



Civil Resolution Tribunal

Date Issued: June 29, 2020

File: SC-2020-000548

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Timms v. ICBC*, 2020 BCCRT 719

BETWEEN:

CHRISTOPHER TIMMS

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and MANJIT
SINGH SANGRA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This small claims dispute is about a motor vehicle collision that occurred on December 13, 2019 (accident). The applicant, Christopher Timms, rear-ended a vehicle driven by the respondent, Manjit Singh Sanghera.

2. The respondent insurer, Insurance Corporation of British Columbia (ICBC), is the parties' insurer. ICBC internally concluded that Mr. Timms was 100% at fault for the collision.
3. Mr. Timms says the collision occurred because Mr. Sanghera stopped suddenly and without warning. He says ICBC did not follow case law about assessing liability for rear-end collisions. Mr. Timms seeks an order instructing ICBC to stop raising his insurance rates. He also seeks \$2,500 for the time and expense he has spent on this claim.
4. ICBC says that it is not the correct respondent and states that Trotter and Morton Building Technologies Inc., the registered owner of the vehicle Mr. Sangra was driving, is the correct respondent.
5. Mr. Timms is self-represented. The respondents are represented by LB, an ICBC employee.

JURISDICTION AND PROCEDURE

6. 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.
7. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary.

8. 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.
9. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers is not within the CRT's jurisdiction. A dispute that involves one or more issues that are within the CRT's jurisdiction and one or more that are outside its jurisdiction may be amended to remove those issues that are outside its jurisdiction.
10. 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.
11. In its Dispute Response, ICBC argued it is not a proper party to the claim. The British Columbia Court of Appeal held in *Innes v. Bui*, 2010 BCCA 322 that the issue of whether ICBC acted properly or reasonably in making its administrative decision to assign responsibility for a collision to a plaintiff is strictly between the plaintiff and ICBC. I am satisfied that ICBC is a properly named party in this dispute since Mr. Timms says that ICBC wrongfully determined he was 100% responsible for the accident.

ISSUES

12. The issues in this dispute are:
 - a. Did ICBC breach its statutory obligations investigating the accident and assessing fault?
 - b. Who is liable for the accident?

EVIDENCE AND ANALYSIS

13. In a civil claim such as this, the applicant bears 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.
14. The collision occurred on December 13, 2019 on United Boulevard in Coquitlam. Mr. Timms provided a 30 second dashboard camera video recording with audio of the accident (video). The video showed it was dark and raining. Mr. Sangra's vehicle merged from the left in front of Mr. Timms. The traffic control signal at the approaching intersection was red and the parties' vehicles were decelerating. As the parties approached the intersection, the traffic control signal turned green but the vehicles continued to decelerate. Then Mr. Sangra's brake lights turned off and both vehicles started slowly accelerating. After 4 seconds, Mr. Sangra's left turn indicator started flashing and his brake lights turned on again. Mr. Sangra's vehicle appeared to come to a full stop. Approximately 2½ seconds later Mr. Timms's vehicle struck the back of Mr. Sangra's vehicle. The parties disagree over whether Mr. Sangra's vehicle was ½ or ¾ of the way through the intersection at the time of the accident. I cannot tell from the video but I find nothing turns on this in any event.
15. Mr. Timms says he was travelling along United Boulevard when Mr. Sangra changed lanes in front of him. He says he slowed a bit to give Mr. Sangra some room to merge. He says they slowed for a red traffic light at the intersection of Golden Drive but it turned green as they approached it. He says a truck was in front of Mr. Sangra and it went through the intersection. He says Mr. Sangra "slammed" on his brakes and turned on his left turn indicator. Mr. Timms's vehicle then struck Mr. Sangra's vehicle. Mr. Timms says he was following Mr. Sangra at a reasonable distance. He says the accident occurred because Mr. Sangra stopped suddenly and without warning.
16. Mr. Sangra says he stopped for a red light at the intersection of Golden Drive and United Boulevard. He says he started moving forward when the light turned green. As he approached the centre of the intersection, he says he was momentarily

distracted by the left turn signal, which had turned red. He says he took his foot off of the gas pedal and slowed down but did not come to a full stop. He says he was approximately $\frac{3}{4}$ of the way through the intersection when he was rear ended. Mr. Sangra says it was dark and raining heavily with poor visibility. He says traffic was moving slowly and cautiously.

17. ICBC assessed Mr. Timms as 100% responsible for the accident.

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

18. To succeed against ICBC, Mr. Timms 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. Timms (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 met this standard when assessing the accident. My reasons are as follows.

20. The evidence before me shows that ICBC obtained statements from both parties, and reviewed the video provided by Mr. Timms several times. Mr. Timms says Mr. Sangra’s statement to ICBC was not consistent with the video. While I agree (see

my reasons below), I find the inconsistencies are not relevant since ICBC's claim assessment was based primarily on the video, not Mr. Sangra's statement.

21. Mr. Timms also says ICBC did not follow the British Columbia Court of Appeal decision in *Ayers v. Singh*, 1997 CanLII 3410 (BCCA) even though it referred to the case on its website. In *Ayers* the plaintiff was driving 2 vehicles behind the defendant when the defendant was confused about the traffic signal and stopped abruptly, causing a collision. The court determined the plaintiff was not liable for the accident since he tried to avoid the collision but in "the agony of the moment", chose to try to move to the empty left turn lane and then brake.
22. ICBC says that Mr. Sangra did not stop so suddenly that Mr. Timms was unable to avoid the accident. It says Mr. Timms had ample time to stop and Mr. Timms did not leave enough distance between the vehicles. It also says Mr. Timms admitted his vehicle was older and took longer to stop than Mr. Sangra's vehicle.
23. ICBC interpreted *Ayers* to mean the plaintiff was not liable because he tried his best to avoid the impact by swerving. ICBC says in Mr. Timms's case, there was no evidence that Mr. Timms tried to avoid the impact by decreasing his speed, swerving, or honking. In *Biggar v Enns*, 2017 BCSC 2290 (CanLII) the court stated at paragraph 46 that courts should look at four factors for rear-end collisions, (i) the speed of the rear vehicle; (ii) the distance between the two vehicles as they were driving along; (iii) the actions of the driver in the rear vehicle before the emergency arose, and; (iv) the actions of the driver as the emergency arose. I find that it was reasonable for ICBC to consider the second and third factors in assessing liability. I find ICBC's interpretation of *Ayers* is reasonable and consistent with other case law.
24. I find that ICBC acted reasonably in investigating the accident and administratively assigning 100% responsibility for the incident to Mr. Timms. Accordingly, I dismiss this aspect of Mr. Timms's claim.

Who is liable for the accident?

25. I must now consider whether Mr. Timms has proved on a balance of probabilities that he was not responsible for the accident. Based on the evidence before me, I find that Mr. Timms has failed to meet this burden. My reasons follow.
26. Section 162(1) of the *Motor Vehicle Act* (MVA) states that the driver of a vehicle must not follow another vehicle more closely than is reasonable and prudent, having regard for the vehicles' speed, the amount and nature of traffic, and the condition of the roadway. ICBC determined that Mr. Timms was responsible for the accident because, as the rear driver, he had a duty not to follow too closely under section 162(1) of the MVA.
27. The courts have consistently held that the onus is on the rear-ending driver to prove the collision was not their fault. In *Wright v. Mistry*, 2017 BCSC 239 and *Skinner v. Fu*, 2010 BCCA 321, the courts concluded that as a general rule the rear driver will be liable for a rear-end collision, because "normally a sudden stop does not create an unreasonable risk of harm".
28. Mr. Timms relies on *Ayers* and says it should be followed because it is on ICBC's website and the facts are almost identical to the subject accident in this dispute. ICBC says *Ayers* can be distinguished on the facts. I agree.
29. In *Ayers*, the parties' vehicles were travelling at 55 km to 60 km per hour and accelerating when the defendant stopped suddenly at a green light. Also, the plaintiff tried to avoid the accident by swerving. The court stated generally that a prudent driver should be prepared for contingencies of an emergent nature depending on the particular circumstances (paragraph 8). It then noted that the drivers were expecting to go on through the traffic control signal and were accelerating. When confronted with the plaintiff's sudden stopping, there was insufficient time for the plaintiff to brake and stop in a timely manner. Under these particular circumstances, where it was very difficult to stop, the court agreed the plaintiff was not negligent.

30. In this case, the vehicles appeared to be travelling much slower than 55 km per hour (I note vehicles in the lane to the right were passing the parties' vehicles). Mr. Timms says he took evasive action and tried to avoid the accident by slowing down. However, I find that the video showed Mr. Timms's vehicle was travelling at a steady speed until it struck Mr. Sangra's vehicle. It was not evident that he decelerated after Mr. Sangra's brake lights lit up. Also, I did not hear in the video that Mr. Timms honked his horn to alert Mr. Sangra of a possible collision. I find these are significant facts that distinguish the cases on the facts.
31. Mr. Timms says Mr. Singh was negligent because he stopped suddenly at a green light, tried to make a left turn from straight through lane, and tried to make a left turn when the left turn lane traffic signal light was red. I will address each in turn.
32. Was Mr. Singh negligent for stopping suddenly? I find that while Mr. Singh stopped unexpectedly, he did not stop suddenly or abruptly. Mr. Timms stated that he was driving a 23 year old pick up truck that he estimated was twice the weight of Mr. Singh's vehicle. He also told ICBC that he had an older vehicle and couldn't stop in time. I find that Mr. Timms should have taken his vehicle's condition into account when he determined how much distance he should have left between his and Mr. Sangra's vehicles.
33. Was Mr. Singh negligent for signaling a left turn while in the wrong lane and when the left turn traffic signal was red? I find Mr. Timms has not proved either of these events were the proximate cause of the accident. In other words, Mr. Timms did not show that the accident occurred because Mr. Sangra signaled to turn left or was in a straight through lane. The accident occurred because Mr. Timms was following too closely.
34. Mr. Timms says there are inconsistencies between Mr. Sangra's statement and the video. I infer Mr. Timms's meant from this that Mr. Sangra's statement is unreliable. Upon comparing Mr. Sangra's statement to the video, I note that Mr. Sangra did not state that he turned on his left turn indicator or that he pressed his brake pedal. I

find both of these factors are significant for assessing liability. I agree with Mr. Timms and I give Mr. Sangra's statement limited weight.

35. However, Mr. Timms's version of the accident is not fully supported by the video either. The video does not show that Mr. Sangra "slammed" his brakes or stopped suddenly. I find the video shows that Mr. Sangra's vehicle was stopped for at least 2 seconds before he was rear ended. As stated above, I find the accident occurred because Mr. Timms was following too closely.
36. As a result, I find Mr. Timms is not entitled to a different liability assessment for the accident and I dismiss his claim.

Injunctive relief

37. 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. Timms 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. Timms asks for an order instructing ICBC to stop raising his insurance rates.
38. 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. Timms 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. Timms.

DISPUTE RELATED FEES AND EXPENSES

39. 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. Timms was unsuccessful in his claim, I dismiss his claim for CRT fees or dispute-related expenses.

40. Mr. Timms claimed \$2,500 for the time and expense he has spent on this dispute. Except in extraordinary cases, the CRT does not award compensation for a party's time spent dealing with a CRT dispute. I find that there is nothing extraordinary about this dispute that would justify deviating from this general rule. I dismiss Mr. Timms's claim for time spent.

ORDER

41. I dismiss Mr. Timms's claims and this dispute.

Rama Sood, Tribunal Member