



Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

LUIS GONZAGA

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA and
Hsiao Jung Zhang

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred in a parking lot in Burlington, Washington, on September 22, 2018. The applicant, Luis Gonzaga, was a passenger in a car that the respondent, Hsiao Jung Zhang, was driving. Mr. Gonzaga says that Ms. Zhang slammed on her brakes while trying to

park because RL, who is not a party to this dispute, opened his car's door in front of Ms. Zhang. Mr. Gonzaga says that his neck snapped forward, injuring his neck and upper back.

2. Mr. Gonzaga says that Ms. Zhang and RL were equally responsible for the accident. He says that Ms. Zhang was driving too fast and should have seen RL's open door. He claims \$2,999 in damages for pain and suffering. He also says that ICBC failed to investigate the accident properly.
3. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures Ms. Zhang.
4. Mr. Gonzaga is self-represented. An ICBC adjuster represents ICBC and Ms. Zhang.

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.
9. As mentioned above, this accident occurred in Washington. At the time, Mr. Gonzaga was a resident of British Columbia but he has since moved. Both respondents are residents of British Columbia. None of the parties raised the issue of whether Washington would be a more appropriate forum, which is an issue often referred to by the Latin term "*forum non conveniens*". In *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17, the Supreme Court of Canada said that if no party has raised the issue of *forum non conveniens*, then the court should hear the case (see paragraph 102). I find that this applies equally to the CRT, so I did not ask for submissions on this issue.

ISSUES

10. The issues in this dispute are:
 - a. Is Ms. Zhang partially responsible for the accident?
 - b. If so, what damages are appropriate?
 - c. Did ICBC reasonably and appropriately investigate the accident?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, Mr. Gonzaga as the applicant must prove his 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.
12. The following facts are not in dispute. On the afternoon of September 22, 2018, Mr. Gonzaga was a passenger in Ms. Zhang's car. Ms. Zhang was circling a mall parking lot in Burlington, Washington, looking for a spot. The parking lot had stall parking. She saw an empty spot to her left and pulled in. As she pulled in, her passenger side bumper struck RL's open door. She slammed on the brakes.
13. Mr. Gonzaga received massage therapy, physiotherapy treatment, and prescription pain relief medications for an injured neck and upper back.
14. Before this dispute, Mr. Gonzaga asked for compensation for his injuries from both RL's insurer and ICBC. In December 2019, he settled with RL's insurer for \$2,999. RL's insurer accepted that RL was 50% responsible for the accident and valued Mr. Gonzaga's damages for pain and suffering at \$6,000. In effect, in this dispute, Mr. Gonzaga claims the other half of this \$6,000 from Ms. Zhang. Mr. Gonzaga does not explain why RL's insurer paid \$2,999 or why he claims \$2,999 from Ms. Zhang, and not \$3,000. However, I find that this detail does not matter.

Is Ms. Zhang partially responsible for the accident?

15. As mentioned above, Mr. Gonzaga makes 2 arguments about why Ms. Zhang is 50% responsible for the accident. First, he says that RL's door was already wide open when Ms. Zhang pulled into the parking stall, so Ms. Zhang should have seen it. He also says that Ms. Zhang was driving too fast for the circumstances.
16. Before turning to these arguments, Washington law applies to the accident because that is where it happened. The parties provided copies of the relevant parts of the Washington statute. I find that the law in Washington is no different than the law in British Columbia in terms of determining responsibility for the accident. In both

jurisdictions, a person cannot open a car door unless it is safe to do so, and a person cannot drive faster than is safe in the circumstances.

17. I will first address Mr. Gonzaga's argument that RL's door was wide open when Ms. Zhang turned into the parking stall. I reject this argument because I find that it is inconsistent with Mr. Gonzaga's admission that RL is 50% responsible for the accident. I find that the only logical basis for Mr. Gonzaga to claim that RL was 50% responsible was if RL opened his door when it was unsafe to do so. I say this because if RL's door was open and there to be seen, as Mr. Gonzaga says in this dispute, RL would bear no responsibility. For these reasons, I find that RL opened his door when it was unsafe to do so.
18. I therefore do not need to consider Mr. Gonzaga's other submissions about whether RL's door was open when Ms. Zhang started parking. That said, I did review the photos of the accident scene and the damage to the 2 vehicles. I do not agree with Mr. Gonzaga that they prove that RL's door was already open when Ms. Zhang started parking.
19. This leaves Mr. Gonzaga's allegation that Ms. Zhang was driving too fast for the circumstances. In particular, he says that an SUV to the left of the vacant parking stall obstructed Ms. Zhang's view as she turned left to park. He says that she should have entered the parking stall more cautiously.
20. There is no evidence from any independent witnesses and no video evidence from a dashcam or surveillance camera. There is no direct evidence from RL. The only indirect evidence from RL, an email from his insurer to an ICBC adjuster about the accident, does not mention Ms. Zhang's speed.
21. As for Ms. Zhang, she reported the accident to ICBC and the Washington State Department of Transportation on the day of the accident. Ms. Zhang also provided a statement for this dispute. None of these documents mention her speed.

22. According to ICBC, Ms. Zhang also had a phone conversation with an ICBC adjuster on December 18, 2018, where they discussed the accident in more detail. Mr. Gonzaga says that I should disregard ICBC's notes about this conversation because there is no transcript or recording in evidence, and because Ms. Zhang does not remember the phone call. I find that I do not need to consider Mr. Gonzaga's argument on this point, because again there is nothing in the notes about Ms. Zhang's speed.
23. Mr. Gonzaga argues that the vehicles' positions after the collision shows that Ms. Zhang made a quick turn. I disagree that that the vehicles' positions say anything about how fast Ms. Zhang was driving.
24. So, I find that the only evidence about Ms. Zhang's speed is Mr. Gonzaga's own statement. While I have no reason to doubt the truthfulness of Mr. Gonzaga's evidence, I find that it is not reliable enough to prove that Ms. Zhang was driving too fast for the circumstances. Witnesses to motor vehicle accidents generally do their best to give evidence about things like vehicle speed, but accidents often happen suddenly and with no warning. Witnesses, especially passengers, are not generally "waiting for an accident to happen", always observing what is happening just in case they need to recall the details later. This can lead witnesses to reconstruct what happened after the fact, and to make mistakes in doing so. See *Rattu (Litigation Guardian of) v. Biln*, 2021 BCSC 208.
25. Mr. Gonzaga does not say that he noticed Ms. Zhang's speed before the accident. As a passenger, he had no reason to do so. So, I find that I must be cautious about the reliability of his evidence about her speed, especially since it is self-serving. It is possible that Ms. Zhang was driving too fast for the circumstances, but absent any corroborating evidence, I find that Mr. Gonzaga has failed to prove it.
26. For these reasons, I dismiss Mr. Gonzaga's claims against Ms. Zhang.

Did ICBC reasonably and appropriately investigate the accident?

27. As mentioned above, Mr. Gonzaga takes issue with how ICBC investigated the accident. It is unclear whether ICBC was Mr. Gonzaga's insurer at the time, but I will assess his claims as if it was in the interests of completeness.
28. ICBC says that it is not a proper respondent in this dispute. However, it is well-established that ICBC must act properly and reasonably in assigning fault (*Singh v. McHatten*, 2012 BCCA 286, referring to *Innes v. Bui*, 2010 BCCA 322). As part of this obligation, ICBC must reasonably investigate a claim. In doing so, ICBC is not expected to investigate with the "skill and forensic proficiency of a detective". Rather, ICBC must bring "reasonable diligence, fairness, an appropriate level of skill, diligence and objectivity" (*McDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283). I find that the steps ICBC must take to reasonably investigate an accident depends, in part, on the severity of the accident and the amount at stake.
29. Here, Mr. Gonzaga thinks that ICBC should have interviewed him and should have obtained a copy of RL's statement to his insurer. While it may have been somewhat useful for ICBC to interview Mr. Gonzaga, I am not satisfied that it would have made any difference to ICBC's conclusions. As for RL's statement, I find that RL's insurer would likely not have given it to ICBC even if ICBC had asked. I note that the accident was relatively minor.
30. So, while ICBC's investigation may not have been perfect, I find that it did not fail to reasonably and appropriately investigate the accident. I dismiss Mr. Gonzaga's claims against ICBC.
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. Mr. Gonzaga was unsuccessful, so I dismiss his claim for CRT fees and dispute-related expenses. Neither respondent claimed any dispute-related expenses or paid any CRT fees.

ORDER

32. I dismiss Mr. Gonzaga's claims, and this dispute.

Eric Regehr, Tribunal Member