



Civil Resolution Tribunal

Date Issued: June 14, 2021

File: SC-2021-000255

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Petersen v. ICBC*, 2021 BCCRT 652

B E T W E E N :

MINA PETERSEN

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA and
JAMES HAUGEN

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This small claims dispute is about who is responsible for vehicle damage. On July 30, 2020, the applicant, Mina Petersen, and the respondent, James Haugen, were

parked beside each other in a ferry lineup in Horseshoe Bay, BC. Mrs. Petersen's car was to the left of Mr. Haugen's truck. Mrs. Petersen's open car door and the side of Mr. Haugen's truck collided. Mrs. Petersen says that Mr. Haugen drove into her door. Mr. Haugen says that Mrs. Petersen opened her door into his truck.

2. The other respondent, Insurance Corporation of British Columbia (ICBC), insures Mr. Haugen. ICBC internally concluded that Mrs. Petersen was fully at fault for the collision. Mrs. Petersen says that the collision was entirely Mr. Haugen's fault. I am not bound by ICBC's determination.
3. Because at the time of the collision Mrs. Petersen was uninsured, ICBC demanded that Mrs. Petersen pay the \$4,549.83 in repair costs for Mr. Haugen's truck, which she has not done. In this dispute, Mrs. Petersen initially asked for a declaration that she was not responsible for Mr. Haugen's repair costs. She amended her claim during facilitation and now asks for \$41.17 that she spent to repair her car. The respondents ask that I dismiss Mrs. Petersen's claim.
4. Mrs. Petersen represents herself. Mr. Haugen 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. 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. I will briefly address Mrs. Petersen's claim against ICBC. The CRT has consistently found that an insured may claim against ICBC if they believe that ICBC did not meet its statutory or contractual obligation to reasonably investigate an accident. I agree with this approach. However, Mrs. Petersen was not insured by ICBC at the time of the accident. In any event, Mrs. Petersen does not argue that ICBC should be liable for her repair costs because of any contractual or statutory breach and does not claim any remedies against ICBC. I find that Mrs. Petersen's claim is solely about who was at fault for the collision. I find that the proper respondent for this claim is Mr. Haugen. See *Kristen v. ICBC*, 2018 BCPC 106. So, I dismiss Mrs. Petersen's claims against ICBC.

ISSUES

10. The issues in this dispute are:
 - a. Who was responsible for the collision?
 - b. What remedy, if any, is appropriate?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, Mrs. Petersen as the applicant must prove her 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. On July 30, 2020, the parties were parked next to each other in a ferry lineup, with Mrs. Petersen's car to the left of Mr. Haugen's truck. Mrs. Petersen was walking back to her car from the right of the ferry lineup when Mr. Haugen's lane started moving. Mr. Haugen stopped to let Mrs. Petersen pass in front of his truck. When she got around his truck, she opened her car's front passenger door and it collided with Mr. Haugen's truck. This much is undisputed.
13. Mrs. Petersen says that there were only a few feet between her car and Mr. Haugen's truck. She says that he did not wait for her to be fully in her car before moving forward. Instead, she says that he started driving while her door was still open. She says that his truck "caught" her open car door as it moved forward. So, she says that Mr. Haugen caused the collision by moving forward before it was safe to do so.
14. According to ICBC's internal notes, Mr. Haugen said that Mrs. Petersen opened her car door into his truck as he was moving. There is no direct evidence from Mr. Haugen before me. The ICBC notes are hearsay. The CRT has discretion to admit evidence that would not be admissible in court proceedings, including hearsay. In previous disputes, the CRT has accepted similar hearsay evidence from internal ICBC notes because ICBC receives and records oral reports from witnesses and parties as part of its standard investigation procedure. See *Medel v. Grewal*, 2019 BCCRT 596. I agree with this approach.
15. However, as I noted in *Armillotta v. ICBC*, 2020 BCCRT 1, the CRT may give these notes less weight than direct evidence from a party or witness. This is because even if the adjuster recorded a person's recollections with reasonable accuracy, the words are still the adjuster's summary of the person's evidence. So, I accept the

ICBC notes as a general description of Mr. Haugen's account of what happened but overall give this evidence less weight than Mrs. Petersen's statement.

16. There are also 2 witness statements in evidence. The first is from Mrs. Petersen's spouse, JP, whose evidence generally matches Mrs. Petersen's. JP also said that they were surprised that Mr. Haugen started moving before Mrs. Petersen was in the car because there was not enough space between the vehicles to do so safely.
17. The other witness, BS, was in the vehicle behind Mr. Haugen. They said that when Mrs. Petersen was beside her car, Mr. Haugen started to move forward. BS said that Mrs. Petersen did not look before opening her door and opened it "too wide", striking Mr. Haugen's truck. BS said that Mrs. Petersen made "a mistake". While it is not entirely clear, I find that BS's statement is likely their direct evidence and not ICBC notes of a conversation because the statement includes casual language and grammar errors that are unlikely to be ICBC's notes.
18. BS's statement is clear and specific about what happened. Mrs. Petersen says that BS did not see what actually caused the collision but does not explain this further. I find that BS's vantage point likely gave them a clear view of what happened. There is also no evidence that he knew either party. So, I place considerable weight on BS's statement, which supports Mr. Haugen's account. In particular, I place more weight on BS's statement than JP's statement, because JP is not neutral as Mrs. Petersen's spouse.
19. Mrs. Petersen argues that the truck damage proves that Mr. Haugen was not careful enough because there was damage from his front driver's side door all the way to the rear taillight. She says that this proves that he drove around 20 feet after the initial impact and must not have been paying close attention to his surroundings.
20. Based on the photos and a repair estimate in evidence, I find that the initial impact to Haugen's truck was between the cab and rear wheel well, not the driver's door. There is a photo of a scratch on Mr. Haugen's door, with a note that the damage to the door was "unrelated". There is no apparent damage between this scratch and

the dent behind the cab, a distance of several feet. I find that an isolated scratch on the driver's door is inconsistent with both parties' accounts of what happened. So, I find that it was pre-existing and unrelated to the collision at issue in this dispute.

21. I find that the physical damage is more consistent with Mr. Haugen's description of the collision than Mrs. Petersen's. This is because the dent between the cab and wheel well is large and deep. It is also behind where the rear wheel well juts out slightly from the body of the truck. I find that the size and location of this dent is inconsistent with Mrs. Petersen's description of the truck catching the door, because the only surface that could have caught the door is the wheel well.
22. While it is impossible to know with certainty what happened, on balance I find that the evidence favours Mr. Haugen's account of what happened. I rely primarily on BS's statement and the size and location of the main dent on Mr. Haugen's truck. I therefore find that Mrs. Petersen opened her car door into Mr. Haugen's truck.
23. Mrs. Petersen also argues that the collision was Mr. Haugen's fault because he did not wait for her to get fully into her car before he started driving. She says that by waving her ahead of his vehicle, he had an obligation to wait until she was safely in her car before moving forward. She relies on section 169 of the *Motor Vehicle Act* (MVA), which says that drivers must not move a stopped vehicle unless it is reasonably safe to do so.
24. I reject this argument because I have found that Mrs. Petersen opened her door into Mr. Haugen's moving vehicle. I find that it was therefore safe for Mr. Haugen to start driving when he did, at which point Mrs. Petersen had not yet opened her door.
25. Mr. Haugen relies on section 203 of the MVA, which says that a person must not open a door unless it is reasonably safe to do so. By Mrs. Petersen's own admission, there was little room between her car and Mr. Haugen's truck. So, I find that it was not reasonably safe for her to open her door until Mr. Haugen had passed. On that basis, I find that Mrs. Petersen's decision to open her door breached section 203 of the MVA and fell below the standard of a reasonably

careful person in the circumstances. I find that Mrs. Petersen is fully at fault for the damage to her car door. I therefore dismiss her claim against Mr. Haugen.

26. 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. Mrs. Petersen was unsuccessful, so I dismiss her claim for CRT fees and dispute-related expenses. The respondents did not claim any dispute-related expenses or pay any CRT fees.

ORDER

27. I dismiss Mrs. Petersen's claims, and this dispute.

Eric Regehr, Tribunal Member