



# Civil Resolution Tribunal

Date Issued: July 3, 2020

File: SC-2020-001640

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dias v. ICBC*, 2020 BCCRT 740

BETWEEN:

SARAH DIAS

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Chad McCarthy

## INTRODUCTION

1. This dispute is about insurance coverage for vehicle damage. The applicant, Sarah Dias, says their car was damaged in a hit-and-run accident. The applicant says the respondent insurer of their car, Insurance Corporation of British Columbia (ICBC), paid for some, but not all, of the damage from the accident. The applicant claims a total of \$766.86: \$129.37 for a wheel alignment check, \$357.49 for additional

repairs, and \$280 for lost wages because ICBC allegedly delayed its repairs and caused the applicant to miss work.

2. ICBC says it paid for the hit-and-run repairs, but that the accident did not cause the additional issues the applicant paid to repair. ICBC also says it did not unreasonably delay its car repairs or cause the applicant to miss work, so it owes nothing.
3. The applicant is represented by their father in this dispute. ICBC is represented by an employee.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
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, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

## ISSUES

8. The issues in this dispute are:
  - a. Did the hit-and-run accident cause the additional vehicle damage that the applicant paid to repair, and if so, how much does ICBC owe for it?
  - b. Is ICBC liable for unreasonable repair delays, and if so, how much does it owe the applicant for lost wages, if anything?

## EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant must prove their claims on a balance of probabilities. I have read and weighed all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.

### ***Did the hit-and-run accident cause the additional vehicle damage that the applicant paid to repair, and if so, how much does ICBC owe for it?***

10. The undisputed evidence is that the applicant's car was parallel parked at a curb on January 7, 2020 when it was side swiped by another vehicle. The driver of the other vehicle did not stop and has not been identified, and the evidence does not show there were any witnesses. The applicant paid an insurance deductible, and ICBC repaired or replaced the car's left side mirror, left rear door handle, left rear upper and lower quarter panels, and left rear side window.
11. The applicant says their car drove fine before the accident, but no longer drove straight after the ICBC repairs due to a damaged right rear upper control arm suspension component and wheel misalignment. The applicant says this damage was caused by the right rear wheel and tire impacting the curb during the accident. ICBC denies that the right rear upper control arm and resulting wheel alignment issues were caused by the accident.

12. It is undisputed that the applicant's optional insurance with ICBC did not cover damage that was not caused by the accident, as set out in the policy's division 5, section 5.9(a) and division 8, section 5(6).
13. Having reviewed the evidence, I find that the applicant's representative is the only person who alleges the applicant's car did not drive straight after the accident. No other person or company who worked on the car, or drove it, said that a straight-line-driving issue was corrected by replacing the right rear upper control arm.
14. The applicant provided pre-accident repair invoices to show the car's condition before the accident and the ICBC repairs. One invoice, dated August 30, 2019, was from BC Diesel Truck Repair Ltd. (BC Diesel). The invoice said the applicant complained of rotational noise in the car. BC Diesel said the noise appeared to be coming from the right rear when driving. BC Diesel checked tire pressures, found no play in the wheel bearings, and referred the applicant to West Coast Ford Lincoln (West Coast) for a second opinion and possible warranty repair. A September 12, 2019 West Coast invoice says West Coast replaced a noisy "steady bearing," but after the repair there was still a non-steady bearing noise coming from the rear of the car. There were no rear wheel bearing issues, but West Coast found both rear tires were "feathered". ICBC says tire feathering is most often a symptom of improperly aligned wheels or a faulty suspension, or both, while the applicant says the feathering was minor and was normal wear and tear. On balance, I find the evidence fails to confirm that the observed tire feathering was caused by a pre-existing wheel alignment issue. West Coast performed no further rear wheel or tire work.
15. I note that neither of these pre-accident invoices say whether the car drove in a straight line, or whether right rear suspension components were undamaged. A BC Diesel vehicle inspection checklist, hand-dated October 31, 2019, indicates that BC Diesel checked various parts of the applicant's car, but the checklist did not include the right rear upper control arm.

16. Following the ICBC repairs in January 2020, BC Diesel performed a 4-wheel alignment on the applicant's car on February 3, 2020. The repair invoice indicated that it was not possible to fully align the wheels, so BC Diesel recommended an alignment specialist, Sullivan Motors Ltd. (Sullivan). A February 7, 2020 Sullivan invoice for a \$129.37 4-wheel alignment indicated that the rear wheels could not be fully aligned. The invoice said that there was no visible wheel or undercarriage damage, and that the car needed a new "upper adjustable arm" to fully correct the alignment. A February 14, 2020 ICBC telephone memo of a conversation with Sullivan said that Sullivan inspected the car's suspension and both wheels, and saw no damage or any signs of impact that would have caused the alignment issue.
17. A February 18, 2020 ICBC telephone memo said that Sullivan clarified that while the car drove straight, the alignment was still slightly out, and that the right rear upper control arm needed to be replaced. According to this ICBC memo, Sullivan again confirmed that there were no signs of any impact to the wheels that would contribute to the right rear upper control arm being damaged from the accident. While these ICBC memos are simply its notes of calls with Sullivan, the applicant does not deny that they accurately record those conversations. The applicant chose Sullivan for their alignment work, and it was open to them to get their own statement from Sullivan, but they did not do so. I find that the ICBC memos of the Sullivan conversations are accurate, and they support a finding that the right rear upper control arm and wheel alignment were not damaged by the accident.
18. According to a February 28, 2020 invoice, BC Diesel replaced the car's "upper left rear control arm" and performed a 2-wheel alignment, following which the car drove straight. I infer that the invoice has a typographical error, and that the right rear upper control arm was replaced.
19. The applicant says they understand that a document from New Planet Collision (New Planet), the body shop that performed the ICBC repairs, said the right rear upper control arm damage could have been caused by the accident. The applicant did not submit such a document, or say why they felt it existed. The applicant says

they do not see that document in evidence, and neither do I. Absent any supporting evidence, I am not persuaded by this argument.

20. The applicant carries the burden of proof to show that the accident caused right rear upper control arm damage or wheel alignment issues. I find that the evidence before me does not show that the accident moved the car's right rear tire against the curb, let alone with enough force to damage the car's right rear suspension. There is also no expert evidence before me that supports the accident damaging the right rear upper control arm, and I find that expert evidence is required to prove that issue. In particular, I find the evidence of BC Diesel and the applicant's representative does not sufficiently describe the forces needed to cause such suspension damage, or indicate whether the evidence shows such forces were present during the accident. Further, I find their evidence is not as objective as the other motor vehicle technician evidence before me, which I prefer, given that the applicant's representative is both their father and an employee or principal of BC Diesel. I do not consider the evidence of BC Diesel or the applicant's representative to be expert evidence under the CRT's rules.
21. Overall, while the applicant may assume the accident caused control arm damage, the evidence fails to support it. On the evidence before me, and in particular the evidence of the Sullivan alignment specialist, I find that the right rear upper control arm was not damaged by the force of the accident, which also did not affect the car's wheel alignment. I find that, as no other reasons for the driving issue were raised, the accident did not cause the applicant's car to stop driving in a straight line.
22. I dismiss the applicant's claims for \$129.37 in vehicle diagnostics and \$357.49 in vehicle repairs.

***Is ICBC liable for delaying its repairs, and if so, how much does it owe the applicant for lost wages, if anything?***

23. The applicant says their damaged car had winter tires. The applicant does not deny that New Planet loaned them a vehicle during the 9 days it was repairing the applicant's car in January 2020. A January 15, 2020 ICBC memo summarizing a conversation with the applicant said that ICBC could not arrange a loaner vehicle for the applicant unless they had "loss of use coverage." The applicant does not claim to have had loss of use coverage. ICBC says, and the applicant does not deny, that New Planet offered to rent the applicant a loaner vehicle with winter tires, and the applicant declined the offer.
24. The applicant says they were unable to get to work because they lacked access to a vehicle with winter-rated tires, and that ICBC unreasonably delayed returning their car because it had New Planet search for used, rather than new, replacement parts.
25. The applicant does not say that their insurance policy prohibited ICBC from installing used parts. The applicant suggests using a used glass panel was a safety issue because it was a structural component, but provided no evidence in support of this. The applicant's car was several years old at the time of the accident, and division 8 section 5(6) of the policy quoted by ICBC says that ICBC is not liable for repair or replacement costs that improve a vehicle beyond its pre-accident condition. On balance, I find that ICBC was permitted to install a used glass panel of sufficient quality.
26. The applicant did not describe their commuting route, or provide evidence of the road conditions on it in January 2020 while their car was being repaired. I find the evidence fails to show that the applicant required a winter tire-equipped vehicle to get to work, or that alternative means of transportation were unavailable.
27. Email correspondence between ICBC and New Planet, which I accept, shows the loaner vehicle had all-season "mud & snow" tires, not winter tires. The applicant had the loaner vehicle from January 8, 2020 to January 17, 2020. New Planet said it ordered a used glass panel for the applicant's car on January 8, 2020. When it did

not arrive in 2 days as expected, New Planet inquired with the supplier after the weekend, on January 13, 2020, who said that the used glass ordered was in poor condition and could not be used. So, New Planet ordered a new glass panel the next day, which arrived the following day, January 15, 2020, but without the attached chrome moulding. New Planet completed the repairs on January 17, 2020 apart from the moulding, and arranged for the applicant to bring their car back in to have the moulding installed when it arrived.

28. The applicant says if ICBC had completed the repairs immediately, the applicant could have used their own car to drive to work, and would not have lost any wages. On the evidence before me, I find the delays described by the body shop were reasonable in the circumstances. Further, I find the delay due to the below-standard used glass panel was not ICBC's fault, and was not excessive. The applicant also had a loaner vehicle during the time their car was being repaired, and has not proven that they were unable to get to work in that vehicle or by other means.
29. Overall, I find that the applicant did not miss work because of ICBC-caused repair delays or loaner vehicle practices. Further, even if ICBC's actions had caused the applicant to miss work, I find that the applicant has not met their burden of proving that they lost any wages. The applicant says they work at BC Diesel, and that they missed 16 hours of work at \$17.50 per hour on January 13 and 15, 2020, totalling \$280. However, the applicant provided no pay stubs or other evidence confirming their wage rate or employment, and no evidence showing that they were not paid for those dates.
30. I dismiss the applicant's claim for \$280 in lost wages.

## **CRT FEES AND EXPENSES**

31. 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. ICBC was successful, but paid no CRT fees, so I order



no fee reimbursement. Neither party claimed CRT dispute-related expenses, so I order no expense reimbursement.

## **ORDER**

32. I dismiss the applicant's claims, and this dispute.

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Chad McCarthy, Tribunal Member