



# Civil Resolution Tribunal

Date Issued: October 9, 2020

File: SC-2020-004282

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Li v. ICBC*, 2020 BCCRT 1145

**BETWEEN:**

BO LI

**APPLICANT**

**AND:**

INSURANCE CORPORATION OF BRITISH COLUMBIA, JOLENE  
ELIZABETH FAITH GILL, and ALEXANDER NORMAN LOWE-  
HEISTAD

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sherelle Goodwin

## **INTRODUCTION**

1. This small claims dispute is about a motor vehicle accident that occurred on October 16, 2019 in Surrey, British Columbia.

2. The applicant, Bo Li, was driving her sport utility vehicle (SUV) straight through an intersection, when her car collided with a minivan being driven by the respondent, Jolene Elizabeth Faith Gill. Ms. Gill was turning left in the intersection. The respondent Alexander Norman Lowe-Heistad owns the minivan driven by Ms. Gill.
3. The respondent insurer, Insurance Corporation of British Columbia (ICBC), internally concluded that Ms. Li was 100% at fault for the accident. Ms. Li says Ms. Faith is 100% at fault for the accident and seeks an order that ICBC reassess responsibility for the accident. Ms. Li also claims \$3,000 for increased insurance premiums, \$300 for the deductible she paid to repair her car, and \$1,700 for her vehicle's accelerated depreciation.
4. The respondents say ICBC's assessment of fault is correct and that Ms. Li is 100% responsible for the accident. The respondents also say Ms. Li has not established that her vehicle has diminished in value, given the vehicle's claims history. ICBC further says it is not a proper party to this dispute. All respondents ask that this dispute be dismissed.
5. Ms. Li represents herself. An ICBC employee, NT, represents all the respondents.

## **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. 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. Most of the argument in this dispute amounts to a “she said, she said” scenario, with each party calling into question the credibility of the other. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required in all cases where credibility is in issue. I have considered the CRT’s mandate of proportionality and a speedy resolution of disputes. I am satisfied that I can assess and weigh the evidence and submissions before me without holding an oral hearing.
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 tribunal considers appropriate.
10. In its Dispute Response, ICBC argued it is not a proper party to this dispute. I disagree. As discussed below, Ms. Li alleges that ICBC acted unreasonably in investigating the accident and assigning fault, which is a claim against ICBC as her insurer (see *Innes v. Bui*, 2010 BCCA 322). Further, Ms. Li seeks reimbursement of her deductible and increased insurance rates paid to ICBC. In *Morin v. ICBC, Clark & Berry*, 2011 BCPC 290, the court determined that ICBC was a proper party for the claimant to recover his paid deductible from. As some of Ms. Li’s claims are for breach of her insurance contract, and as Ms. Li seeks repayment of the insurance deductible, I find ICBC is a proper party in this dispute.

## **ISSUES**

11. The issues in this dispute are:
  - a. Is Ms. Gill liable for the accident?
  - b. Did ICBC breach its statutory obligations or contract of insurance in investigating the car accident and assessing fault?

- c. If either answer is “yes”, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

12. In a civil claim such as this one the applicant, Ms. Li, must prove her claim on a balance of probabilities. I have reviewed all submissions and evidence provided, but I will only refer to that which explains and gives context to my decision.
13. Ms. Li’s grey Kia Rondo and Ms. Gill’s grey Honda Odyssey collided in the intersection of 108 Avenue and 128 Street. The intersection is controlled by stop signs at each of the 4 corners. Ms. Li was travelling eastbound straight through the intersection on 108 Avenue. Ms. Gill was travelling westbound on 108 Avenue, turning left onto 128 Street to travel southbound. The left front bumpers of both vehicles were damaged. None of this is disputed.

### ***Who is Liable for the Accident?***

14. ICBC provided “statements” which are dated telephone notes written by an ICBC employee. The telephone notes are not direct evidence but are hearsay.
15. The CRT has the discretion to admit evidence that would not normally be admissible in court proceedings, including hearsay. In *Medel v. Grewal*, 2019 BCCRT 596, a CRT vice chair accepted similar hearsay evidence on the basis that ICBC, as part of its standard procedures when investigating an accident, receives oral reports from witnesses and records those summaries in its file. While CRT decisions are not binding on me, I agree with the vice chair’s reasoning. I find the witness statements are admissible and I will weigh each statement in my analysis below.
16. On October 16, 2019, Ms. Li told ICBC that she was travelling eastbound on 108 Avenue and arrived first at the 4-way stop. Ms. Li said she came to a full stop, then proceeded straight through the intersection. Ms. Li said she was past the middle of the intersection when, suddenly, Ms. Gill’s grey minivan “came out from the 108 Avenue stop sign” and turned left into Ms. Li’s front left bumper.

17. On October 16, 2019, Ms. Gill told ICBC that she was travelling eastbound on 108 Avenue. She said she stopped at the stop sign, then started turning left onto 128 Street when it was her turn to go. Ms. Gill said Ms. Li failed to stop at her stop sign but came straight through the intersection and hit Ms. Gill's minivan. Although Ms. Gill told ICBC that she was travelling eastbound, I find she was actually travelling westbound on 108 Avenue. This is consistent with all descriptions of how the collision occurred, the damage to the vehicles, and the location of Ms. Li's vehicle in her accident scene photos. Further, the parties do not dispute that Ms. Gill was travelling westbound on 108 Avenue.
18. JB witnessed the accident. On October 16, 2019, JB told ICBC that they were headed westbound on 108 Avenue. JB was stopped in their vehicle behind the van, which was also stopped at the stop sign. JB said the "other driver in the grey SUV" heading eastbound on 108 Avenue "didn't stop properly" and came right through the intersection. JB said the SUV's lights were not on. JB said the van was stopped at the intersection before the SUV arrived, so it was the van's turn to go before the SUV. JB felt the driver of the SUV was in the wrong. The ICBC adjuster's telephone notes indicate that the typed notes were read back to JB, who confirmed they were correct, to the best of JB's knowledge. I infer that the van was Ms. Gill's vehicle and the SUV was Ms. Li's vehicle.
19. Ms. Li disputes JB's statement. She says JB could not have seen whether Ms. Li stopped at the stop sign or not because JB did not see Ms. Li's headlights. Ms. Li says she keeps her headlights on "auto" at all times. I infer this means Ms. Li's headlights would automatically turn on when driving conditions were dark enough to require headlights. Based on photos of the accident scene provided by Ms. Li, I find the streetlights, and Ms. Li's headlights were on at the time Ms. Li took the photos. I further find it was not dark outside, but rather dusk. It is unclear how much time passed between the accident and the photos. So, I find that Ms. Li's headlights being on in the photos does not prove they were on at the time of the accident.

20. Even if Ms. Li's headlights were on at the time of the accident and, even if JB were wrong about that detail, I do not find it is determinative that JB did not see whether Ms. Li came to a full stop or not. I find JB was correct about other details, such as the colour and type of both vehicles, the direction of both drivers, and the location of the vehicle damage. So, I give JB's statement significant weight.
21. ICBC determined Ms. Li was 100% responsible for the accident in its October 28, 2019 letter to Ms. Li. Ms. Li disagreed with ICBC's determination and appealed the decision through the Claims Assessment Review (CAR) process.
22. On January 27, 2020 an independent arbiter confirmed that Ms. Li was 100% liable for the accident in the CAR decision. Based on JB's evidence, the arbiter found Ms. Li did not fully stop before proceeding into the intersection and did not have the right of way to proceed. Based on the physical damage to both vehicles, the arbiter found neither Ms. Li nor Ms. Gill were any further into the intersection than the other at the time of the accident.
23. Neither the ICBC decision, nor the CAR arbiter's decision are binding on me.
24. Ms. Li says the CAR arbiter's decision is incorrect because the arbiter relied on an unknown witness. Ms. Li noted the arbiter referred to a female independent witness, whereas the driver of the vehicle behind Ms. Gill's van was a man. I find the independent witness statement relied upon by the external arbiter was JB's statement, given that the arbiter reproduced JB's witness statement in her review decision. I find nothing turns on the arbiter's potentially incorrect use of gender pronouns when referring to the independent witness JB.
25. Ms. Li says Ms. Gill is 100% at fault for the accident because she did not have the right of way to proceed whereas Ms. Li did. Ms. Li says she arrived at the intersection before Ms. Gill did, and proceeded into the intersection before Ms. Gill did.
26. Ms. Li relies on photos she took at the scene of the accident to show she was more than halfway into the intersection at the time of the accident and so must have entered the intersection first. I disagree. While the photos show Ms. Li's SUV more than

halfway through the intersection after the accident, I find the photos do not show how far into the intersection Ms. Li's vehicle was at the moment of impact.

27. Ms. Li also provided a hand drawn diagram of the accident scene in which her SUV is in the direct middle of the intersection. Ms. Li drew Ms. Gill's vehicle turning left into the side of 128 Street closest to Ms. Gill's vehicle, which means Ms. Gill would have been turning into oncoming traffic on the wrong side of the street. I find it unlikely Ms. Gill would have turned into the wrong side of 128 Street. So, I find Ms. Li's diagram is not correct and not reliable.
28. Further, I find the location of the damages on both vehicles inconsistent with Ms. Li being in the middle of the intersection when the accident occurred. Based on the photos provided by ICBC I find the front and left corner of Ms. Gill's bumper was damaged and the left corner of Ms. Li's bumper and headlight were damaged. So, I find the front left corners of both vehicles struck each other in the accident.
29. Based on the satellite image of the intersection provided by Ms. Li, I find 128 Street is a 2-way street with one lane in each direction. So, I find that Ms. Gill would have to proceed to at least the middle of the intersection before turning left into 128 Street. Given that the front left bumpers of the cars collided, and the position Ms. Gill's minivan was in to make the left turn, I find it likely that Ms. Li had not yet reached the middle of the intersection when the accident occurred. So, I find Ms. Li's position in the intersection at the time of the accident does not show she arrived at, and entered, the intersection before Ms. Gill did.
30. Given that Ms. Li and Ms. Gill directly contradict each other on who arrived at the intersection first, and whether Ms. Li stopped at the stop sign, I find JB's statement favours Ms. Gill's version of events. On balance, I find it more likely than not that Ms. Gill arrived at the intersection prior to Ms. Li and therefore had the right of way to proceed into the intersection before Ms. Li. I also find it more likely than not that Ms. Li failed to stop at the stop sign before proceeding into the intersection.

31. Section 186 of the *Motor Vehicle Act* (MVA) says that, if there is a stop sign, a driver must stop at the marked stop line. Based on the google satellite image and photos provided by Ms. Li, I find Ms. Li had a marked stop line where she entered the intersection of 108 Avenue and 128 Street. Based on the evidence before me I find Ms. Li arrived at the intersection after Ms. Gill, and that Ms. Li failed to stop at the marked stop line, as required. So, I find Ms. Li 100% responsible for the accident.

***Did ICBC breach its statutory or contractual obligations?***

32. To succeed in her claim against ICBC, Ms. Li must prove it more likely than not 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. Li and Ms. Faith (see *Singh v. McHatten*, 2012 BCCA 286, referring to *Innes*).

33. ICBC owes Ms. Li a duty of good faith, which requires ICBC to act fairly, both in how it investigates and assesses the claim and in making its decision about whether to pay the claim (see *Bhasin v. Hrynew*, 2014 SCC 71). 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 assessment of the collected information” (see *McDonald v. Insurance Corp. of British Columbia*, 2012 BCSC 283).

34. The evidence before me shows that, before making a decision about liability, ICBC obtained statements from Ms. Li, Ms. Gill, and the independent witness, JB. ICBC asked about dash cameras. I find it was not unreasonable of ICBC to rely on JB’s statement, given that Ms. Li and Ms. Gill’s statements conflicted about who arrived at the intersection first and whether Ms. Li fully stopped at the stop sign.

35. Based on the evidence before me, I find ICBC had a reasonable basis for its internal determination of liability. While I acknowledge that Ms. Li disagrees with ICBC’s



determination of liability, I find that ICBC did not breach its statutory obligations or contract of insurance. I dismiss Ms. Li's claims against ICBC.

### ***Remedy?***

36. As I have found Ms. Li 100% at fault for the accident, I find she is not entitled to any damages arising from the accident. I dismiss her claims against Ms. Gill and Mr. Lowe-Heistead.
37. Even if I had found Ms. Li was not at fault for the accident, I would not have ordered Ms. Li's claimed damages for increased insurance premiums or accelerated depreciation. While Ms. Li says her driver factor number with ICBC increased, she did not provide any supporting evidence or explain how that might affect the cost of her insurance premiums. Ms. Li provided no submissions or evidence to support her claim for accelerated depreciation. So, I would have found that Ms. Li did not prove her claimed damages.
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. However, as Ms. Li was unsuccessful in this dispute, I dismiss her claim for CRT fees. None of the respondents paid any CRT fees and none of the parties claimed any dispute-related expenses.

### **ORDER**

39. I dismiss Ms. Li's claims and this dispute.

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Sherelle Goodwin, Tribunal Member