



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Liang v. ICBC*, 2020 BCCRT 819

B E T W E E N :

FENG LIANG

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA and JOHN
DOE

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This small claims dispute is about a November 16, 2019 motor vehicle accident. The applicant, Feng Liang, says that the respondent insurer, Insurance Corporation of British Columbia (ICBC), did not investigate the accident thoroughly. Ms. Liang says that ICBC's internal determination that she was 100% at fault was incorrect. She says that the unidentified other driver, the respondent named as John Doe, is responsible for the accident. John Doe was driving a car with stolen license plates. Ms. Liang requests an order reversing ICBC's liability assessment as well as \$500, although she did not explain why she claimed this amount. Ms. Liang represents herself.
2. ICBC says that it carried out a proper investigation and determined that Ms. Liang was 100% responsible for the accident. ICBC provided the same submissions for John Doe. ICBC and John Doe are represented by an ICBC organizational contact.

JURISDICTION AND PROCEDURE

3. 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.
4. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "she said, it said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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. I also

note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.

5. 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.
6. 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

7. The issues in this dispute are:
 - a. Did ICBC breach its statutory obligations in investigating the accident and assessing fault?
 - b. Is Ms. Liang responsible for the accident and if not, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, Ms. Liang must prove her claim on a balance of probabilities. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.

Did the respondent breach its statutory obligations in investigating the incident and assessing fault?

9. The accident occurred on November 16, 2019. Ms. Liang says she is not responsible for the accident and that ICBC did not conduct a proper investigation. She says that she was slowing to stop at a stop sign when a truck with stolen plates overtook her on the left. She says the truck's driver then made an unsafe right turn without stopping at the stop sign and collided with her car. She says the driver then fled the scene.
10. Ms. Liang says that she submitted her dash cam video which shows that her car had left its parking position for a few seconds and was slowing down to stop at the stop sign. She says that at the 12 second mark the video shows the front of the truck has already steered to the right and passes the stop line before the noticeable vibration of the collision is visible. She says that the vibration was caused by the mid-rear end of the truck scraping the left fender of her car.
11. Ms. Liang also says that the other driver breached sections 157, 167, and 186 of the *Motor Vehicle Act* (MVA) because they overtook her car unsafely, they ignored a stop sign, and they turned right unsafely. ICBC investigated the claim and because of Ms. Liang's hit and run coverage ICBC could have found John Doe responsible even though he left the scene. ICBC decided that John Doe's ignoring the stop sign and turning right happened after the time of the collision and the collision itself could have led to these maneuvers.
12. Ms. Liang says that ICBC did not assess her claim correctly because it determined that her car was moving left at the time of the collision. She says this is incorrect and that she was slowing down driving straight at the stop sign. However, she does admit that she was about to turn left. She also says the collision occurred when she was stopping at the stop sign and not when she was leaving the curb where she was parked. She says that there were 5 seconds between her leaving the curb and stopping at the stop sign.

13. Ms. Liang says that the other driver's truck was not already established in the lane and she did not leave her parking spot unsafely. She says if the truck driver was prudent, he would have seen her car and responded appropriately. I infer Ms. Liang means that he would have avoided a collision.
14. To succeed against ICBC, Ms. Liang must prove on a balance of probabilities that ICBC breached its statutory obligations or its contract of insurance, or both. The question is whether ICBC acted "properly or reasonably" in administratively assigning liability to Ms. Liang (see: *Singh v. McHatten*, 2012 BCCA 286).
15. ICBC owes the insured Ms. Liang 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 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 Corporation of British Columbia*, 2012 BCSC 283).
16. In the course of its investigation, ICBC reviewed the dash cam footage which is in evidence and which I consider below when determining liability. As noted, the other driver has not been identified and there were no witnesses. ICBC investigated the scene, took pictures of the street's layout, and provided evidence of the approximate distance Ms. Liang travelled before the collision. Ms. Liang does not argue that there was other evidence that ICBC should have obtained or considered. Rather, she disagrees with its assessment of the evidence.
17. ICBC submits that Ms. Liang had not established her vehicle on the road and that she was leaving the curb from a parked position and steering to the left on approach to the stop sign when she collided with the truck that was already established on the road. ICBC says that Ms. Liang caused the hazard to the truck. As noted, Ms. Liang says the video and pictures show she was not moving to the left.

18. ICBC decided that Ms. Liang was 100% responsible because she violated section 169 of the MVA which says that a person must not move a vehicle that is stopped, standing, or parked unless the movement can be made with reasonable safety and they first give the appropriate signal.
19. Given the overall evidence, I find that ICBC did not breach its statutory obligations or its contract of insurance. ICBC thoroughly investigated the accident, given the other driver fled and there were no other witnesses. I find it reasonable that ICBC accepted the dash cam evidence as determinative since it showed the seconds before the accident.
20. Therefore, I find that Ms. Liang has not proven ICBC's investigation was unreasonable. I find ICBC acted reasonably in administratively assigning Ms. Liang responsibility for the accident.
21. Having determined that the ICBC acted reasonably in its examination of the accident, I turn now to my assessment of liability.

Is Ms. Liang responsible for the accident?

22. The main issue in this dispute is where Ms. Liang's vehicle was at the time of the collision. I have reviewed the dash cam footage and the pictures. The accident occurred on a narrow street with no defined lanes. There is parking on both sides of the street. It does not appear that two vehicles, especially when one of those vehicles is a truck, could drive side by side if cars were parked on both sides.
23. The video shows Ms. Liang starting her vehicle. However, Ms. Liang does not initially pull away from the curb. She drives straight and stays alongside the curb. Based on this, I find that Ms. Liang has advanced from her parking spot, but she has not moved into the main part of the street. The video shows that the truck comes up alongside Ms. Liang on her left in the street's main section. The truck is turning right at the time when Ms. Liang's vehicle is advancing into the main part of the street because she is turning left.
24. Section 165 of the MVA indicates that since Ms. Liang was turning left she should have been causing her vehicle to approach the intersection in the portion of the right side of the roadway that is nearest the marked centre line, or if there is no marked centre line, then as far as practicable in the portion of the right half of the roadway that is nearest the centre line. Ms. Liang did not do this but instead stayed close to the curb until she made it to the stop sign where she moved left into the portion of the road John Doe occupied.
25. Ms. Liang argues that she pulled out of her parking spot, but the video evidence shows that she did not. Ms. Liang only starts to move to the left when she gets close to the stop sign. At that point the truck is established in that portion of the street and it is unclear why Ms. Liang did not see it. Because Ms. Liang was close to the curb even if John Doe had seen her, he would not necessarily know that she was not just beginning to park or adjusting her parking spot. Ms. Liang submits that she had her left blinker on, but it is unclear on the evidence when she turned it on. If it was when she began to move to the left this would have been too late for John Doe to have seen it.

26. Ms. Liang says that the video evidence and the photos do not show her veering left at the time of the collision. I disagree. The video shows the angle changes as Ms. Liang moves away from the curb and to the left as she approaches the stop sign. Further the still photos show that Ms. Liang's car is at an angle to the curb indicating that she was moving her car to the left. I also note that this is after being hit on the left side and if the collision caused her car to move it would have pushed her to the right, not the left. Based on this evidence, I find that Ms. Liang was moving her car left and into the main street at the time that the truck was already established in the roadway to her left.
27. Therefore, I agree with ICBC's assessment and find that Ms. Liang on a balance of probabilities that Ms. Liang is 100% responsible for the collision.
28. I note that even if I had not found Ms. Liang 100% responsible for the accident, I would not have granted her requested remedy of \$500 as she has not explained why she is claiming this amount. Further, 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, the applicant asks for a declaration that she was not at fault.
29. 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. Ms. Liang has 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 the applicant.
30. 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. Because Ms. Liang was unsuccessful in her claims, she is not entitled to have her CRT fees reimbursed. There were no dispute-related expenses claimed.

ORDER

31. I dismiss Ms. Liang's claim and this dispute.

Kathleen Mell, Tribunal Member