



Civil Resolution Tribunal

Date Issued: August 26, 2020

File: SC-2020-004057

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Logan v. ICBC*, 2020 BCCRT 955

BETWEEN:

NICHOLAS LOGAN

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA
and Kirpal Singh

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This small claims dispute is about liability for a December 31, 2019 motor vehicle accident in Surrey, British Columbia.
2. The applicant, Nicholas Logan, was driving westbound on 72nd Avenue, attempting to making a left turn onto 138th Street, on a yellow light. The respondent, Kirpal

Singh, was driving eastbound on 72nd Avenue, attempting to drive straight through the intersection. The two vehicles collided in the intersection.

3. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures both vehicles. ICBC internally assessed Mr. Logan 100% at fault for the accident.
4. Mr. Logan says that Ms. Singh should be held solely responsible for the accident because she had enough time to stop when the light turned yellow and should not have proceeded through the intersection. He says that ICBC wrongly found him at fault for the accident and claims reimbursement of his \$1,000 deductible.
5. The respondents say that ICBC correctly assessed Mr. Logan at fault because the left turning driver has the onus to ensure traffic travelling straight through the intersection will come to a stop.
6. Mr. Logan represents himself. Both respondents are represented by an ICBC employee.

JURISDICTION AND PROCEDURE

7. 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.
8. 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.

9. 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.
10. 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

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. Logan, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant 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.

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

13. As noted above, Mr. Logan says that ICBC wrongly and unfairly found him at fault for the accident. He says that Ms. Singh was not paying attention to the road or the traffic light and that ICBC did not properly consider whether Ms. Singh should have come to a stop when the light turned yellow.

14. To succeed against ICBC, Mr. Logan 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 Mr. Logan: see *Singh v. McHatten*, 2012 BCCA 286, referring to *Innes v. Bui*, 2010 BCCA 322.
15. ICBC owes Mr. Logan 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.
16. Mr. Logan says ICBC failed to consider Ms. Singh’s statement that her light was always green, when his dash cam video shows that the light was yellow when she entered the intersection. He says ICBC found him at fault solely because he was the left turning driver and it failed to apply relevant law that says left turning drivers are not always at fault.
17. In contrast, ICBC submits it applied the correct law and made a decision based on the evidence before it, which included statements from Mr. Logan and Ms. Singh, as well as Mr. Logan’s dash cam footage. It says the dash cam footage shows that Mr. Logan started his left turn on a yellow light, before checking to confirm that through traffic was going to stop.
18. In the circumstances, I find ICBC acted reasonably in investigating the accident and assigning fault to Mr. Logan. I find there is no evidence that ICBC did not review all available evidence before it. While I acknowledge Mr. Logan disagrees about the applicable law, and ICBC’s ultimate fault assessment, I find he has not shown that

ICBC breached its statutory obligations or its contract of insurance. Therefore, I dismiss this aspect of Mr. Logan's claims.

Who is liable for the accident?

19. The underlying facts about how the accident happened are not in dispute. Mr. Logan was facing westbound on 72nd Avenue and had pulled into the intersection on a green light, with his left turn signal on, waiting for an opportunity to turn. When the traffic light turned yellow, an eastbound Honda vehicle in the far curb lane proceeded straight through the intersection and Mr. Logan then commenced his left turn. Ms. Singh was travelling behind the Honda and entered the intersection while the light was still yellow, as Mr. Logan was crossing her lane of travel. Ms. Singh honked but neither vehicle attempted any evasive maneuvers to try and avoid the collision.
20. I have considered the following relevant sections of the *Motor Vehicle Act* (MVA):
 - a. Section 174, "yielding right of way on left turn", which says when a driver is in an intersection intending to turn left, the driver must yield the right of way to traffic approaching from the opposite direction that is in the intersection or so close as to constitute an immediate hazard. Having yielded and given the appropriate signal, the driver may turn left, and traffic approaching the intersection from the opposite directly must yield the right of way to the left turning vehicle.
 - b. Section 128 (1), "yellow light", which says when a yellow light is exhibited at an intersection by a traffic control signal, following a green light, the driver approaching the intersection and facing the yellow light must cause their vehicle to stop before entering the marked crosswalk on the near side of the intersection, unless the stop cannot be made in safety.
21. Mr. Logan says that when the light turned yellow and the eastbound Honda vehicle went through the intersection, he judged that the other eastbound traffic had enough time to stop safely, so he commenced his left turn.

22. In support of his position that Ms. Singh had enough time to stop, Mr. Logan filed still frame, time-stamped photographs taken from his dash cam footage and measurements taken from Google maps. The dash cam photographs are somewhat helpful in determining where Ms. Singh's vehicle was in relation to the crosswalk and intersection while the light was yellow. I note that it shows Ms. Singh's vehicle entered the intersection while the light was yellow and that her vehicle was fully in the intersection before the traffic light turns red, which Mr. Logan does not dispute.
23. However, as for Mr. Logan's still images and measurements proving that Ms. Singh had enough time to stop, I find expert evidence is needed to comment on Ms. Singh's speed and the expected stopping distance. I note that the roads were wet, and it was raining when the accident happened, which could impact stopping distances, but again, I require expert evidence, such as from an engineer, on this issue.
24. So, I find that I must determine the parties' respective responsibility for the accident based on Mr. Logan's statement about the accident, my review of the dash cam footage, which I find provides the best evidence of the circumstances of the accident, and the relevant law. I note that Ms. Singh's statement about the accident was not before me.
25. The courts have regularly stated that the onus is on a left turning driver to prove that they started to turn left when it was safe to do so and that the through driver was not an immediate hazard: see *Nerval v. Khera*, 2012 BCCA 436 at paragraph 33. While a left turning driver can reasonably assume that approaching drivers will obey the rules of the road, they cannot proceed blindly on that assumption: see *Henry v. Bennett*, 2011 BCSC 1254 at paragraph 72.
26. I find that Mr. Logan proceeded with his left turn immediately after the Honda drove past him, without pausing to assess whether Ms. Singh was slowing down or was going to stop. In fact, Mr. Logan admits that Ms. Singh did not appear to slow down at all. I find that Mr. Logan blindly assumed that Ms. Singh would stop for the yellow light and was in breach of section 174 of the MVA when he started his left turn

without confirming it was safe to do so. Had Mr. Logan paused even momentarily before starting his turn, he would have seen Ms. Singh was not slowing for the yellow light and been able to safely wait to complete his left turn once she passed through the intersection. Therefore, Mr. Logan bears some responsibility for the accident.

27. In support of his position that the left turning driver is not always fully at fault, Mr. Logan relies on the previous non-binding CRT decision in *Ivanciuc v. Wang et al*, 2018 BCCRT 55. The accident circumstances in *Ivanciuc* are similar to the circumstances in this case, and there, the CRT determined the through driver 75% at fault and the left turning driver only 25% at fault.
28. However, I note there were some distinguishing factors in *Ivanciuc*. First, as the through driver approached the intersection in that case, he passed other cars on his right that had slowed for the yellow light. Also, there was a car in front of the left turning driver that completed a left turn in front of the through driver. The CRT Vice Chair found these two factors supported the conclusion that the through driver should have slowed down in anticipation of the left turning driver completing her left turn.
29. Here, I note there was no traffic beside Ms. Singh coming to a stop, alerting her that she should also come to a stop, or signaling to Mr. Logan that Ms. Singh could likely come to a safe stop. Further, there were no other left turning drivers immediately in front of Mr. Logan, which may have signaled to Ms. Singh as the light turned yellow that she should be slowing for other left turning drivers.
30. Nevertheless, the dash cam video shows that the light turned yellow at least 3 seconds before Ms. Singh's front tires crossed the stop line into the marked crosswalk, at which point Mr. Logan had already started his turn. The light turned red less than one second later, just as the vehicles collided. Therefore, I find that Ms. Singh entered the intersection on a "stale yellow" light.

31. The onus is on Ms. Singh to prove that she was unable to stop safely in all the circumstances: see *Ziani v. Thede*, 2011 BCSC 895. She has provided no evidence that it was unsafe for her to stop for the yellow light. Therefore, I find that Ms. Singh also bears some responsibility for the accident. However, given the high onus on left turning drivers, I find Mr. Logan bears more of the responsibility.
32. On balance, I find Mr. Logan 75% at fault for the accident, and Ms. Singh 25% at fault.

Remedy

33. Mr. Logan seeks reimbursement of his \$1,000 insurance deductible. ICBC's January 8, 2020 letter to Mr. Logan confirms the amount of his deductible and the respondents agree that Mr. Logan paid the \$1,000 to have his vehicle repaired. Given my findings on liability, Ms. Singh is responsible for 25% of Mr. Logan's damages, or \$250.

TRIBUNAL FEES, EXPENSES, AND INTEREST

34. The *Court Order Interest Act* applies to the CRT. Mr. Logan is entitled to pre-judgment interest on the \$250 portion of his deductible from May 22, 2020, the date he filed this dispute, to the date of this decision. This equals \$0.71.
35. 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 find that Mr. Logan was partly successful and so he is entitled to reimbursement of half of his CRT fees, which is \$62.50. The respondents did not pay any fees and neither party claimed any dispute-related expenses.

ORDERS

36. Within 14 days of the date of this decision, I order the respondent, Ms. Singh, to pay the applicant, Mr. Logan, a total of \$313.21, broken down as follows:

- a. \$250 as reimbursement for the insurance deductible,
- b. \$0.71 in prejudgment interest under the *Court Order Interest Act*, and
- c. \$62.50 for tribunal fees.

37. Mr. Logan is entitled to post-judgment interest, as applicable.

38. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.

39. 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.

Kristin Gardner, Tribunal Member