



# Civil Resolution Tribunal

Date Issued: July 21, 2020

File: SC-2020-001775

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Savoie v. ICBC*, 2020 BCCRT 806

BETWEEN:

TIFFANY SAVOIE and JOSHUA SAVOIE

**APPLICANTS**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about insurance coverage for vehicle damage. The applicants, Tiffany Savoie and Joshua Savoie, were involved in a single vehicle accident on December 20, 2019 when their truck slid off a forest service road near Bonaparte Lake in British Columbia.

2. Ms. Savoie was driving the truck at the time of the accident. Mr. Savoie is the truck's owner.
3. The Savoies say that the truck's driveshaft was damaged as a result of the accident, but the respondent insurer of their truck, Insurance Corporation of British Columbia (ICBC), will not pay for the driveshaft repair. The Savoies also say the truck's front right U-joint and shocks needed repair after the accident but were not covered. The Savoies claim \$1,800 in uncovered repair costs.
4. ICBC says the driveshaft, U-joint and shock repairs are not covered by the Savoies' Autoplan Optional Policy (policy) because the damage to those parts was not caused by the accident. ICBC says the Savoies' claim should be dismissed.
5. The Savoies are each self-represented. ICBC is represented by 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. 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.
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.

## **ISSUES**

10. The issues in this dispute are:
  - a. Did the uncovered damage occur during the accident?
  - b. If not, was the uncovered damage “coincidental with” the other damage from the accident, as described in the insurance policy?
  - c. Did the applicants fail to protect the truck from further loss or damage?
  - d. If ICBC is liable for any uncovered damage, what amount is owing?

## **EVIDENCE AND ANALYSIS**

11. In a civil claim such as this, the applicants bear 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.
12. I note at the outset that, as the truck’s owner, Mr. Savoie holds the policy with ICBC. I find that all the issues raised in this dispute relate to whether ICBC is liable for the uncovered repairs under the policy. Given that Ms. Savoie is not a party to the policy, I dismiss her claims against ICBC and consider only ICBC’s liability to Mr. Savoie under the policy.
13. On December 20, 2019, Ms. Savoie was driving Mr. Savoie’s 2008 Dodge Ram truck on a snowy, slippery forest service road when she lost control. She says as the truck was sliding, she pressed the accelerator to try and keep the truck on the road. There was a steep embankment to their left. She says as she was accelerating, the rear wheels of the truck went over the snowbank on their left and

they only stopped when the truck bed hit a tree. The Savoies say that but for hitting the tree, they likely would have rolled down the embankment.

14. It is undisputed that the Savoies recovered the truck the following day and delivered it to a repair shop. The Savoies say that they called several tow companies but that no tow truck would retrieve the truck for them, so they used a tractor to pull the truck back onto the road.
15. The Savoies reported the accident to ICBC and an ICBC estimator, LC, went to the repair shop to assess coverage for the reported damage. For the damage to the driveshaft, LC's January 23, 2020 note says: "driveshaft is split in two pieces from rotation which show driveshaft was spinning trying to get out of ditch".
16. The Savoies provided photographs of the accident scene, showing where the truck came to rest. The photographs did not change LC's opinion, as his February 4, 2020 note says the driveshaft's "rotational marks" suggest the driveshaft may have been "on a rock or something sharp" while they tried to drive the truck back onto the road.
17. Two ICBC managers also reviewed the file. ICBC material damage manager, JN, noted that a large dent in the driveshaft was caused when it broke and impacted the ground. ICBC material damage operations manager, LK, noted the "evenly space rotational marks and rotational gouging around the shaft" were most likely caused by spinning on a sharp rock, breaking the driveshaft cleanly in two. Both JN and LK agree that the driveshaft was damaged not from the accident, but from pulling the truck out of the ditch.
18. ICBC says the driveshaft damage constitutes mechanical failure and was not caused during the accident. Section 5.9 of the policy says ICBC is not liable for damage consisting of mechanical fracture, failure or breakdown of a part unless the damage is coincidental with other loss or damage that is covered under the policy.
19. ICBC also argues that the Savoies failed to mitigate the loss, contrary to Division 8, Prescribed Condition 5 of the policy, which says if loss or damage to a vehicle that

is covered occurs, the owner or operator of the vehicle must protect the vehicle as far as reasonably possible from further loss or damage.

20. The Savoies deny that the driveshaft was damaged when they were attempting to get the truck back onto the road, and say it occurred during the accident. Further, they say that after they received the truck back from the repair shop with the driveshaft still broken, they discovered that the right U-joint was also damaged and the shocks were compromised and needed replacement.
21. The Savoies eventually had the driveshaft and U-joint replaced and Mr. Savoie replaced the shocks himself, all at the Savoies' cost.

***Did the uncovered damage occur during the accident?***

22. It is undisputed that under the policy, ICBC is liable to repair damage to Mr. Savoie's truck that was sustained during and as a result of the accident.
23. The Savoies' Dispute Notice claims only for the rear driveshaft repairs. I infer this is because the U-joint and shocks damage was discovered after the Dispute Notice was issued. The Savoies submit that the first repair shop did not initially find this damage because ICBC did not authorize it to complete all necessary repairs. However, the Savoies submitted no evidence or submissions about how the U-joint and shocks were damaged in the accident.
24. I find that the uncovered damage to the U-joint and shocks was not properly raised in the Dispute Notice. Even if it had been, I would have found that the Savoies have not proven the U-joint and shocks were damaged either as a result of the accident or coincidental with the covered damage.
25. I turn then to the driveshaft.
26. As noted, the Savoies say the driveshaft was damaged and broke in two pieces during the accident. Mr. Savoie says he returned with his stepfather, JS, to inspect the truck's damage shortly after the accident and discovered the driveshaft severed in half. In an email statement, JS, confirmed that when he looked under the truck,

he observed the driveshaft was “disconnected from the transmission” and no longer usable. This was before any attempt to get the truck back onto the road.

27. The Savoies submitted a May 8, 2020 invoice from an auto repair centre. The invoice includes a statement that its tech inspected the rear driveshaft and believes the damage was caused by an impact, which broke the driveshaft in half. There is no evidence about who created the statement on the invoice, and I have no evidence before me about their qualifications or those of the “tech” referred to in the statement. Therefore, I do not place any weight on this statement.
28. The Savoies also submitted a May 28, 2020 email from IK, the manager and estimator from the first repair shop they took the truck to after the accident. IK inspected the broken driveshaft. In the email, IK says he believes the large dent in the driveshaft was caused by the accident and would have been enough to warrant the driveshaft’s replacement. He notes that ICBC paid to replace the dented muffler system running beside the driveshaft and says this shows the undercarriage of the truck sustained dents during the accident. The muffler system denting and replacement coverage is supported in the evidence.
29. As for the spin marks on the driveshaft, IK said that “most people” would try to get the truck back on the road after such an accident. I infer from this statement that IK accepts the rotational marks and gouging may have been caused after the accident.
30. The ICBC estimator and managers are consistent in their conclusion that the marks and gouging on the driveshaft were likely caused by it spinning on a sharp object until it severed in half. Both JN and LK conclude that the large dent was caused when the driveshaft broke and fell to the ground.
31. The ICBC estimator and managers’ notes and emails and IK’s email are not expert evidence under the CRT rules because I do not have their qualifications before me. I accept that their roles provide them with more knowledge and experience in assessing the cause of vehicle damage than the ordinary lay person. However, I

place more weight on LC and IK's evidence because they looked at the physical driveshaft, not just photographs.

32. Having reviewed the parties' evidence and submissions, I find the ICBC estimator and managers focused on how the driveshaft split into two pieces in concluding whether the damage was caused during the accident. It is not seriously disputed that the marks and gouging on the driveshaft were likely caused by pressing the accelerator when the driveshaft was contacting a sharp object. However, I am not persuaded by the ICBC managers' explanation of the large dent located just below the split, and I prefer IK's evidence that the dent was caused during the accident.
33. From my review of the photographs in evidence, the rotational marks and gouging are not equal and evenly spaced around the area of the dent, suggesting to me that the dent was already present when the driveshaft was spinning on the sharp object. Further, the rotational marks continue below the dent, suggesting to me that the driveshaft was being supported by the object and would not likely have fallen and "slammed" onto the ground, as LK stated.
34. Based on the evidence, I find it is more likely than not that the dent in the driveshaft was caused during the accident, while the truck was still in motion and before the driveshaft broke into two pieces. I accept IK's statement that the dent alone would have been enough to warrant the driveshaft's replacement, even in the absence of the driveshaft breaking in two, which ICBC did not dispute.
35. Nevertheless, I also find it is more likely than not that the driveshaft broke during the accident. The Savoies say that Ms. Savoie was pressing the accelerator, as the back of the truck went over the edge of the embankment and all the way up to the point that the back of the truck came to rest against a tree. They say that the wheels and driveshaft would have been spinning very fast while the accelerator was depressed, "frantically trying to grab traction to get back onto the road".
36. I find it is more likely than not that Ms. Savoie continued to press the accelerator for some period of time after coming to rest, in an attempt to drive back onto the road,

and this is when the driveshaft broke. I say this because I accept that when Mr. Savoie and JS went back to look at the truck after the accident, the driveshaft was already severed.

37. Therefore, I find that the damage to the driveshaft was caused during the accident and ICBC is liable for its repair under Mr. Savoie's policy.

***Was the uncovered damage "coincidental with" the other damage from the accident?***

38. Given my findings above, I do not need to address the issues ICBC raised about coverage exclusions under the policy. Nevertheless, I note that even if I had found the driveshaft damage was caused while getting the truck back onto the road, as ICBC submitted, I would have found the driveshaft damage was "coincidental with" other damage from the accident and ordered ICBC to cover its repair.

39. There is a general legal principle that in insurance contracts, coverage should be interpreted broadly and exclusions should be interpreted narrowly: see *Derksen v. 539938 Ontario Ltd.*, 2001 SCC 72, at paragraph 46.

40. In *Dhadwal v. ICBC*, 2014 BCSC 449, the Court considered the phrase "coincidental with" in section 5.9 of the policy, and found that it means "corresponding or having a close similarity in some manner, such as in space, substance, nature, character, value, or time". The Court found there did not need to be a causal relationship between the mechanical fracture, failure or breakdown and the other loss or damage for which indemnity is provided. The BC Court of Appeal upheld the judge's reasoning on this issue in *Dhadwal v. Insurance Corporation of British Columbia*, 2015 BCCA 112.

41. The evidence is that the Savoies were unable to find a tow truck that would recover their truck. I find it is unreasonable to say the Savoies should have left their truck along a steep embankment, with the front end sticking out onto a narrow forest service road, during the winter season. I find that the Savoies' attempt to retrieve the vehicle was close in time to the accident and part of the same sequence of



events. I also find that, in this case, the Savoies' truck falling partly off the road and the attempt to get it back onto the road are close enough in substance, nature, and character that damage caused by recovering the truck is not excluded under the policy.

42. ICBC also argues that the Savoies failed to mitigate further loss or damage. I find the Savoies were attempting to mitigate the vehicle damage by recovering it from its resting place on the forest service road. I find there were no other reasonable options available to the Savoies and, as such, the Savoies did not breach Prescribed Condition 5 of the policy.
43. Therefore, I find ICBC must pay Mr. Savoie for the driveshaft repair.

### ***Damages***

44. The Savoies submitted an invoice for the driveshaft replacement, which also includes the U-joint replacement, transmission fluid, and eco fees, totaling \$1,879.61. I found above that ICBC is not liable for the U-joint replacement. I also find the Savoies have not proven the transmission fluid and eco fees are related to the driveshaft repair.
45. Based on the invoice, I find Mr. Savoie paid \$1,350 for the driveshaft part and \$26.25 for its installation, plus GST and PST, for a total of \$1,541.40.
46. I note in ICBC's evidence, LK says ICBC would likely have found a recycled driveshaft at a much lesser cost than the new one installed, and that recycled parts are generally 60% of the cost of new parts. I infer it is ICBC's position that replacing the driveshaft with a new part constitutes a betterment, meaning Mr. Savoie would be put in a better position than if the damage had not occurred.
47. However, ICBC did not make submissions on the betterment issue and I find it has not proven a cheaper option was, in fact, available. Accordingly, I find that there is no basis to reduce the actual amount Mr. Savoie spent to repair the driveshaft. I order ICBC to pay Mr. Savoie \$1,541.40.

48. The *Court Order Interest Act* applies to the CRT. Mr. Savoie is entitled to pre-judgment interest from December 20, 2019, the date of the accident, to the date of this decision. This equals \$16.37.
49. 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. I find the Savoies are entitled to reimbursement of \$125 in CRT fees. They did not claim any dispute-related expenses.

## **ORDERS**

50. Within 30 days of the date of this decision, I order ICBC to pay Joshua Savoie a total of \$1,682.77, broken down as follows:
- a. \$1,541.40 for the cost of the driveshaft repair,
  - b. \$16.37 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125 in CRT fees.
51. Mr. Savoie is entitled to post-judgment interest, as applicable.
52. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to

consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

53. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Kristin Gardner, Tribunal Member