



Civil Resolution Tribunal

Date Issued: January 12, 2021

File: SC-2020-005608

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Peacock v. ICBC*, 2021 BCCRT 32

B E T W E E N :

CARRIE PEACOCK

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA,
DAVID ARCE and IN & OUT EXPRESS LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This small claims dispute is about fault for a motor vehicle accident that occurred on June 23, 2020 in Abbotsford. The applicant, Carrie Peacock, was at a 4-way stop

behind a moving truck, owned by the respondent In & Out Express Ltd. (In & Out) and driven by the respondent David Arce. It is undisputed that the front of Ms. Peacock's vehicle impacted the rear of the moving truck. The question is whether Mr. Arce backed into Ms. Peacock, as Ms. Peacock alleges, or whether Ms. Peacock rear-ended Mr. Arce, as Mr. Arce alleges.

2. The respondent Insurance Corporation of British Columbia (ICBC) insures Ms. Peacock, Mr. Arce and In & Out. ICBC internally concluded that Ms. Peacock was 100% at fault for the accident.
3. Ms. Peacock says that Mr. Arce was at fault. She claims \$500, which is the deductible she paid to repair her vehicle.
4. Ms. Peacock is self-represented. The respondents are all represented by an ICBC adjuster.

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 the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says 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 of 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 *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.

7. Section 42 of the CRTA says 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. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The tribunal's order may include any terms or conditions the CRT considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. Who is at fault for the accident?
 - b. If Mr. Arce is fully or partially at fault, what are Ms. Peacock's damages?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, Ms. Peacock as the applicant must prove her case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
11. The accident occurred in the early afternoon of June 23, 2020, at a 4-way stop in a rural area near Abbotsford. Ms. Peacock was driving a small SUV. Mr. Arce was driving a large moving truck.
12. Ms. Peacock provided a detailed statement about the accident. She says that the moving truck stopped at a 4-way stop, intending to turn right. She says that they were on a narrow country road so she expected that the truck may need to reverse slightly in order to make the tight turn. According to photographs of the accident

scene that Ms. Peacock took, the road is narrow with only a small grass shoulder on each side before a deep ditch. There is also a stop sign and fire hydrant at the corner where the truck was turning right. Based on the photographs, I accept Ms. Peacock's evidence that the right hand turn that Mr. Arce wished to make was relatively tight, given the moving truck's size of the moving truck.

13. Ms. Peacock says that she therefore left "ample room" for Mr. Arce to maneuver around the corner, including room to reverse if needed. She says that when the truck started reversing, she honked her horn to ensure Mr. Arce knew she was there. When the moving truck did not stop, she continued honking her horn, but it did not stop and collided with her front bumper.
14. Ms. Peacock says that immediately after the impact, the truck began moving forward and she feared that Mr. Arce was driving away. She says that she quickly took a photograph of the truck in case it left the scene so that she would have its license plate. However, the truck soon stopped and a passenger got out. According to Ms. Peacock, the passenger asked if she was hurt, which she was not. Ms. Peacock says that the driver also got out of the truck and apologized. I note that under section 2 of the *Apology Act*, an apology is not an admission of liability. I have not considered Ms. Peacock's allegation that Mr. Arce apologized in making this decision.
15. Ms. Peacock reported the accident to ICBC the same day.
16. The respondents provided no direct evidence either from Mr. Arce or his passenger. Rather, they provided ICBC's internal notes where its employees made notes of their conversations with Mr. Arce and the passenger. The ICBC adjuster representing Mr. Arce also provided submissions in this dispute that reiterate what is in the notes, without providing any additional detail.
17. According to these notes, an ICBC adjuster spoke to Mr. Arce on June 25, 2020. The adjuster's notes record that Mr. Arce said that after the accident, Ms. Peacock accused him of backing into her, which he denied. Mr. Arce said that Ms. Peacock

was following closely behind him. He also said that there would be no reason for him to reverse at the intersection.

18. ICBC determined that as the rear driver, Ms. Peacock bore the onus to prove that the accident was not her fault. Because there was no dash cam footage, independent witness or other objective evidence, ICBC determined that the accident was Ms. Peacock's fault. ICBC also determined that Ms. Peacock was following Mr. Arce too closely, contrary to section 162 of the *Motor Vehicle Act* (MVA).
19. On September 21, 2020, ICBC contacted the passenger, who said that he was asleep when the accident occurred and had no knowledge of how it happened. He acknowledged speaking to Ms. Peacock but had no relevant information to provide.
20. So, did Mr. Arce back into Ms. Peacock or did Ms. Peacock rear-end Mr. Arce? For clarity, I do not agree with ICBC that Ms. Peacock bears the onus of proving that the accident was not her fault simply because she was the rear driver. While there is often a reverse onus on the driver in a rear-end collision, it is not automatic (see *Singleton v. Morris*, 2010 BCCA 48). I find that it would be inappropriate to apply the reverse onus in the circumstances of this dispute because the central issue is whether it was a rear-end collision or not. So, applying the reverse onus would prejudice the outcome. That said, as mentioned above, Ms. Peacock bears the burden of proving her claims because she is the applicant in this dispute. For the reasons that follow, I find that she has proven her claims.
21. First, where there are no independent witnesses or dash cam footage to an accident, the primary evidence the CRT must assess is the direct evidence from the parties. This requires the CRT to assess the parties' credibility and reliability. Credibility is about whether the party is telling the truth. Reliability which is about whether the party's recollection is accurate regardless of their intentions.
22. There is no direct evidence from Mr. Arce in this dispute. The respondents' evidence, which again is from ICBC's internal notes, is hearsay evidence. The CRT has discretion to admit evidence that would not be admissible in court proceedings,

including hearsay. In previous disputes, the CRT has accepted similar hearsay evidence from internal ICBC notes because as part of its standard procedures when investigating an accident, it receives and records oral reports from witnesses and parties (see *Medel v. Grewal*, 2019 BCCRT 596). I agree with this approach.

23. However, as I noted in *Armillotta v. ICBC*, 2020 BCCRT 1, the CRT may give these notes less weight than direct evidence from a party or witness. This is because even if the adjuster recorded a person's recollections with reasonable accuracy, the words are still the adjuster's summary of the person's evidence. So, I find that it is difficult to assess the reliability and credibility of Mr. Arce's evidence when he has not directly provided a statement, especially considering his evidence is not particularly specific or detailed.
24. For these reasons, I find it appropriate to place more weight on Ms. Peacock's detailed statement than on ICBC's summary of Mr. Arce's recollections.
25. Turning to the evidence, Mr. Arce does not address Ms. Peacock's assertion that Mr. Arce moved the truck forward after the collision. He also does not address her assertion that she repeatedly honked her horn. In the absence of any contrary evidence, I accept Ms. Peacock's evidence on both points.
26. The fact that Mr. Arce moved the truck forward after the collision is key because in Ms. Peacock's photograph of the aftermath of the accident, the moving truck is stopped before the intersection and several meters ahead of Ms. Peacock. Ms. Peacock argues that this is more consistent with her version of events, and I agree. If Ms. Peacock had rear-ended Mr. Arce when he was stopped at the intersection, as he alleges, he would need to enter the intersection to move forward. On the other hand, if Mr. Arce stopped at the intersection and then reversed back into Ms. Peacock, as she alleges, he would have room to move forward without entering the intersection. So, the truck's location before the intersection is more consistent with Mr. Arce backing into Ms. Peacock.

27. I also find the fact that Ms. Peacock took a photo of the truck immediately after the accident supports her version of events. I find it unlikely that Ms. Peacock would have photographed the truck to record the license plate if she had just rear-ended it. The fact that she took this photograph is more consistent with her allegation that the truck had unexpectedly reversed into her vehicle and appeared to be leaving the scene.
28. For these reasons, I prefer Ms. Peacock's version of events. I find that Mr. Arce reversed into Ms. Peacock's stopped vehicle. I find that this was a clear breach of the standard of care of a reasonably prudent driver.
29. As for the respondents' allegation that Ms. Peacock was following too closely, the only evidence to support this is Mr. Arce's hearsay evidence, which is vague on this point. Also, because I have found that Mr. Arce reversed into Ms. Peacock after they both stopped at the intersection, Mr. Arce's evidence about how close she was following before they stopped is not relevant. In any event, the burden is on the respondents to prove that Ms. Peacock was contributorily negligent, and I find that they have not done so.
30. Under section 86 of the MVA, In & Out is vicariously liable for Mr. Arce's negligence as the truck's registered owner.
31. As for damages, Ms. Peacock claims \$500, which was the insurance deductible she paid to have her vehicle repaired. Ms. Peacock provided the invoice from the repair shop, which shows that she paid the deductible. Also, the respondents do not dispute this amount. So, I order Mr. Arce and In & Out to pay Ms. Peacock \$500.
32. As for Ms. Peacock's claims against ICBC, the CRT has consistently found that an insured has a right to claim against ICBC if they believe that ICBC did not meet its statutory obligation to reasonably investigate an accident. I agree with this approach. In this dispute, Ms. Peacock did take issue with some aspects of ICBC's investigation. However, I find that substance of her claim is not about ICBC's investigation. Rather, it is about the outcome of ICBC's investigation. She has not

requested any remedy other than the refund of her deductible, which I find is a damages claim against Mr. Arce and In & Out and not a breach of contract claim against ICBC. I find that there is no basis for an order against ICBC, and so I dismiss Ms. Peacock's claims against ICBC.

33. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. Peacock is entitled to pre-judgment interest on the deductible from July 6, 2020, the date of the repair invoice, to the date of this decision. This equals \$1.17.
34. 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. Peacock is entitled to reimbursement of \$125 in CRT fees from Mr. Arce and In & Out, but not ICBC. Ms. Peacock did not claim any dispute-related expenses.
35. ICBC did not pay any CRT fees or claim any dispute-related expenses.

ORDERS

36. Within 28 days of the date of this order, I order Mr. Arce and In & Out to pay Ms. Peacock a total of \$626.17, broken down as follows:
 - a. \$500 in damages as reimbursement for the deductible,
 - b. \$1.17 in pre-judgment interest under the COIA, and
 - c. \$125 in CRT fees.
37. Ms. Peacock is entitled to post-judgment interest, as applicable.
38. I dismiss Ms. Peacock's claims against ICBC.
39. 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.

40. 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.

Eric Regehr, Tribunal Member