



Civil Resolution Tribunal

Date Issued: October 26, 2020

File: SC-2020-004428

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Williams v. ICBC*, 2020 BCCRT 1201

BETWEEN:

JASON WILLIAMS and LINDA WILLIAMS

APPLICANTS

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and ADAM
COOK

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a small claims dispute about a motor vehicle accident that happened on October 5, 2019 in North Vancouver, BC.
2. The applicant, Jason Williams, was driving a Honda Civic owned by his mother, the co-applicant, Linda Williams. Just before the accident, Mr. Williams says he was

stopped in a left turning lane about 2-3 meters behind the respondent Adam Cook's truck. Mr. Williams says that Mr. Cook reversed his truck into the front end of the Honda causing vehicle damage. The respondent insurer, the Insurance Corporation of BC (ICBC), wrote off the Honda and paid Ms. Williams the Honda's market value of \$6,748.36 after applying a \$500 deductible. There is no personal injury allegation here.

3. In the Dispute Response, Mr. Cook denied liability and stated that Mr. Williams rear-ended Mr. Cook's stopped truck. Mr. Cook made no direct statement in this proceeding.
4. ICBC insures both drivers. Based on the conflicting versions of events, ICBC assessed 100% fault against Mr. Williams because of the onus on rear or following drivers under section 162(1) of the *Motor Vehicle Act* (MVA).
5. The Williamses say ICBC did not properly investigate the claim and its decision was wrong. They seek a declaration to reverse ICBC's fault determination and to find Mr. Cook wholly responsible for the accident. They also seek \$5,000 in damages, which includes the \$500 collision deductible and anticipated future insurance premium increases.
6. The Williamses are each self-represented. An ICBC claims adjuster represents the respondents.

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 tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a “they said, they said” scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal’s mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the tribunal’s process and found that oral hearings are not necessarily required where credibility is an issue.
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.

Preliminary Issues

11. In the Dispute Responses, the respondents stated that ICBC was not the proper respondent to the Williamses’ claims. I disagree. The Williamses’ claims include an allegation that ICBC failed in its duty to assess liability under the insurance contract. The British Columbia Court of Appeal held in *Innes v. Bui*, 2010 BCCA 322 that the issue of whether ICBC acted properly or reasonably in making an administrative decision on fault is strictly between the plaintiff and ICBC. The same applies to this dispute before the CRT. I find that ICBC is a properly named party.

12. In their submissions, the Williamses ask that I order the respondents to disclose additional records and information. I infer they seek a pause in the proceedings for a further exchange of submissions. Considering the CRT's mandate for speedy dispute resolution and my findings against Mr. Cook below, I decline to make this order. I find it neither necessary nor proportional in the circumstances of this small claims dispute.

ISSUES

13. 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? If not Mr. Williams, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, as the applicants the Williamses must prove their claims on a balance of probabilities. I have read all the parties' submissions but refer only to evidence and argument that I find relevant to provide context for my decision.

15. The accident occurred in the evening of October 5, 2019 at the intersection of Keith Road and Brooksbank Avenue, in North Vancouver. Mr. Williams was driving a Honda Civic and Mr. Cook was driving a Chevrolet Silverado truck with a steel hitch on the back. Mr. Williams was the following or rear driver. There were no independent witnesses to the accident. These facts are not disputed.

16. The following facts are disputed. Mr. Williams says that immediately before the accident, both his and Mr. Cook's vehicles were stopped in the left-hand lane waiting to turn left. Mr. Williams says he saw Mr. Cook's reverse lights turn on. He says that despite honking his horn, Mr. Cook reversed and crashed his truck's rear-end into the Honda's front-end "totaling" his car. Mr. Williams says that immediately after the accident Mr. Cook accepted fault. He says Mr. Cook stated that he reversed because

he was attempting to change into the right through lane and did not see the Honda behind him.

17. As noted, Mr. Cook did not provide a statement for this proceeding. However, in the Dispute Response filed at the outset of the CRT process, Mr. Cook did not admit to reversing into Mr. Williams's vehicle. Mr. Cook said that he was stopped in the furthest left lane waiting to turn left and Mr. Williams rear-ended Mr. Cook's stopped truck. Mr. Cook had also told this to ICBC as shown in the ICBC adjuster's notes.

Claims against ICBC

18. The Supreme Court of Canada has held that an insurer owes its insured a duty of good faith, which requires it to act fairly, both in how it investigates and assesses the claim and in its decision about whether to pay the claim (see *Bhasin v. Hrynew*, 2014 SCC 71 (CanLII) at paragraph 55).
19. The courts have held that ICBC 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 Corporation of British Columbia*, 2012 BCSC 283 at paragraph 249). The issue to decide here is whether ICBC acted properly and reasonably in investigating the accident and administratively assigning sole responsibility against Mr. Williams.
20. The Williamses say that ICBC did not properly investigate the claim and made an "unreasonable, unfair and incorrect decision". I address the Williamses' main concerns when discussing ICBC's investigation below.
21. ICBC says its decision was reasonable and correct based on the facts found by its investigation. ICBC says that the 2 drivers gave different accounts of how the accident happened and it had no objective evidence to confirm the facts from sources like independent witnesses. It says it properly applied the presumption in MVA section 162 against following drivers and reasonably concluded fault against Mr. Williams.
22. I turn now to ICBC's investigation.

23. I find on ICBC's file notes that it interviewed Mr. Williams and considered his statement and the photographs he took of the vehicles after the accident. I find ICBC also interviewed Mr. Cook who gave a completely different version of the accident as noted above. The file notes state that ICBC interviewed a police officer who attended the scene after the accident. The police officer did not witness the accident or have relevant information to help ICBC determine fault.
24. The Williamses say that ICBC should have taken a statement from Mr. Williams's passenger. ICBC's file notes state that it declined to take the passenger's statement because he was not an independent witness. Where there is no agreement on key facts and no independent witnesses, I find a prudent investigation would have included a passenger's statements. A passenger may have useful information not provided by the drivers. In this case, the passenger's statement in evidence corroborates Mr. Williams's version of events and provides nothing new. Had ICBC taken the statement, I find it would have been in the same position with conflicting evidence from persons interested in the outcome. So, it is not clear that taking the statement would have changed ICBC's internal decision. I find this omission was not a serious investigative flaw.
25. According to ICBC's file notes, Mr. Cook had a dash cam and he initially agreed to email ICBC the footage but then did not send it. The notes state that Mr. Cook told ICBC he accidentally left the dash cam on overnight and recorded over the footage. I find Mr. Cook's explanation to ICBC is questionable. I would have expected a person to try to safeguard footage that might absolve them of liability. However, I infer on the ICBC file notes that ICBC accepted Mr. Cook's explanation was plausible, and that the footage was gone. As for this proceeding, I find no need to make a production order because of my findings against Mr. Cook below.
26. The records show that ICBC examined the Honda's front-end damage. ICBC concluded that the damage would have been the same regardless of whether the truck reversed into the Honda or the Honda rear-ended the truck. Had ICBC hired an expert or analyzed the vehicles' electronic sensors it may have had additional

information to determine what happened. However, I find ICBC was not required to do a more forensic investigation on this relatively minor claim.

27. The ICBC file notes state that the Williamses asked ICBC to hold the Honda at the salvage yard so they could retrieve the electronic data and hire an expert to inspect it themselves. The Williamses did not then have an expert examine the data. I find ICBC gave the Williamses a reasonable opportunity to do so before ICBC removed the Honda from the salvage yard.
28. For this proceeding, the Williamses provide their own accident reconstruction based on the vehicles' damage and other evidence. I find accident reconstruction is not within an ordinary person's expertise and it requires expert opinion (see *Berger v. Guliker*, 2015 BCCA 283). The Williamses do not say they have this expertise and there is no expert report before me. So, I put no weight on their unqualified opinion that ICBC's assessment of the evidence before it was wrong.
29. I find the extent of ICBC's obligation to investigate an accident varies with the severity of the accident. I find ICBC's investigation was not perfect. However, the standard is reasonableness and not perfection. I find the thoroughness of ICBC's investigation was proportional to the low overall value of this claim. I find that ICBC's investigation was reasonable in the circumstances.
30. I find ICBC considered relevant information and its decision to assign 100% fault to Mr. Williams is consistent with the legal presumption against following drivers. In *Skinner v. Fu*, 2010 BCCA 321, the Court of Appeal held that, as a general rule, fault lies with the following driver in a rear-end collision. Given the conflicting evidence and the lack of independent witnesses, I find ICBC's internal fault determination against Mr. Williams as the following driver was reasonable.
31. I find that the Williamses have not proven that ICBC breached its statutory obligations or its contract of insurance. I dismiss the Williamses' claims against ICBC.

Who is liable for the accident?

32. I am not bound by ICBC's liability assessment and I must consider whether the Williamses have proved on a balance of probabilities that Mr. Cook is liable for the accident. For the reasons that follow, I find that they have met that burden here.
33. Faced with conflicting evidence, it is impossible to know with certainty what happened. I must assess the credibility of the 2 drivers and the reliability of their evidence to determine the most likely sequence of events that led up to the accident. Credibility is about whether a person is being fully truthful in their evidence. Reliability is about whether a person's evidence is accurate, regardless of their intentions.
34. For this proceeding, Mr. Williams provided a very detailed statement explaining his version of the events leading up to the accident. I find Mr. Williams's statement is credible given its specificity and consistency with the photographic evidence before me. I also find Mr. Williams's statement of events is consistent with the statements he gave ICBC shortly after the accident. Mr. Cook on the other hand, provided no direct statement in this proceeding and there is no explanation why not. The ICBC adjuster representing Mr. Cook only provided the partly redacted ICBC file notes that contain his conversations with ICBC. The adjuster's notes are vague and are not Mr. Cook's own words. Given the vagaries and redactions in ICBC's file notes, I prefer Mr. Williams's more specific evidence. I find it is more likely than not that Mr. Cook reversed his truck into Mr. Williams's stopped Honda.
35. Section 193 of the MVA says:
- The driver of a vehicle must not cause the vehicle to move backwards into an intersection or over a crosswalk, and must not in any event or at any place cause a vehicle to move backwards unless the movement can be made in safety
36. I find that Mr. Cook negligently moved backwards in an intersection contrary to section 193 of the MVA and this caused the accident. I find that Mr. Cook is 100% at fault for the accident.

37. The parties agree that ICBC paid the Williamses for the Honda's fair market value less a \$500 deductible. I find that Mr. Cook must pay the Williamses \$500 in damages for the insurance deductible.
38. The Williamses also claim \$4,500 for future insurance premium increases. ICBC's letters to the Williamses in evidence state that any impact on future insurance premiums will be determined at the time of renewal or when a new policy is purchased. The Williamses provided no statements showing that ICBC increased their premium rates or that they already paid increased premiums. Given that I have found Mr. Cook 100% liable, the Williamses should not receive future insurance premium increases from this accident. As a result, there will be no future loss. I dismiss this aspect of their claim.
39. The *Court Order Interest Act* applies to the CRT. The Williamses are entitled to pre-judgement interest on the \$500 in damages from December 19, 2019, the approximate payout date for the Honda, to the date of this decision. This equals \$5.94.
40. 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. I find the Williamses were substantially successful in their claim against Mr. Cook. I find the Williamses are entitled to reimbursement from Mr. Cook of \$175, their paid CRT fees. No claim for dispute-related expenses was made by any party.

ORDERS

41. Within 30 days of the date of this order, I order Mr. Cook to pay the Williamses a total of \$680.94, broken down as follows:
 - a. \$500 in damages,
 - b. \$5.94 in pre-judgment interest under the *Court Order Interest Act*, and

- c. \$175 in CRT fees.
42. The Williamses are entitled to post-judgment interest, as applicable.
43. I dismiss the Williamses' claims against ICBC and their remaining claims against Mr. Cook.
44. 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.
45. 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.

Trisha Apland, Tribunal Member