



Civil Resolution Tribunal

Date Issued: July 24, 2020

File: SC-2020-002100

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wang v. ICBC*, 2020 BCCRT 824

BETWEEN:

XIA WANG

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and ANA
CECILIA VILLAFUERTE DE CERNA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred on September 15, 2018 on Rupert Street in Vancouver.
2. The applicant, Xia Wang, says the other driver, the respondent Ana Cecilia Villafuerte de Cerna, should share liability for the accident. Ms. Wang says she was travelling behind Ms. de Cerna who turned suddenly. Ms. Wang says she had no time to act and hit Ms. de Cerna's rear side bumper. Ms. Wang claims \$5,000, which she says is to "compensate her colleagues" for covering her workload, her loss of potential commission, car rental costs, physiotherapy fees, and extra car insurance.
3. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures both Ms. Wang and Ms. de Cerna. ICBC says it properly found Ms. Wang 100% liable for following Ms. de Cerna's vehicle too closely, contrary to section 162 of the *Motor Vehicle Act (MVA)*.
4. Ms. Wang is self-represented. An ICBC employee represents ICBC and Ms. de Cerna.

JURISDICTION AND PROCEDURE

5. 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.
6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the

circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.

7. 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.
8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

9. 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 Ms. Wang is not 100% liable, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant Ms. Wang 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.

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

11. Ms. Wang essentially argues that ICBC did not act fairly or reasonably in assigning fault for the accident. To succeed against ICBC, Ms. Wang 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 Ms. Wang (see *Singh v. McHatten*, 2012 BCCA 286, referring to *Innes v. Bui*, 2010 BCCA 322).

12. ICBC owes Ms. Wang 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).
13. As noted above, Ms. Wang’s argument is that ICBC should hold Ms. de Cerna at least partially responsible, because she allegedly made an illegal U-turn. She says ICBC has “lots of experts” and should investigate to determine who is telling the truth. Ms. Wang says that by holding her liable, ICBC is unreasonably “encouraging drivers” to make illegal turns. Ms. de Cerna denies making an illegal U-turn and says she was signaling to turn left when Ms. Wang hit her. Ms. Wang did not explain what experts ICBC could have employed to determine Ms. Wang could not have stopped safely or that Ms. de Cerna made an illegal U-turn. I do not accept Ms. Wang’s argument on this point.
14. ICBC’s claim file notes show there were no witnesses and Ms. Wang submitted a photo of a notice she posted seeking witnesses, presumably in the area where the accident occurred. I find there is nothing in this that shows ICBC acted unreasonably.
15. In the circumstances, I find ICBC acted reasonably in investigating the accident and assigning 100% fault to Ms. Wang. I agree with ICBC that the case law is clear that the onus is on the rear-driver to show they could not have avoided the accident without negligence. I find ICBC reasonably relied on the applicable case law

(discussed further below), the drivers' statements, the police report that concluded Ms. Wang had been following too closely without any criticism of Ms. de Cerna, and section 162 of the MVA in concluding Ms. Wang was 100% responsible for the accident. Therefore, I dismiss Ms. Wang's claims against ICBC. I turn then to my assessment of which driver is liable for the accident.

Who is liable for the accident?

16. In the Dispute Notice issued at the outset of this CRT proceeding, Ms. Wang said that Ms. de Cerna's car was in front of her, "just South of Queen Ave about 50 meters away", and "made a sudden and unexpected left turn without turning signal or brake light". She said that it was raining lightly and she had "no time to act" and hit Ms. de Cerna's right side bumper.
17. In her later submissions, Ms. Wang describes Ms. de Cerna's turn as a "sharp illegal left U-turn without signaling, crossing the solid yellow line" to the left northbound lane. She submits that she did not "respond instantly out of shock and hit the car". In her final reply submission, Ms. Wang says her earlier statement that Ms. de Cerna was "south past the intersection of Queen Ave and Rupert St" was "not accurate". Yet, she reiterates that Ms. de Cerna was southbound on Rupert Street having already passed the Queen Ave intersection and then made a sharp U-turn. I find Ms. Wang's inconsistent submissions means her evidence is less reliable.
18. In contrast, ICBC says and the police report shows the accident occurred as Ms. de Cerna was signaling to turn left on Queens Avenue, and that Ms. de Cerna was not past the Queens Avenue intersection. Consistent with this, according to ICBC's September 17, 2018 telephone notes, Ms. de Cerna said that she was about 3 houses away from Queens Avenue when she put her signal on.
19. In her reply submission, Ms. Wang says she "may take my part of liability" for failing to stop her car due to her "slow reaction". However, she reiterates that she feels Ms. de Cerna should be held at least partly responsible for the alleged illegal U-turn.

20. Based on the accident scene photos in evidence, and accepting the undisputed evidence that Ms. de Cerna's vehicle "spun out", I find the collision occurred just before the Queens Avenue intersection, not after it as alleged by Ms. Wang. I find the photos do not support Ms. Wang's position that Ms. de Cerna was making an illegal U-turn, because in showing Ms. de Cerna's vehicle facing northbound before Queens Avenue the photos are consistent with Ms. de Cerna's vehicle having "spun out" after she was hit before her planned left turn at the intersection.
21. So, I find the weight of the evidence does not show Ms. de Cerna made an illegal U-turn as alleged by Ms. Wang. Even without the police report, I would be left with a tie between Ms. Wang's and Ms. de Cerna's versions, and as the applicant Ms. Wang bears the burden of proof. I find she has not proved Ms. de Cerna made an illegal U-turn.
22. In any event, I find section 162 of the MVA is determinative here. That section says that a driver must not permit their vehicle to follow another vehicle more closely than is reasonable, having regard to the traffic and highway conditions. Ms. Wang does not deny she was following too closely, although as noted she says that Ms. de Cerna must bear at least some responsibility for making the alleged illegal U-turn.
23. As noted above, the burden is on the rear-driver to show they could not stop without negligence (see *Cue v. Breitkreuz*, 2010 BCSC 617 and *Bains v. Chatakanonda*, 2018 BCSC 2412). I find Ms. Wang has not met this burden. Even if Ms. de Cerna had made an illegal U-turn in front of Ms. Wang (which I have found she did not), this does not adequately explain why Ms. Wang was unable to stop safely. There is no suggestion that in making the alleged U-turn that Ms. de Cerna somehow was approaching or on the verge of colliding with Ms. Wang's vehicle. In *Wright v. Mistry*, 2017 BCSC 239 and *Skinner v. Fu*, 2010 BCCA 321, the court concluded that generally a rear driver is liable for a rear-end collision, because "normally a sudden stop does not create an unreasonable risk of harm." In *Bains*, the defendant stopped suddenly while waiting to turn left when the plaintiff rear-ended the defendant. There, the court found the plaintiff 100% responsible for the accident, for

following too closely. I find Ms. Wang was negligent for failing to keep a safe distance behind Ms. de Cerna and I find Ms. Wang is 100% responsible for the accident.

24. Given my conclusion on liability, I find I do not need to address Ms. Wang's damages claims in any detail. However, I would note that apart from receipts for physiotherapy and car rental, and around \$350 she paid to colleagues, she did not prove her claimed damages.

25. Under section 49 of the CRTA and CRT rule 9.5, a successful party is generally entitled to the recovery of their tribunal fees. I see no reason to deviate from that here. Ms. Wang was unsuccessful and neither respondent paid CRT fees. No dispute-related expenses were claimed.

ORDER

26. I order Ms. Wang's claims and this dispute dismissed.

Shelley Lopez, Vice Chair