



Civil Resolution Tribunal

Date Issued: January 18, 2021

File: SC-2020-005077

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wolfram v. ICBC*, 2021 BCCRT 58

BETWEEN:

HARTMUT WOLFRAM

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and YUNSUN
KIM

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that took place on August 31, 2019 on Marine Drive in Burnaby, British Columbia.
2. The applicant Hartmut Wolfram and the respondent Yunsun Kim were travelling in the same eastbound direction on Marine Drive. Mr. Wolfram says Ms. Kim changed

into his lane without signaling and collided into his vehicle. Ms. Kim disagrees and says it was Mr. Wolfram who changed lanes and collided into her vehicle.

3. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures both drivers. ICBC internally assigned 50% fault to each driver on the basis that it could not determine who made the lane change.
4. Mr. Wolfram argues that ICBC's determination was wrong. He seeks a declaration that Ms. Kim is solely responsible for the accident. In the Dispute Notice, Mr. Wolfram also claimed a total of \$2,286.99 in damages, broken down as \$2,136.99 for property damage and \$150 for his insurance deductible. In his submissions, Mr. Wolfram added a \$500 claim for insurance premium increases. There is no personal injury claim before me.
5. Mr. Wolfram is represented by legal counsel, Jordana Dhahan. The respondents are both represented by an ICBC adjuster.

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). 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.
7. Section 39 of the CRTA says that the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always

necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.

8. 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.
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 CRT considers appropriate.
10. As a preliminary matter, Mr. Wolfram submitted evidence past the CRT's deadline. He says it was late due to an oversight by the law firm representing him. The respondents do not object to the late evidence and they reference some parts of Mr. Wolfram's late evidence in their submissions. I find that the respondents had a reasonable opportunity to review and respond to the late evidence. I find it is also not highly controversial evidence and the respondents are not prejudiced by allowing it. For these reasons, I have allowed Mr. Wolfram's late evidence and have considered it in my decision below.

ISSUES

11. The issues in this dispute are:
 - a. Did ICBC breach its statutory obligation in investigating and assessing fault?
 - b. Was Ms. Kim 100% at fault for the accident?
 - c. What if any, are the damages?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, as the applicant Mr. Wolfram must prove his claims on a balance of probabilities. I have read the parties' submissions, but only comment on the argument and evidence that I find relevant to provide context for my decision.
13. As noted, this dispute involves an accident that happened on Marine Drive in Burnaby, British Columbia on August 31, 2019.
14. The undisputed evidence is that just prior to the accident, Mr. Wolfram was driving his VW vehicle in the middle of 3 lanes (2/3) and Ms. Kim was driving her Mazda in the far-left lane (3/3). They were driving in the same eastbound direction. One of the drivers entered the other driver's lane and the vehicles collided. Neither driver admits to making a lane change. They each say the other driver crossed the broken line into their lane of travel causing the accident. There were no witnesses or any dash camera footage.
15. Both parties provided statements to ICBC on August 31, 2019.
16. Mr. Wolfram stated that he had been driving eastbound in the middle lane on Marine Drive for about 10 to 15 minutes and intended to turn right in about 2 kilometers to attend a wedding. He stated that he saw Ms. Kim in the extreme left lane and saw her move into his lane and hit his vehicle in a "matter of a split second". He said he did not see Ms. Kim signal prior to her lane change. He stated that the lane on his right was completely empty and the lane in front of him was empty as well.
17. Ms. Kim stated that she got into the extreme left lane on Marine Drive at the Marine Sky Train Station and stayed in that lane as she was heading to Metrotown. She said she did not know where she was supposed to make the next turn and was following her GPS. She says she checked her side view mirror and saw a navy vehicle, not Mr. Wolfram's vehicle, in the distance. Ms. Kim said she did not see Mr. Wolfram's vehicle in her mirrors. She stated that she then felt an impact. She stated that she saw Mr. Wolfram's vehicle halfway in her lane seemingly to get in front of her and then moved back to his lane.

18. In his submissions to the CRT, Mr. Wolfram adds that he noticed in his left side mirror that Ms. Kim was looking down at her lap. Considering the importance of Ms. Kim allegedly looking down, I would have expected Mr. Wolfram to have told ICBC about it in 2019 and it is not in his statement. I put no weight on this additional detail considering the time that has passed since the accident.
19. During ICBC's internal liability investigation in September 2019, both its physical damage appraiser and material damage manager examined Mr. Wolfram's vehicle. They both concluded, based on the tire marks on it from Ms. Kim's vehicle that she and not Mr. Wolfram had changed lanes.
20. Based on the 2 assessments of Mr. Wolfram's vehicle damage, ICBC assigned 100% fault to Ms. Kim under section 151(a) of the *Motor Vehicle Act* (MVA).
21. Section 151(a) of the MVA states that a driver who is driving a vehicle on a laned roadway must not drive it from one lane to another when a broken line only exists between the lanes, unless the driver has ascertained that movement can be made with safety and will in no way affect the travel of another vehicle.
22. A different ICBC appraiser examined Ms. Kim's vehicle damage. That appraiser concluded they could not tell from the vehicle damage which vehicle changed lanes. The appraiser also stated that Ms. Kim would have been in Mr. Wolfram's blind spot, which Mr. Wolfram disputes.
23. Following the assessment of Ms. Kim's vehicle, ICBC decided that it could not determine which driver crossed into the other's lane. It changed its initial conclusion on fault and apportioned it equally between the 2 drivers.
24. I stop to note that the appraiser did not examine Mr. Wolfram's vehicle. There is no statement of their expertise and it is not clear how they determined the blind spot without the vehicle or driver present. Given their qualifications are not before me as required by CRT rule 8.3, I do not accept their opinion as expert evidence. I have put no weight on their opinion about the blind spot.

25. On November 10, 2020, an external Claims Assessment Review Arbiter reviewed the evidence at Mr. Wolfram's request. The Arbiter concluded that both drivers contributed equally to the accident and assigned 50% fault for the resultant damage. This decision is not binding on me in any way.
26. During the CRT dispute process, the parties all agreed to have an ICBC Materials Damage Operations Manager review the photographs of both vehicles' damage. The stated purpose of the review was to see if there was "any evidence one vehicle turned into the other vehicle". The Operation Manager's qualifications are not before me as required by CRT rule 8.3(2) for expert evidence. However, all the parties agreed to the review by this Operation Manager and there is no dispute over their qualifications or their conclusions on the cause of vehicle damage. In the context of this dispute, since it was jointly sought and undisputed, I accept the statement into evidence despite not qualifying as expert evidence.
27. In their September 3, 2020 statement before me, the Operations Manager stated that he reviewed photographs of both vehicles for the purposes above. He noted "significant" transfer from Ms. Kim's Mazda tire on Mr. Wolfram's VW. After explaining their consideration of various factors, the Operations Manager wrote:

Based on the photos I can't see anything definitive. Based on the amount of tire transfer in my opinion it is more likely that the Mazda changed lanes into the VW, however there is still evidence that the [material damage] could have been caused from the VW turning into the Mazda.

28. I discuss the weight I apply to the Operation Manager's statement below.

Did ICBC breach its statutory obligation in investigating and assessing fault?

29. To succeed in his claim against ICBC, Mr. Wolfram must prove on a balance of probabilities that ICBC breached its statutory obligations or its contract of insurance, or both. The issue I must decide is whether ICBC acted "properly or reasonably" in

administratively assigning 50% responsibility against Mr. Wolfram (see *Singh v. McHatten*, 2012 BCCA 286).

30. ICBC owes Mr. Wolfram a duty of good faith, which requires ICBC to act fairly, both in how it investigates and assesses a 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" (*McDonald v. Insurance Corp. of British Columbia*, 2012 BCSC 283).
31. Apart from disagreeing with its decision, Mr. Wolfram does not specifically allege that ICBC failed to reasonably investigate the accident or that it otherwise breached its statutory or contractual obligations to him.
32. Based on the evidence before me, I find ICBC did not act unreasonably in its investigation of the accident. It took statements from the drivers, assessed the vehicle damage, and considered the information before it. While I find its investigation was not very thorough, I find it was sufficient considering the minor nature of the accident and lack of any personal injury.
33. I find the fact that ICBC changed its initial fault determination after completing its investigation was not improper. I find ICBC was entitled to change its fault determination when it received new information during its investigation, as it did here. While I came to a different conclusion on fault as I discuss below, I find ICBC's conclusion was not unreasonable based on the information before it.
34. In the circumstances, I find Mr. Wolfram has not proven that ICBC acted unreasonably in investigating the accident or in its internal fault assessment. The evidence does not show that ICBC breached its statutory or contractual obligations. I dismiss Mr. Wolfram's claims against ICBC.

Was Ms. Kim at fault for the accident?

35. As noted, neither ICBC nor the Arbiter's conclusions on fault are binding on me. The question I must decide is whether Mr. Wolfram has proven on a balance of probabilities that it was Ms. Kim who moved into his lane, contrary to section 151(a) of the MVA. For the reasons that follow, I find he has.
36. I accept on the wedding invitation in evidence that Mr. Wolfram intended to turn right 2 kilometers past the accident site to attend a wedding. I find it would have made little sense for him to change into the far-left lane of a 3-lane highway considering his destination. I find this supports Mr. Wolfram's assertion that he did not change lanes.
37. Of the 2 drivers, I find Mr. Wolfram's statement about the vehicles' respective positions on the road more reliable. Mr. Wolfram was able to describe the traffic around him and knew where he was turning. By contrast, Ms. Kim was admittedly following a GPS and did not know where to turn. She said she checked her mirrors but does not describe anything about the traffic ahead or beside her. I find this suggests Ms. Kim was distracted or not reasonably aware of the traffic around her. Considering this, I find it plausible that Ms. Kim allowed her vehicle to cross the broken line without signaling as Mr. Wolfram asserts that he saw.
38. Next, the ICBC Operations Manager concluded after they reviewed photographs of both vehicles' damage that it was "more likely" that Ms. Kim's vehicle changed lanes because of the tire transfer. I note that "more likely" is equivalent to the civil burden of proof (balance of probabilities) that applies to this dispute. There was no vehicle examination that concluded it was more likely that Mr. Wolfram had changed lanes. The 2 examinations of Mr. Wolfram's vehicle in September 2019 had come to the same conclusion as the Operations Manager. I find the Operations Manager's conclusion is consistent with the other evidence and favours a finding that it was Ms. Kim's vehicle that changed lanes.
39. On the whole of the evidence before me, I find it more likely than not that Ms. Kim allowed her vehicle to cross the broken line when it was not safe to do so contrary to

section 151(a) of the MVA and that this caused the accident. I find Ms. Kim is 100% at fault for the accident.

40. As the CRT does not have the authority under the CRTA to grant declaratory orders, I decline to make the requested order declaring that Ms. Kim is 100% at fault. In any event, I find Mr. Wolfram substantively seeks damages on my finding that Ms. Kim is 100% at fault for the accident, which I turn to next.

What if any, are the damages?

41. The receipt in evidence shows Mr. Wolfram paid a \$150 deductible on February 25, 2019 to repair his vehicle. I find Ms. Kim must reimburse Mr. Wolfram the \$150 for his deductible.
42. The submitted ICBC estimate shows ICBC paid the claimed \$2,136.99 to repair Mr. Wolfram's vehicle. As Mr. Wolfram has not shown he incurred other costs to repair it apart from the \$150 deductible, I dismiss Mr. Wolfram's claim for \$2,136.99 in vehicle damage.
43. Mr. Wolfram claims \$500 for increased insurance premiums. This claim was not included in Mr. Wolfram's application for dispute resolution. However, nothing turns on it here because I provided the parties with an additional opportunity to provide submissions on damages.
44. ICBC says that given it internally concluded that Mr. Wolfram was 50% at fault for the collision, his "driver risk factor" was affected. ICBC agrees it increased Mr. Wolfram's premiums as a result.
45. In comparing Mr. Wolfram's past and current Owner's Certificate of Insurance and Vehicle License, I accept that Mr. Wolfram paid over \$500 more in premiums when he renewed his insurance on January 26, 2020 as compared to the previous year. ICBC does not dispute Mr. Wolfram's assertion that it increased the premium by \$500 based on the accident. So, I accept Mr. Wolfram's assertion that he paid \$500 more in insurance premiums because of the accident.

46. I find Ms. Kim must pay Mr. Wolfram \$500 for the insurance premium increase he has paid.
47. The *Court Order Interest Act* applies to the CRT. Mr. Wolfram is entitled to pre-judgment interest on the \$150 deductible from February 25, 2019 and on the \$500 insurance premium increase from January 26, 2020 to the date of the decision. This equals \$6.83.
48. 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. As Mr. Wolfram was substantially successful, I find Ms. Kim must pay Mr. Wolfram \$125 for his paid CRT fees.
49. Mr. Wolfram also claims \$10 in dispute-related expenses. However, the CRT served the respondents and Mr. Wolfram did not prove he incurred any additional expense. So, I dismiss Mr. Wolfram's \$10 claim for dispute-related expenses. The respondents paid no CRT fees and claimed no dispute related expenses.

ORDERS

50. Within 30 days of the date of this order, I order Ms. Kim to pay Mr. Wolfram a total of \$781.83, broken down as follows:
 - a. \$650 in damages for the deductible and paid insurance premiums,
 - b. \$6.83 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
51. Mr. Wolfram is entitled to post-judgment interest, as applicable under the *Court Order Interest Act*.
52. I dismiss Mr. Wolfram's claims against ICBC and his additional claim against Ms. Kim.

53. 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.
54. 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