



Civil Resolution Tribunal

Date Issued: September 4, 2020

File: SC-2020-003578

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wolpert v. Hemminger*, 2020 BCCRT 996

BETWEEN:

JESSICA WOLPERT and DANIEL WOLPERT

APPLICANTS

AND:

ADRIANNA HEMMINGER 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 November 7, 2019 motor vehicle accident in Port Coquitlam, British Columbia.
2. The applicant, Jessica Wolpert, was driving eastbound on Pitt River Road behind the individual respondent, Adrianna Hemminger, when their two vehicles collided.

The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures both vehicles and internally found Ms. Wolpert 100% liable for the accident.

3. The other applicant, Daniel Wolpert, is the owner of the vehicle Ms. Wolpert was driving.
4. Ms. Wolpert says that Ms. Hemminger should be held partially at fault for the accident because she says Ms. Hemminger changed lanes without signaling, when it was not safe to do so. Ms. Wolpert says she is only 50% at fault and claims \$2,128.76 for half her cost of the repairs to Ms. Hemminger's vehicle.
5. Ms. Hemminger and ICBC say that ICBC's liability determination was reasonable and correct based on its investigation. They maintain that Ms. Wolpert is 100% liable for the accident.
6. Mr. and Ms. Wolpert are each self-represented, although only Ms. Wolpert made any submissions. The respondents are both 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 Ms. Wolpert, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicants bear 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. The parties were travelling eastbound on Pitt River Road, just east of Lougheed Highway. Ms. Wolpert was driving behind Ms. Hemminger, in the left of two lanes. Ms. Hemminger signaled her intention to move into the right lane and started her lane change, when she changed her mind, moved back fully into the left lane and came to a sudden stop. Ms. Wolpert was unable to stop in time and rear-ended Ms. Hemminger.

14. Ms. Hemminger says she did not complete her lane change and made an abrupt stop because a flag person came out onto the roadway with a stop sign. As noted above, Ms. Wolpert says that Ms. Hemminger did not signal that she was moving back into the left lane, which was unsafe and, combined with the sudden stop, she says Ms. Hemminger should share responsibility for the accident.

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

15. To succeed in her claim against ICBC, Ms. Wolpert 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 to Ms. Wolpert: see *Singh v. McHatten*, 2012 BCCA 286 referring to *Innes v. Bui*, 2010 BCCA 322.

16. ICBC owes Ms. Wolpert 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. The ICBC claim file notes in evidence show that ICBC relied primarily on dash cam footage from Ms. Wolpert’s vehicle in coming to its decision. The notes state that the footage shows Ms. Hemminger signalled right to get into the curb lane, then decided to move back after getting less than half-way into the curb lane. They also state the footage shows a construction worker ahead turned their “slow” sign to “stop” and Ms. Hemminger “slams on brakes” to avoid hitting them.

18. In its February 28, 2020 letter to Ms. Wolpert, ICBC says it relied on section 162 of the *Motor Vehicle Act* (MVA) in finding her 100% liable for the accident. Section 162 of the MVA says a driver must not 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. ICBC says a driver must be far enough behind the vehicle in front of it to be able to stop safely, even in an emergency.
19. Ms. Wolpert applied for a Claims Assessment Review (CAR) of ICBC's liability determination. The independent arbiter upheld ICBC's liability determination, finding the dash cam footage showed Ms. Hemminger's lane change did not appear to have had any bearing on Ms. Wolpert's view of the flag person or her inability to stop in time. Rather, the arbiter stated that it appeared Ms. Wolpert did not leave enough space in order to bring her vehicle to a safe stop. Therefore, ICBC maintained its liability assessment that Ms. Wolpert was fully responsible for the accident.
20. While I acknowledge that the applicants disagree with ICBC's liability determination, I find that ICBC did not breach its statutory obligations or its contract of insurance. The applicants have not proven ICBC's investigation was unreasonable or that it failed to consider available evidence. I find ICBC acted reasonably in administratively assigning Ms. Wolpert full responsibility for the accident. Therefore, I dismiss the applicants' claims against ICBC.
21. Given that I am not bound by ICBC's internal liability determination or the CAR decision, I turn now to my own assessment of liability.

Who is liable for the accident?

22. Ms. Wolpert's main point of dispute is with Ms. Hemminger's partial lane change. Ms. Wolpert says that it was unsafe for Ms. Hemminger to move back into the left lane in front of Ms. Wolpert, without signaling. She says that she had no opportunity to react when Ms. Hemminger moved in front of her and slammed on her breaks.

23. From my review of Ms. Wolpert's dash cam footage, I find the following:

- Well before the accident location, the parties pass at least 3 signs indicating there is a construction area ahead, including a reduced speed sign.
- When Ms. Hemminger first puts her right turn signal on, Ms. Wolpert has a clear view ahead. There are 2 flag people clearly visible at the entrance to an approaching construction site on Ms. Wolpert's right.
- Ms. Hemminger starts to move into the right lane, but before her car is 50% into the right lane, she turns her right signal off and her brake lights come on. Ms. Hemminger continues braking as she re-establishes herself fully in the left lane.
- As soon as Ms. Hemminger starts braking, a flag person is clearly visible on the right, who has raised a stop sign and starts walking towards the road, and then enters the right lane.

24. The courts have consistently held that the onus is on the rear-ending driver to prove the collision was not their fault. In *Wright v. Mistry*, 2017 BCSC 239 and *Skinner v. Fu*, 2010 BCCA 321, the courts concluded that, as a general rule, the rear driver will be liable for a rear-end collision, because "normally a sudden stop does not create an unreasonable risk of harm".

25. In order to find Ms. Hemminger partly at fault for the accident, Ms. Wolpert bears the burden to prove that Ms. Hemminger was negligent for changing lanes without signaling, when it was unsafe to do so.

26. First, I find that because Ms. Hemminger always remained at least partly in the left lane, it is inaccurate to say that she "changed lanes" without signaling. Rather, I find that Ms. Hemminger aborted her lane change half-way through and decided to remain in the left lane. Ms. Hemminger turned off her right turn signal and started braking while still partly the left lane. So, Ms. Wolpert should have been alerted that Ms. Hemminger was not going to complete her lane change. I find that under the

circumstances, it was unnecessary for Ms. Hemminger to put on her left signal to indicate that she was going to remain in the left lane.

27. Next, based upon the dash cam footage, I find that Ms. Hemminger made a reasonable decision to abort her lane change when she saw the flag person raise a stop sign and move toward the roadway. I say this because had Ms. Hemminger completed her lane change, she might have been concerned about stopping in time for the flag person walking into the right lane, and there was a dump truck with a trailer in the right lane behind the parties, so Ms. Hemminger might have been concerned about the truck stopping behind her in time.
28. Further, because Ms. Hemminger never moved fully out of the left lane, she was entitled to rely on Ms. Wolpert maintaining a safe distance behind her, so she could come to a safe stop, even if it was sudden. Therefore, while Ms. Wolpert was unable to stop before the collision, I find that it was not because Ms. Hemminger was negligent.
29. I find that had Ms. Wolpert been driving with due care and attention, she should have realized that she was approaching a construction site, indicating that she may have to slow down or come to a stop, and she should have seen the flag person raise their stop sign and had enough time to stop. Overall, I find that Ms. Wolpert violated MVA section 162 by travelling too closely behind Ms. Hemminger, given their speed, the nature of the traffic and that they were approaching a well-marked construction site. Therefore, I find that Ms. Wolpert was negligent.
30. Given that Ms. Wolpert did not prove Ms. Hemminger was also negligent, I find Ms. Wolpert is 100% liable for the accident, and I dismiss her claims.
31. I note that Ms. Wolpert makes submissions about a written contract that she and Ms. Hemminger entered at the accident scene. In the contract, the parties agree that Ms. Wolpert will privately pay the full cost of the damage to Ms. Hemminger's vehicle. Ms. Wolpert says that Ms. Hemminger breached this contract by reporting the accident and having her vehicle repaired by her third-party insurer. It is not clear

what Ms. Wolpert is claiming in regard to this alleged breach of contract, although I infer that it relates to potentially increased insurance rates. Ms. Wolpert does not explain why this document does not amount to an admission that she is fully responsible for the accident.

32. In any event, I find that nothing turns on the alleged breach of contract. Ms. Wolpert has provided no evidence of any increased insurance rates or of the \$2,128.76 in claimed damages for vehicle repair costs. Therefore, even if I had found Ms. Hemminger negligent or that she had breached her contract with Ms. Wolpert, in the absence of any evidence, I would have dismissed the applicants' claim for damages.

33. 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. The applicants were unsuccessful and so I dismiss their claim for CRT fees. Neither party claimed any dispute-related expenses.

ORDER

34. I dismiss the applicants' claims and this dispute.

Kristin Gardner, Tribunal Member