



Civil Resolution Tribunal

Date Issued: October 2, 2020

File: SC-2020-003355

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hartery v. ICBC*, 2020 BCCRT 1114

B E T W E E N :

ROBERTA HARTERY

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA
and Simon Danilo Silda

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This small claims dispute is about liability for a March 14, 2020 motor vehicle accident in Maple Ridge, BC, and vehicle damage.

2. The applicant, Roberta Hartery, says their car was damaged in a collision with a vehicle driven by the respondent, Simon Danilo Silda. Ms. Hartery says the respondent insurer, Insurance Corporation of British Columbia (ICBC), incorrectly assessed Ms. Hartery 50% at fault for the accident. Ms. Hartery seeks an order that they be assessed 0% at fault for the accident, an order to have wheel damage fixed at no charge, and \$5,000 for accelerated depreciation of Ms. Hartery's vehicle.
3. ICBC and Mr. Silda deny that Ms. Hartery was less than 50% liable for the accident. ICBC insures Ms. Hartery, but says that ICBC is not a proper party to the dispute. The respondents deny owing Ms. Hartery for accelerated vehicle depreciation, or that the accident caused wheel damage.
4. Ms. Hartery is self-represented in this dispute. An ICBC employee represents ICBC and Mr. Silda.

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. Although the parties' submissions each call into question the credibility of the other party in some respects, I find I can properly assess and weigh the written evidence and submissions before me without an oral hearing. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Keeping in mind that the CRT's mandate includes proportional

and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.

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, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
9. In its Dispute Response, ICBC argued it is not a proper party to the dispute, and that the claims should be against Mr. Silda only. I disagree. As discussed below, a central issue in this dispute is whether ICBC acted reasonably in internally assigning 50% responsibility for the collision to Ms. Hartery. According to *Innes v. Bui*, 2010 BCCA 322, such an issue is only between a plaintiff and ICBC. This applies to the applicant, Ms. Hartery, in this CRT dispute. Further, Ms. Hartery claims that ICBC failed to repair all of the insured accident damage. I find that ICBC is a properly named party.

ISSUES

10. This issues in this dispute are:
 - a. Did ICBC breach its statutory obligations or contract of insurance in investigating the car accident and assessing fault? If so, what is the appropriate remedy?
 - b. Who is liable for the accident and wheel damage repairs?
 - c. Is Ms. Hartery entitled to damages for accelerated depreciation of their car, and if so, how much?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Ms. Hartery must prove their claims on a balance of probabilities. I have read and weighed all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.
12. The undisputed evidence is that Ms. Hartery was driving their car on Lougheed Highway, and their husband, KH, was a passenger. Mr. Silda was also driving on Lougheed Highway in the same direction. The 2 cars contacted each other, causing damage to the left side and left rear bumper of Mr. Silda's car, and the right front corner and right front side of Ms. Hartery's car. Ms. Hartery followed Mr. Silda for several blocks after the contact before Mr. Silda pulled over. Mr. Silda says he was looking for a safe place to stop. Ms. Hartery says there were many safe places to stop earlier, but provided no evidence showing there was a safe stopping point any earlier.
13. The parties disagree about how the accident occurred. In a statement to ICBC, Mr. Silda says he was travelling in the right-hand lane, and did not leave his lane. He says Ms. Hartery entered his lane from the left and contacted his car. On the other hand, Ms. Hartery and KH say Mr. Silda came into their lane from the right and contacted Ms. Hartery's vehicle. Ms. Hartery says Mr. Silda claims Ms. Hartery "rear-ended" him, but the collision was a side impact. The evidence does not show that Mr. Silda said the accident was a rear-ender, and nothing turns on this because I find neither party disputes the points of contact between the cars.
14. ICBC says it could not determine which lane departures occurred, because they could not prefer one account of the accident over another, and there was no corroborating evidence. So, ICBC internally assessed each driver 50% at fault for the accident. Ms. Hartery says they were unable to avoid Mr. Silda's car when it allegedly entered their lane and hit their vehicle, so Ms. Hartery should be 0% liable for the accident.

Did ICBC breach its statutory obligations or contract of insurance in investigating the car accident and assessing fault?

15. I find Ms. Hartery argues, essentially, that ICBC did not act fairly or reasonably in assigning fault for the accident. Specifically, Ms. Hartery says ICBC should have contacted the car repair shop, who would have supported their claim that Mr. Silda entered Ms. Hartery's lane. Ms. Hartery also says that ICBC only assessed liability at 50% after Ms. Hartery filed a complaint about ICBC.
16. To succeed against ICBC, Ms. Hartery 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 for the accident against Ms. Hartery (see *Singh v. McHatten*, 2012 BCCA 286, referring to *Innes v. Bui*, 2010 BCCA 322).
17. ICBC owes Ms. Hartery a duty of good faith, which requires ICBC to act fairly in how it investigates and assesses the claim (see *Bhasin v. Hrynew*, 2014 SCC 71 at paragraphs 22, 55 and 93). The Continuing Legal Education Society of BC's '*BC Motor Vehicle Accident Claims Practice Manual*' notes that 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).
18. Ms. Hartery says that ICBC failed to consult Ms. Hartery's car repair shop before assigning fault for the accident. However, ICBC provided detailed body shop repair estimates in its possession, for both Ms. Hartery's car and Mr. Silda's car. I find the estimate for Ms. Hartery's car did not identify any accident-related damage to, or propose repairs for, right front wheel damage, despite identifying accident damage and repairs for body panels adjacent to that wheel. Photos of the wheel show an obvious scuff mark on one side of the wheel, which I find the repair shop would have seen. On balance, I find that the estimate would have included any right front

wheel damage that the repair shop identified as accident-related. So, I find the estimate supports a finding that the wheel scuff was not accident-related. More on that below.

19. Ms. Hartery suggests that the repair shop would have supported their argument that Mr. Silda entered Ms. Hartery's lane. But I find this suggestion is not supported by any evidence before me.
20. Further, there is no evidence that Ms. Hartery complained about ICBC before this CRT dispute. Ms. Hartery did not explain whom they complained to or when. I find there is no evidence that ICBC changed its fault assessment because of Ms. Hartery's alleged complaints.
21. Ms. Hartery's arguments also suggest that ICBC failed to properly consider and weigh the evidence about the car accident. I find the evidence shows ICBC considered available photographic evidence, and took statements from Ms. Hartery, KH, and Mr. Silda. Although Ms. Hartery says there was a witness that sustained an injury from the accident, Ms. Hartery did not identify that witness or provide a witness statement. I find no one else witnessed the accident. Both Ms. Hartery and KH say Mr. Silda entered their lane, which Mr. Silda denies. But given the inconsistencies in Ms. Hartery's evidence discussed below, I find that ICBC weighed their statements fairly and reasonably.
22. I find ICBC considered the available evidence, which I find does not support that ICBC acted improperly or unreasonably in evaluating the evidence and assessing fault. Although Ms. Hartery disagrees with ICBC's fault assessment, I find Ms. Hartery has not shown that ICBC breached its statutory obligations or its contract of insurance. I will now address Ms. Hartery's liability for the accident.

Who is liable for the accident and wheel damage repairs?

23. Section 151(a) of the BC *Motor Vehicle Act* (MVA) is relevant here. It says a driver on a roadway with lanes marked by broken lines must not drive into another lane unless the driver determines that the lane change can be safely made and will not

affect another vehicle's travel. There is no dispute that both cars were on a multi-lane highway marked with broken lines when the accident occurred.

24. Each of Ms. Hartery and Mr. Silda say the other unsafely drove into their lane.
25. In his statement to ICBC, Mr. Silda said the road was 3 lanes wide, and he was travelling in the right-hand lane when the accident happened.
26. In his ICBC statement, KH said Ms. Hartery was travelling in the middle lane when the accident occurred. This is consistent with Mr. Silda's statement that he was in the right lane and was struck from the left.
27. Ms. Hartery's statement to ICBC, which I infer from the evidence was a telephone call with Ms. Hartery written down by ICBC, also said that Ms. Hartery was travelling in the middle lane, and Mr. Silda was in the right-hand lane.
28. However, in their submissions in this dispute, Ms. Hartery says they were in the "left lane" when the accident occurred, and indicated that a nearby median affected their ability to avoid Mr. Silda's car. This is inconsistent with Ms. Hartery's earlier statement to ICBC, and with the other 2 witness statements, that Ms. Hartery was in the middle lane, which I find was not beside a median. I find this inconsistency casts some doubt on the accuracy of Ms. Hartery's account of what occurred, as well as their statement that a median affected their ability to avoid a collision. On balance, I find Ms. Hartery was travelling in the middle lane before the accident occurred.
29. As noted, Ms. Hartery says they were unable to move out of Mr. Silda's way because they would have hit "a meridian," which I infer means the median. I place limited weight on this argument, because I have found Ms. Hartery was travelling in the middle lane, which I find was separated from any median or oncoming lanes by the left lane. Ms. Hartery provided no other explanation showing why she was unable to avoid Mr. Silda's car. Ms. Hartery does not say whether Mr. Silda used his turn signal when allegedly changing lanes, or how much time elapsed between when they noticed Mr. Silda's car approaching and the 2 cars making contact. Ms.

Hartery also does not say whether they applied their brakes to avoid contact with Mr. Silda's car.

30. I find that the right front corner and right front side of Ms. Hartery's car contacted the left side and left rear of Mr. Silda's car. I find this means the cars made contact when Mr. Silda was ahead of Ms. Hartery. This is consistent with both accounts of the collision, and either car, or both cars, leaving their lanes. I find the evidence fails to show whether one of the cars was overtaking the other at the time of the accident.
31. I note that Ms. Hartery and KH say that Mr. Silda asked, "Did I hit you?" when they first stopped after the accident, and they say this is evidence he was at fault. Mr. Silda does not confirm saying this, and he denies leaving his lane at the time of the collision. On balance, I find this statement, if Mr. Silda said it, was likely an inquiry about whether the 2 vehicles had come into contact, and provides little support for Mr. Silda's car being the only one that changed lanes.
32. Overall, I find Mr. Silda's evidence is internally consistent, unlike Ms. Hartery's. Having weighed the evidence, I find that Ms. Hartery has not met their burden of showing, on a balance of probabilities, that they were less 50% at fault for the accident. So, I dismiss Ms. Hartery's claim for a different division of liability.
33. I note that, even if I had found Ms. Hartery was not 50% at fault, the CRT lacks jurisdiction to order ICBC to internally assign a different amount of liability for the accident. This would require what is known as injunctive or declarative relief, which is not available under CRTA section 118 for small claims such as this one. However, the question of liability is relevant to the accelerated depreciation issue, below.
34. Turning to Ms. Hartery's claim for repairs to their right front wheel, ICBC says, essentially, that the evidence does not show that the wheel damage was accident-related. I found above that the repair shop would have identified any accident-

related wheel damage. Yet the estimate for Ms. Hartery's car did not show any such accident-related wheel damage.

35. Photos in evidence show a scuff mark on one side of the right front wheel, near to the tire. However, I find there is no evidence before me showing that the accident caused the scuff, other than Ms. Hartery's bare assertion. Further, I find that determining whether the scuff resulted from the accident or another cause is a question outside ordinary knowledge, and requires expert evidence: see *Bergen v. Guliker*, 2015 BCCA 283. I find there is no expert evidence before me, and specifically no expert evidence attributing the scuff to the accident.
36. I find Ms. Hartery has not met their burden of proving that the accident caused the wheel scuff. I dismiss Ms. Hartery's claim for right front wheel damages.

Is Ms. Hartery entitled to damages for accelerated depreciation of their car, and if so, how much?

37. Ms. Hartery's car is a 2019 Chevrolet Cruze. According to the repair shop estimate, the car had been driven only 1,198 kilometres when it was brought in following the accident. Ms. Hartery says the fact their car was damaged in an accident has reduced its market value, despite the car being repaired. Ms. Hartery claims \$5,000 in damages for this accelerated depreciation.
38. Accelerated depreciation is the loss of market value of a motor vehicle because it was damaged, regardless of the fact the damage was repaired, as explained in *Squire v. ICBC*, 1990 CanLII 711 (BCCA). *Squire* says that accelerated depreciation claims, such as this one, have been successful in tort against the person whose fault caused the damage. Here, I find that Mr. Silda was 50% at fault for the accident, and that the accelerated depreciation claim is a tort claim between Ms. Hartery and Mr. Silda.
39. As discussed in *Liang v. ICBC*, 2020 BCCRT 192, which is not binding on me but which I find persuasive and applicable here, ICBC is not a proper party to an accelerated depreciation claim.

40. ICBC's evidence shows that, after consideration, it determined Ms. Hartery was not entitled to insurance coverage for accelerated depreciation. I note that Ms. Hartery has not produced any evidence showing that ICBC is responsible for any accelerated depreciation from the accident under their contract of insurance, such as a copy of their insurance policy. So, I find ICBC is not responsible for any accelerated depreciation damages.
41. Turning to whether Mr. Silda is liable for any accelerated depreciation, I find that Ms. Hartery must prove on a balance of probabilities that the accident reduced their car's market value. Ms. Hartery provided no evidence supporting that their car's market value was reduced by the accident, such as a market value report, or sale prices of similar cars. ICBC submitted a Vehicle Valuation Report, but I find it is of limited value here. The report only calculated a market value for Ms. Hartery's car based on similar vehicles advertised for sale, and did not appear to consider the accident's effect on the car's value.
42. I find Ms. Hartery has not met the burden of showing that the accident reduced their car's market value. So, I find Ms. Hartery is not entitled to damages for accelerated depreciation, and I dismiss their claims for those damages.
43. Overall, I find that Ms. Hartery has failed to prove any of the claims against the respondents, and I dismiss them.

CRT FEES AND EXPENSES

44. 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. The respondents were successful, but paid no CRT fees, so I order no fee reimbursement. Neither party claimed CRT dispute-related expenses, so I order no expense reimbursement.

ORDER

45. I dismiss Ms. Hartery's claims and this dispute.

Chad McCarthy, Tribunal Member