



Civil Resolution Tribunal

Date Issued: May 25, 2021

File: SC-2020-009878

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Leroy v. Insurance Corporation of British Columbia*, 2021 BCCRT 560

B E T W E E N :

ELENA NAHUM LEROY

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA and LOGAN
BERKA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This small claims dispute is about liability for a motor vehicle accident. The respondent insurer, the Insurance Corporation of British Columbia (ICBC), found the applicant, Elena Nahum Leroy, 100% liable for a hit and run collision with the respondent Logan Berka's parked vehicle on November 13, 2019 (accident). Mrs.

Leroy says she was not involved in the accident and that ICBC did not properly investigate it or correctly assign liability. She wants ICBC to reimburse her \$427 for her increased insurance premiums.

2. ICBC says it fulfilled its responsibility to Mrs. Leroy to investigate the accident under section 74 of the *Insurance (Vehicle) Regulation* (IVR). It says its liability decision was reasonable and correct based on the facts it found during its investigation.
3. Mr. Berka says ICBC's liability decision was reasonably based on matching damage to both his and Mrs. Leroy's vehicles.
4. Mrs. Leroy is self-represented. An ICBC employee represents both ICBC and Mr. Berka.

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. Some of the evidence in this dispute amounts to a "she said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Bearing in mind the CRT's mandate that

includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice. I also note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

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 obligations in investigating the accident and assessing fault?
 - b. Was Mrs. Leroy responsible for the accident, and if not, what are her damages?

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicant Mrs. Leroy must prove her claims on a balance of probabilities. This means I must find it is more likely than not that her position is correct.
11. The respondents chose not to provide submissions despite having the opportunity to do so. While I have considered all of the parties' evidence and Mrs. Leroy's submissions, I refer only to what I find relevant to explain my decision.

12. On November 12, 2019, Mr. Berka parked his vehicle on the street across from his home. On November 13, 2019, Mr. Berka's father noticed damage to the left rear door of the vehicle and dark blue paint chips on the ground from a different vehicle. On November 14, 2019, Mr. Berka's father went to the school parking lot around the corner from their home and found Mrs. Leroy's vehicle which he thought matched the colour of the paint chips and had some visible damage. Mr. Berka reported all of this to ICBC.
13. On November 17, 2019, ICBC contacted Mrs. Leroy about the accident. She denied being involved, though she did admit to being in the area on the day of the accident to drop her son off at the nearby school. She told ICBC her vehicle had previous damage on both the front and rear bumper.
14. ICBC estimators inspected both vehicles and the paint chips Mr. Berka found next to his vehicle. One of the estimators determined that the damage to the left rear door of Mr. Berka's vehicle matched the damage on the front left bumper of Mrs. Leroy's vehicle, both in terms of the height of the damage from the ground, and the paint transfer. The estimator also determined that some of the paint chips matched the paint colour of Mrs. Leroy's vehicle.
15. On December 16, 2019, ICBC internally determined Mrs. Leroy was 100% responsible for the accident based on the matching damage to the 2 vehicles, the paint chips, and Mrs. Leroy admitting to being in the area on the date of the accident.
16. Mrs. Leroy appealed ICBC's liability decision through its internal claims assessment review (CAR) process. On March 26, 2020, the CAR arbiter upheld the original liability assessment finding Mrs. Leroy 100% at fault for the accident.

Did ICBC breach its statutory obligations in investigating the accident and assessing fault?

17. ICBC owes Mrs. Leroy a duty of good faith, which requires it to act fairly, both in how it investigates and assesses a claim and how it decides whether to pay the claim (see *Bhasin v. Hrynew*, 2014 SCC 71 at para. 33, 35, 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" (see *McDonald v. Insurance Corp. of British Columbia*, 2012 BCSC 283).
18. To succeed in her claim against ICBC, Mrs. Leroy must prove on a balance of probabilities that ICBC breached its statutory obligations or its contract of insurance, or both. I must determine whether ICBC acted "properly and reasonably" in administratively assigning Mrs. Leroy 100% responsibility for the accident (see *Sing v. McHatten*, 2012 BCCA 286).
19. Mrs. Leroy says ICBC ignored her evidence and arguments at each step of its investigation. In particular, she says she submitted photos of the previous damage to her vehicle but ICBC did not mention or consider the photos in any of its reports or letters. However, there is no indication in ICBC's file that Mrs. Leroy submitted photos at any point during the investigation, and Mrs. Leroy did not submit any emails or other evidence in this dispute to show she sent ICBC the photos. Even if she did send ICBC the photos she submitted as evidence in this dispute, I find they show the damage to the front left bumper of her car in August 2019 was not as severe as the damage at the same spot in November 2019 after the date of the accident. The November 2019 photos show a long vertical strip of paint missing from the front left bumper that is not visible in the August 2019 photos.
20. Aside from the photos, I find ICBC's file shows that it considered Mrs. Leroy's statements in making its liability assessment. The file also shows the estimator

referred to the previous damage to Mrs. Leroy's vehicle, but ultimately determined that some of the damage on her vehicle's left front bumper was caused by the accident.

21. Mrs. Leroy also says ICBC based its liability assessment on inconclusive evidence and refers to an estimator's note which states, "Viewed TP photos in docs and unfortunately they are not adequate enough for us to do an MD matchup with" (reproduced as written). I infer that MD means material damage. However, I find this note refers to the multiple photos Mr. Berka took and submitted to ICBC, which included measurements Mr. Berka took of the height of the damage on his vehicle. The ICBC file shows that Mr. Berka brought his vehicle in for inspection approximately 2 weeks after the note was written, and ICBC's damage assessment was based on that inspection, not Mr. Berka's photos.
22. Mrs. Leroy also says ICBC made its liability assessment without witnesses or "hard evidence". However, I find witness statements are not required to determine liability, and it is unclear exactly what Mrs. Leroy means by "hard evidence." I find ICBC reasonably based its liability assessment on the evidence it had available, which was the estimator's assessments of the damaged vehicles and paint chips, and statements from the parties.
23. In the circumstances, I find Mrs. Leroy has not proven that ICBC acted unreasonably in investigating the accident or in its internal liability assessment, and I dismiss this claim. However, I am not bound by ICBC's liability determination, so I turn now to my own assessment of whether Mrs. Leroy was responsible for the accident.

Was Mrs. Leroy responsible for the accident, and if not, what are her damages?

24. For the following reasons, I find Mrs. Leroy was responsible for the accident. She admits to dropping her son off at the school around the corner from Mr. Berka's house on the day of the accident but says she did not drive down Mr. Berka's street

that day. She submitted a map showing her usual route to school and an alternate route, neither of which go down Mr. Berka's street. However, as explained below, I find the physical evidence of the paint chips and vehicle damage outweighs Mrs. Leroy's denial of involvement in the accident.

25. An ICBC estimator, RG, inspected the damage to Mrs. Leroy's vehicle in late November 2019 and compared its colour with the paint chips discovered at the scene of the accident. RG noted that the paint chips were not all the same colour shade, but since Mrs. Leroy's vehicle had been rebuilt it may have been painted multiple times in different areas. RG determined that the colour of some of the paint chips matched the colour of Mrs. Leroy's vehicle.
26. A different estimator, JM, inspected Mr. Berka's vehicle and determined that on the left rear door there was "clear coat transfer" indicating "vehicle to vehicle" contact 16 to 23 inches above the ground. RG determined that the height of the damage to Mrs. Leroy's vehicle's front bumper matched the height of the damage to Mr. Berka's vehicle's left rear door, and that the damage was consistent with Mrs. Leroy's vehicle striking Mr. Berka's vehicle.
27. Mrs. Leroy says the height of the damage on each of the vehicles is not an exact match, and that the part of her front bumper with chipped paint is several inches higher than any of the damage to Mr. Berka's vehicle. However, I find the photos show significant overlap in the height of the damage to both vehicles. I also place more weight on the ICBC estimators' in-person damage assessment than that of Mrs. Leroy who bases her assessment of the damage to Mr. Berka's vehicle strictly on the photographs in evidence.
28. Mrs. Leroy says her vehicle had previous damage before the accident. However, as noted above, I find the photos Mrs. Leroy submitted of the previous damage to her vehicle in August 2019 are unhelpful, because when compared with the November 2019 photos in evidence it is clear Mrs. Leroy's vehicle incurred additional damage after August 2019.

29. Mrs. Leroy says that since both vehicles were damaged on the left side, she could not have sideswiped Mr. Berka's vehicle as ICBC alleges. ICBC did not address this in its investigation or in this dispute. However, based on the map in evidence Mr. Berka appears to live on a small residential road that likely does not experience heavy traffic. If Mrs. Berka was driving in the opposite direction of the direction Mr. Berka's vehicle was parked, she could have drifted into the left side of the road and sideswiped Mr. Berka's vehicle without encountering any oncoming traffic. She also could have sideswiped the vehicle while turning her vehicle around. On balance, I find there are multiple possible scenarios in which Mrs. Leroy's vehicle could have struck Mr. Berka's vehicle in the manner alleged. I find the physical evidence of the paint chips and damage to the vehicles outweighs Mrs. Leroy's argument on this point.
30. On balance, I find Mrs. Leroy is 100% liable for the accident. So, I find she is not entitled to reimbursement of increased premiums, and I dismiss her claim.
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. Since Mrs. Leroy was unsuccessful, I find she is not entitled to reimbursement of her CRT fees. She did not claim any dispute-related expenses.

ORDER

32. I dismiss Mrs. Leroy's claims and this dispute.

Sarah Orr, Tribunal Member