove says the impact was minor and denies it was severe enough to cause bodily injuries. ICBC relies on the British Columbia Supreme Court's decision in *Gordon v. Palmer*, 1993 CanLII 1318 (BCSC) and says that personal injuries cannot be measured by the extent of physical damage to vehicles. Mr. Satanove says the decision in *Gordon* is about injuries from slip and fall accidents and does not apply. I disagree. *Gordon* was about a rear end motor vehicle accident with minimal vehicle

damage. Justice Thackray stated in his decision “[i]n the case at bar the limited amount of motor vehicle damage is not, in my opinion, the yardstick by which to measure the extent of the injuries suffered by the plaintiff. No evidence was called to substantiate the theory of ‘no physical damage: no injury’.” This reasoning in *Gordon* has been cited in numerous motor vehicle court cases.

17. Mr. Satanove also says Mr. Ji’s injuries were from a motor vehicle accident he was in on September 10, 2019, 2 days before the subject accident. ICBC says that Mr. Ji’s vehicle was struck while parked in a parking lot and was unoccupied at the time. Mr. Satanove did not dispute this statement. For this reason, I find the September 10, 2019 accident is irrelevant in determining the cause of Mr. Ji’s injuries.
18. Mr. Satanove also says there was no medical diagnosis of Mr. Ji and YJ’s injuries and that their physical complaints could have been pre-existing. He says the acupuncturist who treated Mr. Ji and YJ, is not a licensed physician. First, Mr. Satanove did not provide any evidence that either Mr. Ji or YJ had pre-existing conditions. Second, section 88(1) of the IVR states that ICBC must pay for all reasonable accident-related injury treatment expenses that are provided by a health care practitioner, including acupuncture treatments. However, section 88(1) does not require a party to obtain a diagnosis from a licensed medical physician in order to qualify for treatments. So, I find it was reasonable for ICBC to determine that Mr. Ji and YJ were injured by the accident and required treatments based on the acupuncturist’s notes.
19. Mr. Satanove denies that ICBC has sole discretion to settle accident claims. He says despite section 74.1 of the IVR, ICBC’s assessment can still be challenged before the CRT. Section 74.1 states that upon assuming the defence of an action for damages brought against an insured, ICBC has exclusive conduct and control of the defence of the action and is entitled to admit liability on behalf of the insured and settle the action. Section 133(1) of the CRTA states that the CRT has jurisdiction over an accident claim concerning the entitlement to benefits under the *Insurance (Vehicle) Act*, and liability. So, I agree with Mr. Satanove that ICBC’s assessment

can be challenged before the CRT. As discussed above, in order to successfully challenge ICBC's assessment, the insured must show that ICBC breached its duty to act in good faith when investigating and assessing a claim. I find that ICBC did not breach its duty when investigating Mr. Ji and YJ's injury claims.

20. Given the above, I find I do not need to address the issue of remedies. However, even if ICBC had breached its duty, I would not have awarded the damages Mr. Satanove claimed in any event. The CRT 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 CRT declare the applicant is 0% responsible for the accident, or that someone else is 100% at fault. Here, Mr. Satanove asks for a declaration that Mr. Ji and YJ were not injured in the accident. Mr. Satanove also seeks an order that he be permitted to re-pay ICBC for the cost of repairing Mr. Ji's vehicle so that he can maintain his claims-free status.
21. 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 CRT's small claims jurisdiction, except where section 118 of the CRTA permits it. Mr. Satanove brought this dispute under the CRT'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 Mr. Satanove.
22. In addition, Mr. Satanove claimed \$3,000. However, he did not provide any explanation of what those damages are for or how they were calculated.
23. Based on my reasons above, I dismiss Mr. Satanove's claims against ICBC and Mr. Ji.

DISPUTE RELATED FEES AND EXPENSES

24. 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. Satanove was unsuccessful in his claim, I dismiss his claim for CRT fees or dispute-related expenses. Neither respondent claimed reimbursement of dispute-related expenses.

ORDER

25. I dismiss Mr. Satanove's claims and this dispute.

Rama Sood, Tribunal Member