



# Civil Resolution Tribunal

Date Issued: October 29, 2020

File: SC-2020-004275

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lin v. ICBC*, 2020 BCCRT 1221

BETWEEN:

CHUN LIN

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and  
STEM TO STERN MARINE SERVICE INC.

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred on October 8, 2019 in Burnaby, British Columbia.
2. The applicant, Chun Lin, says she was stopped on a hill for red light and a truck stopped behind her. Ms. Lin says when the light turned green, her car briefly rolled

backward as she moved her foot from the brake to the gas and collided with the truck behind her. Ms. Lin says the other driver is at fault because his truck was stopped too close to her vehicle.

3. The respondent insurer, Insurance Corporation of British Columbia, internally assessed Ms. Lin 100% at fault for the accident. Ms. Lin disagrees with ICBC's liability assessment. She claims \$1,429.89 for her vehicle repair costs.
4. The respondent company, Stem to Stern Marine Service Inc. (SSMS), is the owner of the truck that Ms. Lin's car collided with. The truck's driver is not a party to this dispute.
5. ICBC says that Ms. Lin was correctly found 100% liable for the collision. ICBC also says that it is not a proper party to this dispute.
6. Ms. Lin is self-represented. Both ICBC and SSMS are 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.
11. As a preliminary matter, I will address ICBC's submission that it is not a proper respondent to this dispute. A key issue in this dispute is whether ICBC acted reasonably in assigning full responsibility for the collision to Ms. Lin. 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 its administrative decision to assign full responsibility for the collision to the plaintiff is strictly between the plaintiff and ICBC. The same applies to Ms. Lin's dispute here. On this basis, I find that ICBC is a properly named party.

## **ISSUES**

12. 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 Ms. Lin, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

13. In a civil claim such as this, as the applicant, Ms. Lin bears the burden of proof on a balance of probabilities. I note that Ms. Lin did not provide any submissions and filed no evidence in this dispute, despite having the opportunity to do so. However, she did provide responses to a submitted Statement of Facts. While ICBC filed evidence, it chose not to make any submissions. Therefore, I base my decision on what the

parties have included in the Dispute Notice, Dispute Response, and Statement of Facts, and the evidence ICBC filed. I only refer to the evidence and arguments as necessary to provide context to my decision.

14. To succeed in her claim against ICBC, Ms. Lin must prove on a balance of probabilities that ICBC breached its statutory obligations or its insurance contract, or both. The question is whether ICBC acted “properly or reasonably” in administratively assigning 100% liability to Ms. Lin (see *Singh v. McHatten*, 2012 BCCA 286, referring to *Innes v. Bui*, 2010 BCCA 322).
15. ICBC owes Ms. Lin 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.
16. As noted above, Ms. Lin did not submit any evidence or provide details about her communications with ICBC during its investigation, nor did she articulate any specific concerns about how ICBC conducted its investigation. According to the parties’ Statement of Facts, Ms. Lin says only that ICBC did not adequately investigate the accident.
17. ICBC’s evidence shows it obtained oral statements from Ms. Lin, the other driver, and an independent witness. I find the statements are consistent about how the accident happened. That is, they each state that Ms. Lin rolled backwards into the truck behind her. ICBC also reviewed Ms. Lin’s dash cam video footage, which I find is consistent with the statements.

18. ICBC says it relied on sections 193 and 169 of the *Motor Vehicle Act* (MVA). Section 193 of the MVA says a driver must not move a vehicle backwards unless the movement can be made in safety. Section 169 of the MVA says a person must not move a vehicle that is stopped unless the movement can be made safely and after giving the appropriate signal.
19. Based on the evidence before me, I find ICBC had a reasonable basis for its liability determination. Ms. Lin has not shown that ICBC should have undertaken some other investigation and failed to do so. While I acknowledge that Ms. Lin disagrees with ICBC's liability assessment, I find she has not proven that ICBC breached its statutory obligations or its contract of insurance. Therefore, I dismiss Ms. Lin's claims against ICBC.
20. Given that I am not bound by ICBC's liability determination, I turn now to my own liability assessment.

***Who is liable for the accident?***

21. As noted above, Ms. Lin has brought this claim against ICBC and the owner of the other vehicle, but not the driver of the other vehicle involved in the accident. In *Kristen v. ICBC*, 2018 BCPC 106, the court held that:

The court cannot assess liability unless the other driver is given an opportunity to present his or her case on that issue. If the other driver is not served and given an opportunity to be heard the court would only have the version of events provided by the claimant to consider. The other driver has a right to notice that the court is being asked to consider the issue of liability and an opportunity to participate in the proceedings to present his or her version of the events.

The proper way for the claimant to do that is to sue the other driver. The proper defendant in an action to determine liability in a motor vehicle accident is the other driver, not ICBC...

22. In *Kristen*, rather than dismissing the claim for not having named the other driver, the court allowed the claimant an opportunity to amend his Notice of Claim and add the other driver as a defendant. Given my conclusion below that Ms. Lin has not proved her claim, in this dispute nothing ultimately turns on the fact that she did not name the other driver.
23. For the reasons that follow, I dismiss Ms. Lin's claim because she has not proven on a balance of probabilities that the other driver was negligent.
24. In Ms. Lin's statement to ICBC she stated she was stopped on an upwards incline and that the other driver stopped too close behind her, so when her vehicle "rolled back a little bit", it collided with the truck behind her. She stated it was a "normal" roll that happened when she moved her foot from the brake to the gas. She says that the truck was stopped less than one foot behind her.
25. As noted above, Ms. Lin had dash cam footage from her own vehicle. From my review of the footage, I find that traffic at the time was heavy. Ms. Lin was several cars back from a traffic light, and she had left more than one car length between her and the car in front of her. The footage shows Ms. Lin's vehicle started moving backwards while the car in front of her still had its brake lights on and was at a complete stop. Therefore, it is unclear why Ms. Lin would be moving her foot to the accelerator.
26. While the footage does not show how close the truck behind her was stopped, I find that Ms. Lin was rolling backwards for almost 4 seconds before the impact. Further, while I cannot precisely measure the distance Ms. Lin rolled, from the footage I find that she rolled back considerably more than one foot before colliding with the truck. I find the distance Ms. Lin moved backward was more than what one would typically see when simply moving from the brake to the accelerator on an incline of the degree I observed in the dash cam footage.
27. I find that it was unsafe for Ms. Lin to allow her vehicle to move backwards from a stopped position when there was another car stopped behind her and that she was negligent in doing so.

28. While Ms. Lin says that the driver behind her stopped too close to her, I find there is no evidence before me to support that submission. The witness statement says that “there was room” between Ms. Lin and the truck behind her and that he saw Ms. Lin roll back and hit the truck.
29. On balance, I find that Ms. Lin has not proven that the other driver was negligent. As a result, I find Ms. Lin is not entitled to a different liability assessment for the accident and, therefore, is not entitled to damages.
30. However, even if I had found the other driver partly or fully at fault for the accident, I would not have allowed Ms. Lin’s claimed damages. She did not provide any evidence about the cost of her vehicle repairs or explain why she did not only pay a deductible. Therefore, I would have dismissed Ms. Lin’s claims in any event.

### ***Fees and expenses***

31. 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. As Ms. Lin was unsuccessful, I find she is not entitled to reimbursement of her claimed fees. The respondents did not pay and fees and did not claim any expenses, so I make no order.

## **ORDER**

32. I order Ms. Lin’s claims and this dispute, dismissed.

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Kristin Gardner, Tribunal Member