



Civil Resolution Tribunal

Date Issued: May 19, 2021

File: SC-2020-009964

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nunna v. ICBC*, 2021 BCCRT 537

BETWEEN:

SATHISH NUNNA

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and
LORETTA BERCIER

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This small claims dispute is about liability for a motor vehicle accident that occurred on October 10, 2019 (accident) between the applicant, Sathish Nunna, and the

respondent, Loretta Bercier. The respondent Insurance Corporation of British Columbia (ICBC) insures both Mr. Nunna and Ms. Bercier.

2. ICBC internally found Mr. Nunna 100% at fault for the accident. Mr. Nunna disagrees with ICBC's decision and seeks \$577.50 for vehicle repairs.
3. Ms. Bercier and ICBC say ICBC correctly determined that Mr. Nunna is 100% at fault for the accident. ICBC also says that it is not a proper party to the dispute.
4. Mr. Nunna is self-represented. Ms. Bercier and ICBC are 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 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. Most of the evidence in this dispute amounts to a "he said, she said" scenario. 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 do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. Did ICBC breach its statutory or contractual obligations in investigating the accident?
 - b. Who is responsible for the accident, and if not Mr. Nunna, what are the appropriate damages?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant, Mr. Nunna, must prove his claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. In its Dispute Response, ICBC argued it is not a proper party to this dispute. I disagree. As discussed below, an issue in this dispute is whether ICBC acted reasonably in finding Mr. Nunna 100% at fault for the accident. According to *Innes v. Bui*, 2010 BCCA 322, such an issue is only between a plaintiff and ICBC. So, I find ICBC is a proper respondent. However, I do agree with ICBC that it is not a proper respondent on the issue of who is liable for the damage to Mr. Nunna's vehicle. The proper respondent in an action to determine liability of a motor vehicle accident is the other driver, not ICBC (see *Kristen v. ICBC*, 2018 BCPC 106).

Did ICBC breach its statutory or contractual obligations in investigating the accident?

12. I find Mr. Nunna argues, essentially, that ICBC did not act fairly or reasonably in investigating and assigning fault for the accident. In the Dispute Notice, Mr. Nunna suggested ICBC should not have relied on the statement of GK, an independent witness, in making its determination. Mr. Nunna also said that he asked ICBC to evaluate pictures and maps. In his submissions, Mr. Nunna says he asked ICBC to further investigate who caused the accident but ICBC kept telling him that he was 100% at fault. Lastly, Mr. Nunna says he asked ICBC to obtain video footage from the police officer's vehicle that was at the scene or from nearby commercial buildings' security cameras but ICBC failed to do so. ICBC says it fulfilled its obligations to Mr. Nunna in its investigation and the claim's assessment.
13. The onus is on Mr. Nunna to prove that ICBC breached its statutory obligations or its contract of insurance, or both. The issue is whether ICBC acted "properly or reasonably" in administering Mr. Nunna's insurance claim (see *Singh v. McHatten*, 2012 BCCA 286, referring to *Innes*).
14. ICBC owes Mr. Nunna a duty of good faith, which requires it to act fairly in how it investigates and assesses the claim (see *Bhasin v. Hrynew*, 2014 SCC 71 at paragraphs 33, 55 and 93). In *McDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283 at paragraph 249, the court said that an insurer is not expected to investigate a claim with perfect proficiency, but must bring "reasonable diligence, fairness, an appropriate level of skill, thoroughness, and objectivity to the investigation and the assessment of the collected information".
15. The evidence before me shows that before finding Mr. Nunna 100% at fault, ICBC obtained information from both parties as well as GK, the independent witness, and a police officer (CT) who was at the scene.
16. Although Mr. Nunna argues that ICBC should not have relied on GK's statement, he has provided no evidence to show that GK's statement is unreliable. Similarly, Mr. Nunna has not provided any evidence in support of his other allegations against

ICBC. There is no evidence that Mr. Nunna provided pictures or maps to ICBC that ICBC refused to consider. There is also no evidence that any relevant video footage exists, or that he raised the issue of potential video footage with ICBC before starting this dispute.

17. Therefore, I find that Mr. Nunna has not established that ICBC acted unreasonably or in bad faith in determining who caused the accident and administering his claim. I find Mr. Nunna has not shown that ICBC breached its statutory obligations or its contract of insurance, and I dismiss Mr. Nunna's claims against ICBC.

Who is liable for the accident?

18. To successfully recover damages, Mr. Nunna must prove that Ms. Bercier was responsible for the accident, and that the accident caused the claimed damage to his vehicle. This is a claim for what is known in law as "negligence".

19. The following facts are undisputed:

- a. On October 10, 2019, Mr. Nunna was travelling westbound on Yale Road (Yale) when he approached the intersection of Yale and Williams Street (Williams) in Chilliwack, British Columbia.
- b. Mr. Nunna entered the intersection behind CT's police vehicle.
- c. There was construction activity in the intersection with flagger personnel present.
- d. Ms. Bercier was facing southbound on Williams and stopped at a red light before she entered the intersection.
- e. Mr. Nunna and Ms. Bercier's vehicles collided while they were both in the intersection.

20. The central issue in Mr. Nunna's negligence claim is the light's colour when he entered the intersection. If Mr. Nunna entered the intersection on a green light, under *Motor Vehicle Act* (MVA) sections 127(1)(a)(i) and (iii) he would have the right of way

unless Ms. Bercier lawfully entered the intersection before him. If Mr. Nunna had a yellow light when he entered the intersection, under MVA section 128(1)(a), Mr. Nunna should have stopped before entering the marked crosswalk unless he can show that he could not have stopped safely. Lastly, if the light was red, Mr. Nunna should not have entered the intersection at all (see MVA section 129(1)).

21. In the Dispute Notice, Mr. Nunna says that he entered the intersection while he had a green light and he was still in the intersection when the light turned yellow. He says that the light then turned green for Ms. Bercier and she entered the intersection and struck his vehicle. In his submissions, Mr. Nunna says that he had a yellow light when his vehicle was struck, suggesting that Ms. Bercier entered the intersection on a red light. Mr. Nunna also says that Ms. Bercier was not paying attention and was looking to her right when she proceeded into the intersection. Ms. Bercier says that she started to enter the intersection when her light turned green. She says that Mr. Nunna entered the intersection on either a yellow or red light and collided with her vehicle.
22. ICBC provided its file notes as evidence. The notes include “statements” from both drivers, GK and CT. These “statements” are telephone notes from ICBC adjusters. There are no written statements from any of these witnesses. So, the telephone notes are not direct evidence but are hearsay.
23. The CRT has discretion to admit evidence that would not normally be admissible in court proceedings, including hearsay. In *Medel v. Grewal*, 2019 BCCRT 596, a CRT vice chair accepted similar hearsay evidence on the basis that ICBC, as part of its standard procedures when investigating an accident, receives oral reports from witnesses and records those summaries in its file. Although prior CRT decisions are not binding on me, I agree with and adopt the vice chair’s reasoning. I note that none of the parties here dispute the accuracy of ICBC’s file notes. So, I find these statements admissible. I will weigh each statement in my analysis below.
24. I first turn to Mr. Nunna’s evidence. On October 10, 2019, Mr. Nunna told ICBC that he entered the intersection on a green light with a flagger holding a “slow” sign for him. He said he was still in the intersection when the light turned red and he saw Ms.

Bercier was looking to the right and tried to wave to get her attention. He says Ms. Bercier turned right and hit his vehicle. Ms. Bercier, however, told ICBC she saw there was a “slow” sign for Mr. Nunna on Yale due to construction. There were no flagger personnel on Williams. She said she entered the intersection when her light turned green and was 3 seconds in when Mr. Nunna’s vehicle hit hers. I find these two statements are not reconcilable, and so I find additional evidence is required to determine which statement is more reliable.

25. GK told ICBC he was waiting at the red light on Williams opposite Ms. Bercier and witnessed the accident. He said when the light turned green, he waited for the car across from him (Ms. Bercier) to cross the intersection so he could make a left turn. According to GK, there was no car stuck in the intersection when his light turned green. He said Mr. Nunna came from his right and the two vehicles collided when Ms. Bercier had a green light.
26. I find GK is an uninterested, independent witness who saw the accident. I give his statement significant weight. I find that GK saw the light’s colour at the time Ms. Bercier entered the intersection. Therefore, I find the light was green when Ms. Bercier entered the intersection and, under MVA section 127(1)(a)(iii), Ms. Bercier would have been required to yield to Mr. Nunna’s vehicle only if he was lawfully in the intersection before the light turned green for her. So, I must determine what colour the light was for Mr. Nunna to determine if he was lawfully in the intersection.
27. Based on his notes from the accident, CT told ICBC that he entered the intersection when the light was yellow. He did not recall if it was a fresh or stale amber or if there was a car behind him. He also did not see the accident. However, CT’s police report for the accident states that Mr. Nunna caught the tail end of a yellow light while he was going northbound on Yale. CT also said there were flaggers at the intersection, but they were not directing traffic on Yale while he was in the intersection. I give considerable weight to CT’s statement that he entered the intersection on a yellow light since he is an uninterested witness.

28. In addition to his own submissions about the light's colour, Mr. Nunna relies on a March 11, 2021 handwritten statement of another witness, RD. This statement says RD was outside drinking coffee on October 10, 2019 and saw a blue SUV (presumably, Mr. Nunna) crossing the intersection on a green light when the other vehicle (presumably, Ms. Bercier) collided with the blue SUV. For the following reasons, I give RD's statement little weight. First, RD's statement does not indicate how close he was to the accident site and what vantage point he had to be able to see the light's colour. Second, I question the reliability of RD's statement since it was provided almost 1.5 years after the accident's date. Even if RD was close enough to see the light's colour, I find it is unlikely that RD would remember this small but important detail after 1.5 years. RD's statement is also inconsistent with CT's evidence.
29. Based on CT's statement to ICBC, the police report, and since it is undisputed that Mr. Nunna was driving behind CT's car, I find it is more likely that Mr. Nunna entered the intersection on a stale yellow or red light, than on a green light.
30. Under MVA section 128(1)(a), the onus is on Mr. Nunna to prove that he was unable to stop safely as he approached the intersection on a yellow light (see *Ziani v. Thede*, 2011 BCSC 895). Mr. Nunna has presented no evidence that he was unable to stop safely before he entered the intersection. Therefore, I find that Mr. Nunna was not lawfully in the intersection at the time Ms. Bercier's light turned green.
31. Further, aside from Mr. Nunna's submissions, there is no evidence that Ms. Bercier was distracted or otherwise negligently entered the intersection. Since I have already found that Ms. Bercier entered the intersection on a green light and that Mr. Nunna was not lawfully in the intersection when Ms. Bercier's light turned green, I find Mr. Nunna to be 100% at fault for the accident. So, I dismiss Mr. Nunna's claim against Ms. Bercier.
32. 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. Nunna was not successful, I dismiss his claim for paid CRT fees. The respondents paid no CRT fees and claimed no dispute-related expenses.

ORDER

33. I dismiss Mr. Nunna's claims and this dispute.

Nav Shukla, Tribunal Member