



Civil Resolution Tribunal

Date Issued: December 14, 2020

File: SC-2020-004524

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Schimpf v. ICBC*, 2020 BCCRT 1411

BETWEEN:

CAMERON SCHIMPF

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and
STEPHEN DORNAN

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that happened on May 2, 2019 in Surrey, British Columbia.

2. The applicant, Cameron Schimpf, says he was rear-ended by a semi-truck driven by the respondent, Stephen Dornan, causing Mr. Schimpf's vehicle to "spin out". The semi-truck driven by Mr. Dornan is owned by a third party, HLCS, which is not a party to this dispute.
3. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures both Mr. Schimpf and Mr. Dornan. ICBC determined Mr. Schimpf was solely at fault for the accident. Mr. Schimpf disagrees and seeks a new determination of liability and the return of the \$500 deductible he paid. The respondents say Mr. Schimpf was fully responsible for the accident and is therefore not entitled to reimbursement of his deductible.
4. Mr. Schimpf is self-represented. The respondents are both represented by an ICBC employee.

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). Section 2 of the CRTA states that 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. Section 39 of the CRTA says that the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT'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 CRT's

process and found that oral hearings are not necessarily required where credibility is an issue.

7. Section 42 of the CRTA says that 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. In resolving this dispute the CRT may make one or more of the following orders, where permitted by section 118 of the CRTA:
 - a. Order a party to do or stop doing something;
 - b. Order a party to pay money;
 - c. Order any other terms or conditions the CRT considers appropriate.

Claims against ICBC

9. Mr. Schimpf named ICBC as a party to this dispute, but other than stating he does not agree with its internal fault assessment, did not make any allegations against it, or claim any specific remedy from it. Therefore, I dismiss Mr. Schimpf's claims against ICBC.

ISSUE

10. The issue in this dispute is who is responsible for the May 2, 2019 accident, and if not Mr. Schimpf, whether he is entitled to reimbursement of his \$500 paid insurance deductible.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant Mr. Schimpf 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.

12. The parties largely disagree on the circumstances of the accident. Mr. Schimpf says he was driving westbound on Highway 17 near 104th Avenue in Surrey, British Columbia. Highway 17 has 2 westbound lanes in that area, and eastbound traffic is separated by a concrete barrier. Mr. Schimpf says he changed lanes from the right lane into the left, "fast" lane, some distance in front of Mr. Dornan's semi-truck. Mr. Schimpf says 5 or 6 seconds later, he was rear-ended by Mr. Dornan's semi-truck, causing Mr. Schimpf's vehicle to spin out of control and strike the centre concrete barrier multiple times before coming to a rest facing the wrong direction in the left westbound lane of Highway 17.
13. In contrast, Mr. Dornan says he was driving his loaded semi-truck westbound on Highway 17 in the far left lane. Mr. Dornan says Mr. Schimpf sped past him in the right lane and tried to cut in front of the semi-truck but misjudged his manoeuvre. Mr. Dornan says as Mr. Schimpf moved into the left lane, he clipped the front right bumper of the semi-truck. Mr. Schimpf denies the accident happened as he changed lanes.
14. Mr. Schimpf says the evidence of a witness, SR, supports his version of events and says Mr. Dornan should therefore be held fully responsible for the accident. SR provided an oral statement to ICBC, as well as a further statement to an independent adjuster hired by ICBC. In both statements, SR explained that he was driving a dump truck behind Mr. Dornan's semi-truck. SR said that Mr. Schimpf's vehicle was ahead of the semi-truck, and stated "the gap" between Mr. Dornan's semi-truck and Mr. Schimpf's vehicle "started disappearing", when suddenly he saw the semi-truck slam on its brakes and changes lanes to the right, unexpectedly and without a signal. The next thing SR saw was Mr. Schimpf's vehicle spinning and hitting the cement barrier. SR denied either vehicle made a lane change before the accident occurred.

15. I find there are several issues with SR's evidence. First, SR does not explain how he was able to see Mr. Schimpf's small vehicle some distance ahead of Mr. Dornan's loaded semi-truck. It is undisputed that Mr. Dornan had a 40-foot steel ocean trailer loaded on his truck at the time, and it is further undisputed that Highway 17 is straight through the accident area, not curved. Therefore, I find SR failed to explain how he was able to see Mr. Schimpf's vehicle ahead of Mr. Dornan's, or the gap that existed between the two vehicles. Additionally, SR stated that neither Mr. Schimpf nor Mr. Dornan made a lane change prior to the accident. This is clearly incorrect as Mr. Schimpf admits he changed lanes from the right lane to the left lane approximately 5 seconds before the accident occurred. Similarly, this is inconsistent with SR's later evidence that Mr. Dornan made a sudden lane change before the accident occurred, which is inconsistent with either party's version of the accident. Given these issues and discrepancies, I am unable to give SR's witness statements any weight.
16. The respondents submitted a report from James Bowler, an accident investigation engineer at MEA Forensic. Mr. Bowler stated he is a Senior Engineer and has been responsible for conducting technical investigations and reconstructions, primarily involving motor vehicle accidents, with MEA Forensic for 25 years.
17. In his September 10, 2020 report, Mr. Bowler explained that he was provided with diagrams and photographs from the parties, as well as Mr. Schimpf's statement, and was asked to determine whether Mr. Schimpf's version of how the accident occurred (stated above) was consistent with the physical evidence. Mr. Bowler noted the damage on Mr. Schimpf's vehicle shows that the initial impact was on the left driver side, behind the vehicle's centre of gravity. He explained this is why when the impact occurred, it caused Mr. Schimpf's vehicle to spin counter clockwise and into the concrete median. Mr. Bowler further explained that in order for the vehicle-to-vehicle contact to occur as it did, either Mr. Schimpf had to change lanes into Mr. Dornan's left lane, or Mr. Dornan had to have changed lanes into Mr. Schimpf's right lane, because the damage was side to side, not front to rear. As noted above, neither party suggests Mr. Dornan changed lanes into the right lane.

18. Under CRT rule 8.3(3), the CRT may accept expert opinion evidence from a person the CRT decides is qualified by education, training, or experience to give that opinion. Given Mr. Bowler's qualifications and experience in accident investigation and reconstruction, I accept Mr. Bowler's September 10, 2020 report as expert evidence under the CRT's rules.
19. I find the damage as indicated by the photographs in evidence is consistent with Mr. Bowler's opinion of how the accident likely occurred. I accept Mr. Bowler's explanation of the accident. I find the matter of how the accident likely occurred requires expert evidence, and I note that there is none contrary to Mr. Bowler's opinion. The photographs submitted by the parties show damage to nearly all sides of Mr. Schimpf's vehicle. Notably, however, there is no damage shown to the rear of Mr. Schimpf's vehicle, which one would expect given Mr. Schimpf's claim of being rear-ended by a loaded semi truck when fully established in the left lane.
20. Given the parties' evidence and Mr. Bowler's report, I find it is more likely than not that the accident occurred when Mr. Schimpf changed lanes in front of Mr. Dornan's semi-truck, and the rear left side of Mr. Schimpf's vehicle struck the semi-truck's right front bumper.
21. Section 151 of the *Motor Vehicle Act* (MVA) governs travel on roadways with 2 or more lanes. Section 151 says that a driver must not move from one lane to another unless the movement can be done with safety and will in no way affect another vehicle's travel. Here, I find Mr. Schimpf changed lanes in front of Mr. Dornan's semi-truck when there was not enough space for him to do so, in breach of section 151 of the MVA, and struck Mr. Dornan's vehicle. I find Mr. Schimpf is therefore 100% responsible for the accident. It follows that Mr. Schimpf is not entitled to reimbursement of his paid deductible. I dismiss Mr. Schimpf's claims.
22. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As Mr. Schimpf was not successful, I find

that he is not entitled to reimbursement of his paid tribunal fees. The respondents did not pay any fees or claim any dispute-related expenses.

ORDER

23. I order Mr. Schimpf's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair