



Civil Resolution Tribunal

Date Issued: July 3, 2020

File: SC-2019-010879

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rimanic v. Choi*, 2020 BCCRT 745

BETWEEN:

LEO RIMANIC

APPLICANT

AND:

KEVIN KAI-LUN CHOI, PUI KI KWOK, and
INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This small claims dispute is about liability for a motor vehicle accident. The applicant, Leo Rimanic, says he was improperly assessed fault for a September 25, 2019 accident that occurred between him and the respondent driver, Kevin Kai-Lun Choi.

2. The respondent Pui Ki Kwok is the owner of the vehicle Mr. Choi was driving. The respondent insurer, Insurance Corporation of British Columbia (ICBC), internally assessed Mr. Rimanic 100% at fault for the accident.
3. Mr. Rimanic says that Mr. Choi was speeding and not paying attention and that ICBC did not do a proper investigation in assessing fault. Mr. Rimanic seeks reimbursement of his \$300 deductible and an order that ICBC's liability assessment be overturned.
4. ICBC says it is not a proper party to the dispute and that it assigned fault according to the provisions of the *Motor Vehicle Act* (MVA).
5. Mr. Rimanic is self-represented. The respondents are represented by an ICBC adjuster.

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. Some of the evidence in this dispute amounts to a "he said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions

before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an issue.

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. 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.
10. As a preliminary matter, I will address ICBC's submission that it is not a proper respondent to Mr. Rimanic's claims. A key issue in this dispute is whether ICBC acted reasonably in assigning full responsibility for the collision to the applicant. 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 full responsibility for the collision to the plaintiff is strictly between the plaintiff and ICBC. The same applies to the applicant Mr. Rimanic's dispute. On this basis, I find that ICBC is a properly named party.

ISSUES

11. The issues in this dispute are:
 - a. Did ICBC breach its statutory obligations in investigating the accident and assessing fault?
 - b. Who is liable for the accident? If not Mr. Rimanic, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant Mr. Rimanic bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

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

13. As noted above, Mr. Rimanic seeks a fresh liability determination, but he does not say what he believes the determination should be. He says that ICBC assessed him 100% at fault only 4 hours after he reported the accident online, without him speaking to an adjuster or providing any evidence. He says ICBC determined his fault based solely on the fact that he was reversing his vehicle, without considering any other factors. Mr. Rimanic argues that ICBC should have inspected his vehicle damage to properly investigate fault for the accident.

14. To succeed in this claim, Mr. Rimanic 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 responsibility solely to Mr. Rimanic: see *Singh v. McHatten*, 2012 BCCA 286 referring to *Innes v. Bui*, 2010 BCCA 322.

15. ICBC owes Mr. Rimanic 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 Corp. of British Columbia*, 2012 BCSC 283.

16. The following underlying facts are undisputed. On September 25, 2019, the parties were in a condominium building underground parking lot. Mr. Rimanic was reversing his vehicle out of a parking stall and Mr. Choi was driving straight down the aisle when their cars collided. The driver's side rear bumper of Mr. Rimanic's vehicle contacted the front passenger side bumper of the vehicle Mr. Choi was driving. The posted speed limit in the parking lot is 10 kilometres per hour. The parties agree there were no independent witnesses or videos of the collision.
17. ICBC says it assessed liability based on Mr. Rimanic's initial online report of the accident in which Mr. Rimanic says his vision when backing out of his parking stall was completely obstructed by a wall to his right, which is the direction Mr. Choi came from. ICBC said Mr. Rimanic was assessed 100% at fault because the onus is on the reversing driver and Mr. Choi had the right of way.
18. Mr. Rimanic says that he is "convinced" that inspecting his vehicle's damage would show that Mr. Choi was speeding, but that ICBC declined to inspect his vehicle. ICBC did not make any submissions specifically on the issue of whether inspecting Mr. Rimanic's vehicle would have assisted its investigation. However, given that ICBC was aware of Mr. Rimanic's allegation that Mr. Choi was speeding, and it declined an opportunity to inspect Mr. Rimanic's vehicle damage, I infer that ICBC decided an inspection would not impact the liability determination.
19. I find that the extent of ICBC's obligation to reasonably investigate an accident varies with the severity of the accident. In this accident, there is no evidence of any injuries. Mr. Rimanic submits that his vehicle damage was \$8,000 and ICBC declared the vehicle Mr. Choi was driving a total loss, although there is no documentation in evidence supporting the amount of damage to either vehicle. Nevertheless, I find from the photographs in evidence that the damage to the vehicles was moderate.
20. While it is possible that Mr. Choi's speed could have impacted ICBC's liability assessment, I find that Mr. Rimanic has not shown that further investigation by ICBC, such as by an estimator, would establish Mr. Choi's vehicle speed based on

an inspection of the vehicle's damage. The standard for investigation is not perfection and Mr. Rimanic did not see Mr. Choi's vehicle prior to the collision, so Mr. Rimanic himself is speculating that Mr. Choi was speeding. Given the severity of this accident, I find that ICBC acted reasonably and proportionately in declining to inspect Mr. Rimanic's vehicle or further investigate Mr. Rimanic's speculative allegation that Mr. Choi was speeding.

21. I note that Mr. Rimanic's collision insurance is not with ICBC, but with a third-party insurer. Mr. Rimanic questions whether this may have played a role in ICBC assessing him 100% at fault for the accident. However, Mr. Rimanic provided no evidence in support of this submission of potential bias.
22. I find that ICBC reasonably considered Mr. Rimanic's and Mr. Choi's statements about the accident circumstances. Mr. Choi said that Mr. Rimanic started to reverse as Mr. Choi was driving past his vehicle. Given Mr. Rimanic's own admission that he was reversing his vehicle with obstructed vision and the relevant MVA provisions discussed further below, I find that ICBC made a reasonable assessment of fault.
23. In summary, I find Mr. Rimanic has not shown that ICBC breached its statutory obligations or its contract of insurance. Therefore, I dismiss Mr. Rimanic's claim against ICBC.

Who is liable for the accident?

24. I turn now to my assessment of who is liable for the accident, noting that I am not bound by ICBC's internal determination. As noted above, Mr. Rimanic did not submit what he thinks the liability determination should be in this case. Mr. Rimanic says that he believes Mr. Choi could have avoided the accident if he had been paying attention and obeying the speed limit, and so, I infer he believes Mr. Choi should be held 100% responsible.
25. In this dispute, ICBC relies on MVA section 193 that says a person must not reverse their vehicle unless it can be done safely. ICBC also relies on MVA section 169 that

says a person must not move a vehicle that is stopped unless the movement can be made safely and after giving the appropriate signal.

26. While section 193 of the MVA does not impose absolute liability on a driver backing up, it does impose a high standard of care because a driver's visibility is reduced when driving in reverse. The reversing driver must take all reasonable precautions and take the time to look behind him and around him both before and during the time his car is backing up: see *Araujo v. Vincent*, 2012 BCSC 1836.
27. Mr. Rimanic admits that as he was backing up, his vision was completely obstructed by a wall to his right. Mr. Rimanic says that he was backing up very slowly, careful to avoid a pillar, also to the right of his vehicle. He says that his vehicle was completely out of his parking stall and in the aisle of travel, there for Mr. Choi to see, when the vehicle Mr. Choi was driving struck his vehicle.
28. Mr. Choi says that he was travelling at the posted speed of 10 kilometres per hour. He says that he saw Mr. Rimanic's vehicle when it was still in the parking stall and it was only when Mr. Choi was driving past it that Mr. Rimanic backed up at "normal speed" and hit the vehicle Mr. Choi was driving.
29. Mr. Rimanic relies on a video he took immediately following the accident in which Mr. Choi says he "did not see" Mr. Rimanic and that he was "in a rush". Mr. Rimanic argues that this proves Mr. Choi was not paying attention and was speeding. I disagree and I find the video unhelpful in determining whose version of the accident is correct. Mr. Choi's later statement to ICBC explains that he was not in a rush and only told Mr. Rimanic he was, as an excuse to leave because Mr. Rimanic was yelling at him. Further, I do not find Mr. Choi's statement to Mr. Rimanic that he did not see him is inconsistent with his statement to ICBC that Mr. Rimanic began to back up while Mr. Choi was driving by him. I note that in the video Mr. Choi denies he hit Mr. Rimanic's vehicle and says that Mr. Rimanic hit him.
30. Mr. Rimanic submits that the vehicles' damage proves that Mr. Choi was speeding. However, I find that expert opinion evidence is necessary to comment on the

positioning and speed of the vehicles before the impact and the associated stopping distance because these issues are outside the knowledge and experience of the ordinary person. In the absence of such evidence, I find I cannot determine who was the dominant driver, the speed of either party, or whether Mr. Choi should have seen and yielded to Mr. Rimanic, as Mr. Rimanic argues.

31. In the end, I find that I am left with an evidentiary tie as to how the accident happened, and, as the applicant, Mr. Rimanic bears the burden of proof.
32. Further, as the reversing driver, Mr. Rimanic has a high standard of care. I find on Mr. Rimanic's own evidence he did not meet the standard of a reasonably careful and prudent reversing driver. He admits that he had no view of traffic in the parking lot coming from his right, the direction Mr. Choi was coming from. He also submits that he is aware speeding is a known problem in that parking lot. Yet, Mr. Rimanic chose to park nose-in to his stall, forcing himself to reverse blindly into traffic. There is no evidence that Mr. Rimanic put his hazard lights on or that he honked his horn before he started backing up, and I find, at a minimum, Mr. Rimanic should have employed these measures to comply with MVA section 193.
33. On balance, I find that Mr. Rimanic has not proven that Mr. Choi was negligent. I find Mr. Rimanic is 100% at fault for the accident and so I dismiss his claims.

Remedy

34. Given the above, I find I do not have to address the issue of remedies. However, even if ICBC had breached its duty or I am wrong in my liability assessment, I find Mr. Rimanic has not proven that he is entitled to the remedies he seeks. The CRT is often asked, as it is in this case, for an order that ICBC reverse or otherwise change its finding of fault. 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. 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. Rimanic 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. Rimanic.

35. In addition, Mr. Rimanic claims \$300 for the cost of his insurance deductible, which he says he paid to his third-party insurer for his vehicle repair. However, he did not provide an invoice or any other evidence of this expense. For these reasons, I would have dismissed Mr. Rimanic's claims in any event.

36. 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. Mr. Rimanic was unsuccessful and so I dismiss his claim for CRT fees. The respondents did not pay any fees or claim any dispute-related expenses.

ORDER

37. I dismiss Mr. Rimanic's claims and this dispute.

Kristin Gardner, Tribunal Member