



Civil Resolution Tribunal

Date Issued: October 5, 2020

File: SC-2020-003676

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bell v. ICBC*, 2020 BCCRT 1123

BETWEEN:

LINDA BELL

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and
DALLAS SECKLER

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred on October 30, 2019 in Vancouver, British Columbia.
2. The applicant, Linda Bell, was exiting a parallel parking spot on West 1st Avenue when her vehicle collided with a vehicle being driven in reverse by the respondent

Dallas Seckler. The respondent insurer, Insurance Corporation of British Columbia (ICBC), internally concluded that Ms. Bell was 75% at fault for the accident. However, after a Claims Assessment Review (CAR) decision, ICBC amended its liability determination and held each party 50% liable.

3. Ms. Bell disagrees with the arbiter's and ICBC's decisions. She says that ICBC failed to properly investigate the accident. I infer that Ms. Bell believes Mr. Seckler should have been held fully liable for the accident. Ms. Bell seeks \$225 for reimbursement of her paid deductible.
4. ICBC denies that its investigation was improper. ICBC and Mr. Seckler say that Ms. Bell was correctly held 50% liable for the accident, based on Ms. Bell's own statement. ICBC also says it is not a proper party to this dispute.
5. Ms. Bell is self-represented. ICBC and Mr. Seckler 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. As a preliminary matter, I will address ICBC's submission that it is not a proper respondent to Ms. Bell's claim. ICBC claims that Mr. Seckler, as the other vehicle's owner and driver, is the only proper respondent. I disagree. Ms. Bell alleges that ICBC acted unreasonably in investigating the accident and assigning fault, which is a claim against ICBC as her insurer. Therefore, 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 Ms. Bell, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, as the applicant Ms. Bell 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. It is undisputed that the accident occurred on West 1st Avenue between Cypress Street and Maple Street in Vancouver. This section of West 1st Avenue is rather narrow, with room for only one car to travel in a single lane down the street when there are cars parked on both sides. That was the situation facing the parties at the time of the accident.
14. Ms. Bell says she was parallel parked along the curb facing westbound on the north side of the street. She says she did a shoulder check and there was no traffic coming down the street in either direction, so she drove forward out of her parking spot to proceed west towards Maple Street. Ms. Bell says she was fully out of her spot when Mr. Seckler reversed his vehicle westbound towards Ms. Bell, and the rear of his vehicle collided with her driver's side door. It is undisputed that Ms. Bell's driver's side window shattered in the impact.
15. Mr. Seckler does not seriously dispute Ms. Bell's version of the accident. He says he was stopped a few car lengths east of Ms. Bell's parked car, facing eastbound. He says that he was looking for a spot in a 2-hour parking zone and he saw someone approaching a parked vehicle behind him in the 2-hour zone. So, he says he reversed his vehicle westbound, intending to stop behind the departing vehicle, when Ms. Bell pulled out from the curb.
16. Both parties deny seeing the other before the collision.
17. There was an independent witness to the accident, LT, who was parked across the street from Ms. Bell, facing eastbound. It was LT's parking spot that Mr. Seckler wanted. LT said in her statement to ICBC that Mr. Seckler was stopped in front of the car parked in front of her (there was one car between LT and Mr. Seckler). LT stated that she saw Mr. Seckler reversing and Ms. Bell pulling forward out of her parking spot at the same time but could not say which car started moving first. LT stated that both cars were moving at the time of impact.

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

18. It is undisputed that ICBC initially found Ms. Bell 75% liable for the accident. Ms. Bell appealed ICBC's liability decision through the CAR process and the independent arbiter found her only 50% liable for the accident. ICBC submits that a 50/50 liability split was reasonable on the evidence.
19. To succeed in her claim against ICBC, Ms. Bell 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 assessing fault between Ms. Bell and Mr. Seckler: see *Singh v. McHatten*, 2012 BCCA 286 referring to *Innes v. Bui*, 2010 BCCA 322.
20. ICBC owes Ms. Bell 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.
21. There was initially some question about whether Mr. Seckler was stopped along the curb (in a permit only zone) before starting to reverse or was stopped in the middle of the road. Also, when Mr. Seckler first reported the accident to ICBC, he said that he had come to a stop after reversing, just as Ms. Bell proceeded out of her parking spot and that she collided with his stopped vehicle.
22. Ms. Bell says that ICBC failed to clarify the facts before coming to its determination. Specifically, she says ICBC should have requested that Mr. Seckler provide a diagram of how he says the accident happened. She says this would have shown

whether Mr. Seckler admitted he was stopped along the curb before reversing, how far he had reversed, and that his statement about coming to a stop before the impact was illogical. She also says that ICBC should have requested further clarification from LT about whether Mr. Seckler was stopped along the curb before reversing. In failing to get this information, Ms. Bell says that both ICBC and the CAR arbiter made their determinations without full information.

23. In response, ICBC says it accepted Ms. Bell's and LT's statements that Mr. Seckler was stopped along the curb facing eastbound, with one car between LT and him, before he started reversing. ICBC also says it accepted LT's statement that Mr. Seckler was still moving in reverse at the time of impact. Therefore, ICBC says that it did not need to have a diagram from Mr. Seckler or further information from LT because it accepted Ms. Bell's position on those facts.
24. ICBC says that both it and the CAR arbiter relied on Ms. Bell's own statement and diagram to find she was partly at fault because she breached section 169 of the *Motor Vehicle Act* (MVA). Section 169 says that a person must not move a vehicle that is stopped, standing or parked unless the movement can be made with reasonable safety and he or she first gives the appropriate signal. ICBC says that had Ms. Bell kept a proper lookout before and as she was pulling out of her parking spot, she would have become aware of Mr. Seckler's vehicle reversing towards her and could have avoided the collision.
25. Ms. Bell also argues that the first diagram she provided to ICBC was incorrect because she was unsure about how many cars were between LT and Mr. Seckler before he started to reverse. Her first diagram shows 2 cars between LT and Mr. Seckler, but as noted above, all parties agree there was only one car between them. Ms. Bell says that ICBC has unfairly relied on this incorrect diagram to support its conclusion that Mr. Seckler was established on the road in reverse for a longer period before the collision.
26. I note that ICBC variously submits that Mr. Seckler had travelled "3 car lengths" and "a minimum of 2 – 3 car lengths" in reverse before the collision. I find based on the

agreed facts between the parties (namely that LT was parked across from Ms. Bell and there was one vehicle between LT and Mr. Seckler) that 2 car lengths is a more accurate estimate of how far Mr. Seckler had travelled in reverse before the collision. Nevertheless, I find that neither ICBC nor the CAR arbiter unfairly weighted Ms. Bell's initial diagram in coming to their conclusions.

27. Rather, I find ICBC's and the CAR arbiter's conclusions that Ms. Bell breached section 169 of the MVA was the basis of their findings that she was partly liable. Both parties said the road was clear in both directions before they started moving and neither saw the other before the collision. While the CAR arbiter split responsibility for the accident differently than ICBC, he agreed that both drivers were negligent and must share responsibility for the accident.
28. Based on the evidence before me, I find ICBC had a reasonable basis for its initial determination of liability. Further, ICBC changed the liability assessment in Ms. Bell's favour (though not to the degree she wishes) after the CAR process. I find that ICBC acted reasonably in investigating the accident and in ultimately assigning 50% responsibility to Ms. Bell. While I acknowledge that Ms. Bell disagrees with ICBC's liability determination, I find that ICBC did not breach its statutory obligations or its contract of insurance. Therefore, I dismiss Ms. Bell's claims against ICBC.
29. Having determined that ICBC acted reasonably in its investigation of the accident, I turn now to my own assessment of liability.

Who is liable for the accident?

30. Ms. Bell says that she properly shoulder checked before proceeding forward to exit her parking spot. She also says she was established in the middle of the road when Mr. Seckler quickly reversed from a stopped position along the curb and down the street to collide with her vehicle.
31. While Ms. Bell acknowledges that she has an obligation to ensure it was safe to start moving from her stopped position under section 169 of the MVA, she argues

that her shoulder check met that obligation. Ms. Bell also argues that Mr. Seckler was under the same obligation under section 169 and had an extra onus under section 193 of the MVA. Section 193 says that a driver must not cause a vehicle to move backwards unless the movement can be made in safety. Ms. Bell says that Mr. Seckler breached 2 sections of the MVA and, therefore, he should bear full responsibility.

32. I agree that Mr. Seckler was negligent and bears some responsibility for the accident because there is a very high standard of care imposed on a driver backing up. 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 in reverse: *Araujo v. Vincent*, 2012 BCSC 1836. This high standard of care is imposed because a driver's visibility is reduced when driving in reverse. I find that had Mr. Seckler been looking around him while his car was backing up, he would have seen Ms. Bell start to leave her parking spot and move into his lane of travel.
33. However, section 193 of the MVA does not impose absolute liability on a driver backing up. Ms. Bell still had to ensure it was safe for her to move from her stopped position along the curb. I find that Ms. Bell's obligation did not end with doing a shoulder check before she started moving. Rather, I find she should have continued to look around her as she pulled out to determine whether it was still safe to proceed into the lane of travel.
34. Further, while the witness said she could not tell whether Mr. Seckler or Ms. Bell started moving first, I find the weight of the evidence shows Mr. Seckler likely started moving and was established in the single lane of travel before Ms. Bell left the curb. As noted above, I have found that Mr. Seckler maneuvered in reverse from the curb, into the middle of the road and continued in reverse for about 2 car lengths before he collided with Ms. Bell. Given Ms. Bell's front driver's side door was the point of impact, I find her vehicle was still at an angle across the road as she exited her parking spot. Based on the distance Mr. Seckler travelled before the impact, I find that Ms. Bell should have seen him as she was leaving the curb.

Therefore, I find that Ms. Bell breached section 169 of the MVA and was negligent for failing to ensure it was safe to move her vehicle from a stopped position.

35. So, I find that both Mr. Seckler and Ms. Bell bear some responsibility for the accident. However, given the high standard of care imposed on a reversing driver, I find that Mr. Seckler should bear more of the responsibility. On balance, I find that Mr. Seckler is 75% liable and Ms. Bell is 25% liable.

Remedy

36. Ms. Bell did not provide a receipt or invoice that showed she paid a \$225 deductible. However, the respondents did not dispute that she paid this amount. Given ICBC's initial liability assessment, I infer that \$225 represents 75% of Ms. Bell's \$300 total deductible. Therefore, because I have found Ms. Bell only 25% liable, I order that Mr. Seckler pay Ms. Bell \$150 (\$225 paid - \$75 owing for 25% liability).

Interest and CRT fees

37. The *Court Order Interest Act* applies to the CRT. Ms. Bell is entitled to pre-judgement interest on the \$150 from May 6, 2020, the date she filed this dispute, to the date of this decision. This equals \$0.63.
38. 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 Ms. Bell was only partly successful and so I order Mr. Seckler to pay half of her paid CRT fees, which is \$87.50. Neither party claimed any dispute-related expenses.

ORDERS

39. Within 14 days of the date of this decision, I order Mr. Seckler to pay Ms. Bell a total of \$238.13, broken down as follows:

- a. \$150 as reimbursement for the insurance deductible,
- b. \$0.63 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$87.50 in CRT fees.

40. Ms. Bell is entitled to post-judgment interest, as applicable.

41. 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.

42. 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