



Civil Resolution Tribunal

Date Issued: September 3, 2020

File: SC-2020-003363

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Choi v. Osborne*, 2020 BCCRT 987

BETWEEN:

SUN KEE CHOI

APPLICANT

AND:

VICTORIA OSBORNE and INSURANCE CORPORATION OF BRITISH
COLUMBIA

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 December 11, 2019 in Vancouver, British Columbia.
2. The respondent, Victoria Osborne, was driving directly behind the applicant, Sun Kee Choi, southbound on Boundary Road when the two vehicles collided. The

respondent insurer, Insurance Corporation of British Columbia (ICBC) found Mr. Choi 100% at fault for the accident.

3. Mr. Choi says that Ms. Osborne rear ended him and that ICBC wrongly found him 100% liable. Mr. Choi claims \$2,000 in unspecified damages, reimbursement of his \$300 deductible. He also seeks an order reversing ICBC's liability determination.
4. ICBC and Ms. Osborne say that ICBC correctly found Mr. Choi liable based on 2 independent witness statements that supported Ms. Osborne's report that Mr. Choi rolled back into her.
5. Mr. Choi is self-represented. Both respondents 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. In some respects, both parties to this dispute call into question the credibility, or truthfulness, 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. I note the decision in *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

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. I note that Mr. Choi filed one item of evidence after the deadline. Given the respondents had the opportunity to see and make submissions about the late evidence and the CRT's mandate to be flexible, I find it is admissible. Nevertheless, I find the late evidence is not relevant to the issues in this dispute and I have placed no weight on it in coming to my decision.

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. Choi, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant, Mr. Choi, 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, the main dispute between the parties is whether Mr. Choi rolled back into Ms. Osborne's vehicle or whether Ms. Osborne rear ended Mr. Choi. Mr. Choi also disputes the truthfulness and independence of the witness statements supporting Ms. Osborne's version of the accident. He says ICBC should have found Ms. Osborne 100% at fault.
14. To succeed in his claim against ICBC, Mr. Choi 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 100% responsibility to Mr. Choi: see *Singh v. McHatten*, 2012 BCCA 286 referring to *Innes v. Bui*, 2010 BCCA 322.
15. ICBC owes Mr. Choi 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.
16. ICBC says it properly relied on Ms. Osborne's report that Mr. Choi rolled back into her because 2 independent witnesses, MR and JM, supported her version. ICBC filed 2 documents containing the ICBC employees' notes of MR's and JM's statements. Both witnesses were in the same vehicle when they said they witnessed the accident. The first statement was taken by telephone on December 17, 2019, when an ICBC employee, SR, spoke with the witnesses together on speaker phone. A different ICBC employee, ED, then spoke with each of MR and JM separately on January 16, 2020, and again with JM on January 24, 2020.
17. In the December 17, 2019 joint statement, MR and JM said they were in the curb lane "further back" and saw Mr. Choi in the next lane roll back and hit the front of

Ms. Osborne's truck. In MR's January 16, 2020 statement, he told ED that he and JM were 10 feet away in a one-ton truck when they saw Mr. Choi reverse into Ms. Osborne's truck.

18. In JM's January 16, 2020 statement, he told ED he was in the passenger seat of a white dump truck "a couple of cars back" when he saw Mr. Choi reverse into Ms. Osborne. He said the truck was "higher up" so they could see the accident.
19. Both MR and JM told ED that Ms. Osborne approached them, and JM handed her their phone numbers through the window.
20. ED's notes show that she called JM back on January 24, 2020 in response to Mr. Choi's concern that it would have been difficult for JM and MR to have seen the accident from their location. JM confirmed that they were in the curb lane, about 2-3 cars back and that Mr. Choi rolled back because it was a steep hill. ED's notes show she told JM she had also emailed him some further questions and requested he provide a diagram and JM say he would respond to the email when he got the chance.
21. ED's notes show that she left 2 further messages with JM and 1 with MR to request that they provide details about the vehicle they were in but that neither responded and JM did not respond to her email.
22. Mr. Choi questions the truthfulness of the witnesses' statements because ICBC was unable to verify what vehicle the witnesses were in or their vehicle's exact location. He says their statement about being 2-3 cars back is inconsistent with the photographic evidence. However, ICBC does not have to investigate claims as a detective would. I find it was reasonable for ICBC to rely on JM's and MR's statements because they reported to be independent witnesses, and I find ICBC was reasonably diligent in obtaining the statements and assessing the witnesses' evidence.
23. The evidence shows that ICBC confirmed in a letter to Mr. Choi dated February 24, 2020, that it found Mr. Choi 100% at fault. The letter states that ICBC relied on

sections 169 and 193 of the *Motor Vehicle Act* (MVA). Section 169 says that a person must not move a stopped vehicle unless the movement can be made with reasonable safety and they first give the appropriate signal. Section 193 says a driver must not move a vehicle backwards unless the movement can be made in safety. The letter also states that in addition to the MVA provisions, ICBC relied on independent witnesses and dash cameras. Here, there was dash cam footage from another vehicle also in the curb lane, driven by RK, which does not show the impact, only what happened after the accident.

24. Mr. Choi applied for a Claims Assessment Review (CAR) and an independent arbiter upheld ICBC's liability determination on April 8, 2020. The arbiter acknowledged that the witnesses' statements contained some inconsistencies, but found they were not enough to affect the overall reliability of their evidence because their core evidence about their location and observation that Mr. Choi rolled back into Ms. Osborne was consistent. As a result, ICBC upheld its original liability determination that Mr. Choi was fully responsible for the accident.
25. I note that despite Mr. Choi's objections to the witness statements and Ms. Osborne's version of the accident, there is no evidence before me that ICBC asked Ms. Osborne for further details about the circumstances of the accident. As I will discuss further below, Ms. Osborne's statement is very brief and does not include details such as the distance between her truck and Mr. Choi when they both came to a stop, how long they were stopped before the accident, or how far Mr. Choi allegedly rolled back. I find that under the circumstances, ICBC likely should have conducted a follow up with Ms. Osborne in its investigation of this accident. However, I find its failure to do so does not rise to the level of a breach of ICBC's statutory obligations or its contract of insurance.
26. While I acknowledge that Mr. Choi disagrees with ICBC's weighing of the evidence and assessment of fault, I find that ICBC acted reasonably in investigating the accident and assigning full responsibility to Mr. Choi. Therefore, I find Mr. Choi has

not proven ICBC breached its statutory obligations or its contract of insurance and I dismiss Mr. Choi's claims against ICBC.

27. Given that I am not bound by ICBC's internal liability determination or the CAR decision, I turn now to my own fresh assessment of liability.

Who is liable for the accident?

28. It is undisputed that the parties were southbound on Boundary Road, approaching Kingsway in the lane immediately to the left of the curb lane. Mr. Choi says that he observed an ambulance approaching him from behind with its lights and siren on, and he came to a stop because there was traffic beside him in the curb lane.

29. Mr. Choi says the ambulance passed him on the left and then moved into his lane but had to stop for a red light at Kingsway. Mr. Choi says some of the cars in the curb lane moved into his lane, behind the stopped ambulance. Mr. Choi says he was also able to move forward slightly, then came to a stop. He says he then felt his car get rear ended. He says he turned around and saw a large tractor truck directly behind him.

30. Mr. Choi says that he got out of his car and signaled to the truck's driver that he would pull over into an alley on his right. Once the light at Kingsway turned green, he waited for cars to clear the curb lane and then angled his car to the right towards the alley. Mr. Choi came to a stop with his car still blocking the curb lane due to traffic in the alley. Mr. Choi says he then got out of his car and took some pictures, copies of which are in evidence.

31. In evidence is also RK's dash cam footage. As noted above, the footage begins after the accident, as Mr. Choi had already pulled over towards the alley. Neither party explained why the footage does not start earlier or whether RK was asked to provide additional footage. In any event, it shows RK in the curb lane, about one car length behind Ms. Osborne's truck, which was stopped in the next lane. There were 2 vehicles in front of RK that maneuvered around Mr. Choi's vehicle, which was blocking the curb lane, and in front of Ms. Osborne's truck to continue towards

Kingsway. The footage then shows RK attempt the same move, but just as he starts to move in front of Ms. Osborne, she starts moving forward and her truck collides with the driver's side of RK's vehicle.

32. While the accident between RK and Ms. Osborne is not directly relevant to this dispute, it does provide context to the witnesses' statements because both JM and MR say they witnessed both accidents from the curb lane. However, I find the timing and photographic evidence is inconsistent with their statements.
33. One of Mr. Choi's photos shows RK's vehicle when it was directly beside Ms. Osborne's truck, just before their collision. In the photo, there are three other vehicles behind RK in the curb lane. If MR and JM were in the curb lane when they witnessed RK's accident, as they said, they should be in one of the vehicles behind RK, yet none of them match the description of the vehicle MR and JM said they were in.
34. Further, I accept Mr. Choi's evidence that after the impact, he got out of his car to motion that he would pull over, then waited for some cars in the curb lane to clear, before he was able to move into that lane. The dash cam footage shows that RK was still more than a car length behind Ms. Osborne's truck after Mr. Choi had moved his vehicle. Therefore, I find the alleged witnesses would have been much further back than they reported to have been, and it is very unlikely that they would have had a clear view of the accident from their position. I find this is so even if they had been in a taller truck, such as a dump truck. However, given there is no dump truck-like vehicle shown in any of the pictures, I find MR's and JM's statements that they were in such a truck and clearly witnessed both accidents to be unreliable. Based on this, and the inconsistencies in their reports about the type of vehicle they were in, their distance from the accident, and that they did not respond to ICBC's requests for further, relevant information, I place very little weight on MR's and JM's statements.
35. Having given the witnesses' statements very little weight, I turn to Mr. Choi's and Ms. Osborne's opposing versions of the accident. The evidence shows that Mr.

Choi has made several very detailed statements about the circumstances surrounding the accident to ICBC and in the context of his submissions for the CAR process. Further, Mr. Choi's wife, who was in Mr. Choi's vehicle at the time of the accident, also filed a signed statement, which is consistent with Mr. Choi's report that Ms. Osborne rear ended them. I also note that in RK's dash cam footage, RK can be heard asking Mr. Choi what happened, and Mr. Choi tells him that Ms. Osborne's truck rear ended him.

36. In contrast, the only statement in evidence before me from Ms. Osborne about what happened are undated notes made by someone that I infer is an ICBC employee. The notes say Ms. Osborne reported she was travelling southbound on Boundary Road in the second of three lanes, and she stopped for the light on Kingsway. The notes say the vehicle in front of Ms. Osborne also stopped and then it rolled back, and its rear bumper contacted the tow hooks on the front of Ms. Osborne's vehicle. No other details about the accident are contained in the notes.
37. The notes of Ms. Osborne's statement are in the words of the ICBC employee, not Ms. Osborne. They have clearly been taken from another document and reproduced into a separate document for the purposes of this dispute. ICBC did not explain why the source document containing the statement was not produced, and ICBC, as Ms. Osborne's representative, did not produce any written statement directly from Ms. Osborne.
38. A similar statement was considered in the decision of *Wiebe v. Holley*, 2020 BCCRT 2020. In *Wiebe*, the Vice Chair found the statement was hearsay and while she found the statement admissible, she placed little weight on it because it did not contain the party's own words, it was not an original document, and, as here, it did not indicate when the statement was given, how it was given, or to whom. While this decision is not binding on me, I agree with its reasoning. While I find Ms. Osborne's statement admissible, I place little weight on it.

39. ICBC submits that the dash cam footage shows Boundary Road is on an upwards incline. While I do not disagree that there is an incline, I find that factor is insufficient to prove that Mr. Choi rolled back into Ms. Osborne.
40. Generally, in cases involving a rear end collision, the courts have held that the onus is on the rear driver to show why the collision was not their fault: see *Singleton v. Morris*, 2010 BCCA 48. Having placed little weight on Ms. Osborne's and the witnesses' statements and given the convincing detail of Mr. Choi's statements and submissions, which I find are consistent with the balance of the evidence before me, I find that Ms. Osborne has failed to meet this onus.
41. The relevant section of the MVA is section 162(1), which states:

A driver of a vehicle must not cause or permit the vehicle to follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the amount and nature of traffic on and the condition of the highway.

42. According to section 162, Ms. Osborne was obligated to ensure she kept her vehicle a safe distance behind Mr. Choi's vehicle. I find she did not do so in this case. I accept that Mr. Choi came to a stop and that Ms. Osborne rear ended him.
43. Therefore, I find that Ms. Osborne is 100% responsible for the accident.

Damages

44. As noted above, in the Dispute Notice, Mr. Choi claims \$2,000 in unspecified damages and \$300 for his deductible. However, in his submissions, Mr. Choi seeks \$937.64 as reimbursement for his cost to repair the vehicle he was driving. The respondents did not make any submissions about Mr. Choi's claimed damages.
45. The evidence shows that Mr. Choi was driving a "courtesy car" from an autobody shop at the time of the accident. I infer that he did not have collision coverage on this car, as the repair estimate does not reflect payment of any deductible. Mr. Choi

submitted the repair invoice and his credit card receipt in support of the \$937.64 cost to repair the vehicle. I find he is entitled to \$937.64 in proven damages.

46. As for Mr. Choi's other requested remedy, 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 tribunal declare the applicant is 0% responsible for the accident, or that someone else is 100% at fault. Here, the applicant asks for an order that ICBC's internal liability assessment be reversed and that Ms. Osborne be held 100% responsible. While a stand-alone order declaring Ms. Osborn liable would be declaratory relief not permitted by section 118, I have already found above that Ms. Osborne is 100% liable, leading to my finding that Mr. Choi is entitled to damages.

47. So, my order is restricted to payment of Mr. Choi's \$937.64 in proven damages.

Interest and Fees

48. The *Court Order Interest Act* applies to the CRT. Mr. Choi is entitled to pre-judgement interest on the \$937.64 from June 11, 2020, the date he paid for the vehicle repairs, to the date of this decision. This equals \$1.75.

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. As the successful parties, I find Mr. Choi is entitled to reimbursement of \$125 in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

50. Within 30 days of the date of this decision, I order the respondent, Victoria Osborne, to pay the applicant, Sun Kee Choi, a total of \$1,064.39, broken down as follows:

- a. \$937.64 in damages,

- b. \$1.75 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

51. The applicant 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 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.

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.

Kristin Gardner, Tribunal Member

