



Civil Resolution Tribunal

Date Issued: August 5, 2020

File: SC-2020-003441

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kwan v. ICBC*, 2020 BCCRT 869

BETWEEN:

CHOK SANG KWAN

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and
CHOY HING CHENG

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This small claims dispute is about liability for a motor vehicle accident that occurred on April 8, 2020 in Richmond, British Columbia.
2. The applicant, Chok Sang Kwan, was involved in a collision with a vehicle driven by the respondent, Choy Hing Cheng, when they were both reversing their vehicles in

a parking lot. Mr. Kwan says that the respondent insurer, Insurance Corporation of British Columbia (ICBC), wrongly assessed him as 50% at fault for the collision.

3. Mr. Kwan seeks an order that he is not at fault for the collision. He also claims reimbursement of his \$150 deductible paid for vehicle repairs.
4. ICBC and Ms. Cheng say ICBC's liability decision was reasonable and correct based upon ICBC's investigation. ICBC also says it is not a proper respondent to Mr. Kwan's claim.
5. Mr. Kwan is self-represented. ICBC and Ms. Cheng are 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.
10. As a preliminary matter, I will address ICBC's submission that it is not a proper respondent to this dispute. A key issue in this dispute is whether ICBC acted reasonably in assigning partial responsibility for the collision to Mr. Kwan. 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 responsibility for the collision to the plaintiff is strictly between the plaintiff and ICBC. The same applies to Mr. Kwan's dispute here. 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, and if not Mr. Kwan, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant Mr. Kwan 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.
13. The circumstances of the accident are largely undisputed. Both Mr. Kwan and Ms. Cheng had parked their vehicles "nose in" in a shopping centre parking lot. Their vehicles were across the driving aisle from one another, with Ms. Cheng's stall about two parking stalls to the right of Mr. Kwan. Mr. Kwan started reversing straight

out of his stall first, when Ms. Cheng then also started reversing at an angle and their vehicles collided in the middle of the aisle.

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

14. Mr. Kwan says that ICBC did not properly consider video footage of the accident in assessing him 50% at fault for the accident.
15. To succeed in this claim against ICBC, Mr. Kwan 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 50% responsibility to Mr. Kwan: see *Singh v. McHatten*, 2012 BCCA 286 referring to *Innes v. Bui*, 2010 BCCA 322.
16. ICBC owes Mr. Kwan 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.
17. ICBC says that it did consider the video footage in its liability assessment. It says that it also considered Mr. Kwan’s statement that he was looking forward and using only the rearview mirror and backup camera to see behind him while he was reversing. ICBC says that Ms. Cheng also stated she was using only her rearview mirror while reversing.
18. ICBC relied on sections 169 and 193 of the *Motor Vehicle Act* (MVA). Section 169 of the MVA says that a person must not move a vehicle that is stopped unless the

movement can be made safely and after giving the appropriate signal. Section 193 of the MVA says a person must not reverse their vehicle unless it can be done safely. ICBC says that because both parties were reversing from a parked position, they had equal responsibility to ensure it was safe to do so.

19. While Mr. Kwan argues that the video footage shows that he came to a complete stop before the impact, ICBC says the footage shows he stopped only about one second before to the collision, which it says does not relieve Mr. Kwan of responsibility.
20. I find that in addition to the parties' statements, ICBC did consider the video footage in its *liability* assessment. I find ICBC's investigation and liability determination was reasonable on the evidence. There is no evidence or allegation that ICBC should have undertaken some other investigation and failed to do so. Therefore, I find Mr. Kwan has not proven that ICBC breached its statutory obligations or its contract of insurance. I dismiss Mr. Kwan's claim against ICBC.

Who is liable for the accident?

21. Given that I am not bound by ICBC's liability assessment, I turn now to my own assessment of who is liable for the accident.
22. I note that in ICBC's Dispute Response, it alleges that Mr. Kwan was not the registered owner of the vehicle he was driving and, therefore, he has no right of action in contract or tort to recover damages relating to the vehicle in which he has no property interest. However, ICBC did not provide any evidence of the vehicle's ownership and did not pursue this argument in its submissions. In any event, given my findings on liability below, nothing turns on the actual ownership of Mr. Kwan's vehicle in the context of this dispute.
23. Mr. Kwan says that Ms. Cheng should be held 100% responsible for the accident, or she should at least bear a greater share of the responsibility.

24. I find that the video footage shows Mr. Kwan was reversing his vehicle for 6 seconds before Ms. Cheng started reversing her vehicle. Then, both vehicles were reversing at the same time for 5 seconds before Mr. Kwan came to a stop. About 1 second after Mr. Kwan stopped, the rear passenger side corner of Ms. Cheng's vehicle collided with the rear passenger side door of Mr. Kwan's vehicle. I find that neither Mr. Kwan nor Ms. Cheng were reversing at an excessive speed.
25. A reversing driver must take all reasonable precautions and take the time to look behind them and around them both before and during the time their car is backing up: see *Araujo v. Vincent*, 2012 BCSC 1836. 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. Given that both Mr. Kwan and Ms. Cheng were reversing, they were both subject to this high standard of care.
26. Although Mr. Kwan started reversing his vehicle before Ms. Cheng, he was still obligated to continue looking behind and around him during the time that his vehicle was in reverse. Mr. Kwan's statement to ICBC said that he was "stopped and ready to turn a little", *then* he "heard a bang". It also said that Mr. Kwan did not see the other vehicle before he was hit. Therefore, I find that Mr. Kwan did not see Ms. Cheng's vehicle before the collision.
27. The video footage shows that Mr. Kwan was still reversing for 5 seconds after Ms. Cheng started moving backward. I find that Mr. Kwan should have seen Ms. Cheng's reversing vehicle well before he stopped, had he been keeping a proper lookout. If he had seen Ms. Cheng sooner, he may have had the opportunity to honk his horn or pull forward to avoid the collision. I find that relying solely on a backup camera and rearview mirror is insufficient to comply with section 193 of the MVA and the high onus on a reversing driver in these circumstances.
28. I find it is possible that Ms. Cheng did not see Mr. Kwan's reversing vehicle before she started moving backwards, because the video footage does not show whether her vision was obstructed by other vehicles to her right. However, had Ms. Cheng

taken the time to look behind and around her while she was reversing, I find that she would have seen Mr. Kwan and been able to stop her vehicle before the collision.

29. So, I find that both Mr. Kwan and Ms. Cheng breached section 193 of the MVA and that both were equally responsible for the accident. Therefore, I dismiss Mr. Kwan's claims.

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. As Mr. Kwan was unsuccessful, he is not entitled to reimbursement of his CRT fees. The respondents did not pay fees or claim dispute-related expenses.

ORDER

31. I dismiss Mr. Kwan's claims and this dispute.

Kristin Gardner, Tribunal Member