



# Civil Resolution Tribunal

Date Issued: May 21, 2021

File: SC-2020-009237

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fulford v. ICBC*, 2021 BCCRT 555

B E T W E E N :

NICOLE FULFORD and MAR-TAN FULFORD

**APPLICANTS**

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This small claims dispute is about motor vehicle insurance coverage. The applicant Nicole Fulford reported to the respondent insurer, Insurance Corporation of British

Columbia (ICBC), that she hit an object on the Coquihalla Highway in May 2020. Ms. Fulford admittedly did not pull over and stop driving immediately, as ICBC argues she ought to have done. So, while ICBC paid for the car's oil pan damage, ICBC refused to cover the engine damage. The applicant Mar-Tan Fulford owns the car Ms. Fulford was driving. The applicants claim \$5,000, and say they want ICBC to either replace or repair the engine or write the vehicle off.

2. ICBC argues that the engine damage was consequential damage resulting from Ms. Fulford continuing to drive the vehicle after the impact. ICBC says this damage is excluded under the Autoplan Optional Policy, on the basis Ms. Fulford continued to drive the car after impact when it was not reasonably prudent to do so.
3. Ms. Fulford represents the applicants. ICBC is represented by an employee.

## **JURISDICTION AND PROCEDURE**

4. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). 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.
5. 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 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 find I can fairly hear this dispute through written submissions.

6. Under section 42 of the CRTA, 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.
7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.
8. CRT staff advised the applicants initially indicated they had some difficulty uploading evidence. CRT staff however then gave the applicants an opportunity to submit late evidence, but the applicants chose not to do so. I also note ICBC made no arguments but did submit evidence.

## **ISSUES**

9. The issues in this dispute are whether Ms. Fulford reasonably ought to have immediately pulled over after the impact, whether she is entitled to insurance coverage for the engine damage, and what remedy, if any, is appropriate.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim like this one, the applicants have the burden of proving their claims, on a balance of probabilities. As noted, there is no evidence from the applicants and no submissions from ICBC. While I have reviewed the evidence and submissions before me, I have only referenced below what I find is necessary to give context to my decision.
11. Ms. Fulford says she was driving on the Coquihalla Highway and hit a trailer hitch laying on the road in the mid-morning of May 8, 2020. She says she did not feel it was a safe location to pull over, and so she continued to the next exit. She says that there was nothing to indicate that there was any damage to her vehicle, such as an engine warning light. Ms. Fulford says that when she pulled over, she inspected the

vehicle and saw fuel and oil coming from underneath. It is undisputed there were no witnesses or dash cam footage of the impact, and no police attended.

12. ICBC covered the damage to the vehicle's oil pan, based on Ms. Fulford's collision with the trailer hitch. However, ICBC determined that the consequential damage, namely the engine damage, was a result of Ms. Fulford's continuing to drive the vehicle after impact. As noted, ICBC says the engine replacement is excluded under the applicable Autoplan Optional Policy. This policy says ICBC is not required to pay for loss or damage resulting from the driver's failure to "protect the vehicle as far as reasonably possible from further loss or damage".
13. It is undisputed and I find that ICBC bears the burden to establish the insurance coverage is forfeited. Ms. Fulford relies on *Dhadwal v. ICBC*, 2014 BCSC 449 (which on the relevant points was affirmed on appeal, 2015 BCCA 112). She says that case shows that a reasonably prudent person would not have known that her minor low impact collision, which did not trigger any immediate functional impairment or engine warning light, would have required her to immediately stop and call a tow truck.
14. However, Ms. Fulford does not explain why she felt it unsafe to pull over. She also did not explain the size of the trailer hitch or the force of the impact. As noted, she submitted no evidence and her submission is essentially limited to her characterization of *Dhadwal*, as described above.
15. I find the best evidence of what happened is what is set out in ICBC's claim file notes that ICBC submitted in evidence, which Ms. Fulford did not dispute. I note ICBC redacted much of the notes, for reasons it did not explain. However, I rely on those portions of the unredacted notes that I accept accurately describe what Ms. Fulford told ICBC had happened. My description below of Ms. Fulford's description of the impact comes from ICBC's notes of its discussions with Ms. Fulford.
16. Ms. Fulford said there was a "big hitch" on the road and she ran over it, unable to change lanes as she was already passing another vehicle. She said she thought the

hitch was a bird on the ground at first, and that she saw a semi-truck drive over it before she did. Ms. Fulford said that she drove about 5 minutes before taking the next exit, and that the only warning light that came on was the oil light, which she noticed come on a few minutes after impact. After Ms. Fulford pulled over, she called her spouse and a tow truck. Again, I accept this was Ms. Fulford's description of what happened, in part because Ms. Fulford did not dispute it and because it is a more detailed account that was given closer in time to the incident.

17. Ms. Fulford also told ICBC that there was a semi-truck stopped on the side of the road near the accident. Ms. Fulford further advised she was going to visit relatives and took a particular exit. The notes say that based on a google map review of the accident area, there appeared to be a shoulder on the highway where a car could safely pull off to the side. For the same reasons as noted above, I accept the above is what Ms. Fulford told ICBC and I accept that there was a shoulder on the highway near the accident, in part given Ms. Fulford's admission to ICBC there was a semi-truck parked there.
18. ICBC argues the engine damage is consequential damage, because it only resulted from the oil pan's hole draining the oil while Ms. Fulford continued to drive. Ms. Fulford does not dispute this is why the engine was damaged, and so I accept this is what happened. In other words, I accept that the engine damage was "coincident with" Ms. Fulford's driving over the hitch, meaning the engine damage was caused by that impact. What matters in this dispute is whether Ms. Fulford failed to protect the vehicle as far as reasonably possible.
19. ICBC's notes say the relevant case law is all about what a reasonable and prudent person would do, noting things like the time of day, the surrounding area and whether the driver has access to a cell phone. However, ICBC did not identify any particular cases. That said, this is essentially what *Dhadwal* says on the material issue in this dispute.
20. In *Dhadwal*, the court found it was clear the car's engine damage would not have occurred if the car had been towed to a repair shop rather than driven after the

collision. I find similar circumstances apply here, which is not disputed. Again, the issue here is whether ICBC has proved that by continuing to drive Ms. Fulford failed to protect the vehicle “as far as reasonably possible from further loss or damage”. In *Dhadwal*, the court concluded at paragraph 109 that “as far as reasonably possible” imported a negligence standard. In other words, here, did Ms. Fulford’s decision to continue driving in the circumstances fall below the standard of care of a reasonably prudent driver?

21. In *Dhadwal*, the court concluded (my bold emphasis added):

Driving a vehicle that has sustained apparently minor damage in a collision to the owner’s home, and then to a repair shop, rather than having it towed, is a common and everyday occurrence. The evidence satisfies me that the observable body damage to the Mercedes was minimal and consistent with a low-impact collision, and **that there were no signs of leaking fluids prior to the engine shutting down**. I am also satisfied that it is more likely than not that no warning lights were illuminated to indicate low fluids or that the engine should be checked.

22. Here, ICBC’s notes do not indicate that Ms. Fulford commented on how loud or forceful the impact was. I cannot conclude it must have been loud and forceful based on the ICBC notes’ reference to an unnamed ICBC staff person that it likely was. However, I find it likely was significant enough because I accept Ms. Fulford first thought it was a bird but then, without stopping to pull over, somehow realized she had driven over a hitch. Notably, the court concluded in *Dhadwal* that there was insufficient evidence that any warning light came on, until just before the engine seized. Here, I have found above Ms. Fulford acknowledged the oil light came on within a few minutes of the impact and yet she continued driving for at least a couple minutes more.

23. On balance, I find *Dhadwal*’s facts are distinguishable. I find it undisputed that there was a shoulder near the accident site, which I find Ms. Fulford likely could have pulled over onto since she admits there was a truck also parked on it. I also find it likely the impact was significant, and that Ms. Fulford knew the oil warning light

came on within a few minutes of impact but she continued to drive for another 2 to 3 minutes. Ms. Fulford had a cell phone and could have used it to call a tow truck from the shoulder by the accident scene, had she pulled over there. I find in all of these circumstances, a reasonably prudent person would not have continued to drive. So, I find the applicants are not entitled to insurance coverage for the engine damage. I dismiss the applicants' claims.

24. I note there is no evidence before me of the engine's repair or replacement cost, and so even if I had found there was available coverage, I would have found the applicants have not proven their claimed \$5,000 loss. I note that I have no jurisdiction under section 118 of the CRTA to order ICBC to repair or replace the engine or write the engine off, as this is injunctive relief (an order to do something) that is not provided for under section 118 in these circumstances.

25. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. The applicants do not claim reimbursement of their paid CRT fees and ICBC did not pay any, and neither party claimed dispute-related expenses, so I make no order for them.

## **ORDER**

26. I order the applicants' claims and this dispute dismissed.

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Shelley Lopez, Vice Chair