



# Civil Resolution Tribunal

Date Issued: June 21, 2021

File: SC-2020-009894

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Homayoon v. ICBC*, 2021 BCCRT 679

BETWEEN:

BEHRANG HOMAYOON

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

## INTRODUCTION

1. This is a dispute about insurance premiums. On May 2, 2017, the applicant, Behrang Homayoon, damaged his vehicle by hitting a pole in a parking lot (accident). Mr. Homayoon made a claim with the respondent, Insurance Corporation of British Columbia (ICBC), to cover the damage to his vehicle (claim). Mr. Homayoon says his

premiums were not affected by the claim until 2019 when ICBC's new Insurance Rating Model (IRM) came into effect and his premiums increased.

2. Mr. Homayoon says that in May 2017, ICBC misrepresented the effect the claim would have on his future insurance premiums. He claims payment of \$3,247.73, which is the value of the claim. He also wants ICBC to adjust his driver factor to reflect his safe driving record, and to reduce his insurance premiums to reflect the revised driver factor.
3. ICBC denies that it made any misrepresentations to Mr. Homayoon in May 2017. It says all information it provided to Mr. Homayoon was accurate at the time, and it is bound by the Basic Insurance Tariff.
4. Mr. Homayoon is self-represented and ICBC is represented by an 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, 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.
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. I find I have no jurisdiction under section 118 of the CRTA to order ICBC to adjust Mr. Homayoon's driver factor or reduce his insurance premiums. This is because both requested orders are for injunctive relief, which are orders for a party to do or stop doing something. These requested orders are not related to the recovery of personal property nor are they for specific performance of an agreement relating to personal property or services under section 118 of the CRTA. So, I decline to address these requested remedies in my decision.

## **ISSUE**

9. The issue in this dispute is whether ICBC misrepresented the effect Mr. Homayoon's claim would have on his future insurance premiums.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, as the applicant, Mr. Homayoon must prove his claims on a balance of probabilities. Mr. Homayoon chose not to provide evidence despite having the opportunity to do so. I have read all of ICBC's evidence and the parties' submissions but refer only to what I find relevant to explain my decision. For the following reasons, I dismiss Mr. Homayoon's claims.
11. On September 1, 2019, the IRM replaced ICBC's previous claim-rated scale insurance model. These changes are set out in the ICBC Basic Insurance Tariff. ICBC says the IRM changes the way insurance premiums are determined by linking accidents to the driver involved rather than the vehicle involved. It says that under the new IRM, driving experience and claims history are both considered in determining a driver's insurance premiums. None of this is disputed.

***Did ICBC misrepresent the effect Mr. Homayoon's claim would have on his insurance premiums?***

12. It is undisputed that in May 2017, Mr. Homayoon spoke with an ICBC employee, MH, about the accident and subsequently made the claim. Mr. Homayoon says that during the phone call, MH told him that based on his driving history his premiums would not be affected by making the claim. Mr. Homayoon says he relied on MH's statement in deciding to make the claim instead of selling his vehicle or paying for the repairs himself. Mr. Homayoon says that since the IRM came into effect in 2019, his insurance premiums have increased significantly, though he did not submit any evidence to support this claim. He says that had he known in May 2017 that such changes would come into force, he would not have made the claim.
13. To establish negligent misrepresentation, Mr. Homayoon must prove that 1) ICBC owed him a duty of care, 2) ICBC's representations were untrue, inaccurate, or misleading, 3) ICBC acted negligently in making the representations, 4) Mr. Homayoon reasonably relied on the negligent misrepresentations, and 5) Mr. Homayoon's reliance caused him damage or loss (see *Queen v. Cognos Inc.*, 1993 CanLII 146 (SCC)).
14. Though neither of the parties specifically raised it, it is undisputed that MH was an ICBC employee at the time of the May 2017 phone call and they were acting within the scope of their employment when they spoke with Mr. Homayoon about making the claim. So, I find ICBC is vicariously liable for any negligent misrepresentation MH may have made. However, for the following reasons, I find MH did not make a negligent misrepresentation.
15. I accept that ICBC owed Mr. Homayoon a duty of care as his insurance provider. However, I find Mr. Homayoon has not established that MH made the alleged representation during the May 2017 phone call.
16. ICBC disagrees with Mr. Homayoon's recollection of his phone call with MH. It says MH told Mr. Homayoon that based on the claim-rated scale that was in effect at that

time, claim payment history was one of the many factors that could affect his insurance premiums. ICBC says it advised Mr. Homayoon, both through MH's phone call and through written communication, to speak with an Autoplan Broker or to use the Premium Impact Estimator (PIE) tool on its website to determine how making a claim could impact his future insurance premiums. While ICBC did not submit a statement from MH, I find its position is supported by a May 11, 2017 note on Mr. Homayoon's ICBC file from MH as well as a May 11, 2017 letter from ICBC to Mr. Homayoon. Both documents state that ICBC advised Mr. Homayoon to use the PIE tool and to contact his Autoplan broker to find out how the claim could impact his future insurance premiums. Neither document makes any guarantee about Mr. Homayoon's future insurance premiums.

17. I prefer ICBC's evidence about the May 2017 phone call because it is supported by 2 separate documents that were created at the time of the phone call, whereas Mr. Homayoon relies only on his memory of a conversation that took place 4 years ago. I find Mr. Homayoon has not established that MH guaranteed his premiums would stay the same after making the claim, and so I find MH did not make a negligent misrepresentation.
18. Mr. Homayoon also says ICBC should have informed him in May 2017 of the possibility that it could drastically change its policies in the future for determining insurance premiums. However, I have already found that ICBC made no guarantee to Mr. Homayoon about his future insurance premiums. I find the documentary evidence before me clearly shows that ICBC told Mr. Homayoon there are many factors that affect insurance premiums. I find this left open the possibility that rates could change significantly in the future based on new policies. I also note that ICBC's basic insurance rates, as set out in the Basic Insurance Tariff, are set by the BC Utilities Commission, not ICBC. Under section 44 of the *Insurance Corporation Act*, ICBC is required to charge premiums as set out in the Basic Insurance Tariff.
19. Mr. Homayoon is also concerned that ICBC does not have an internal mechanism to address how the new IRM system negatively affects drivers like him with good driving

histories. However, the evidence clearly shows that under the terms of Schedule D in the Basic Insurance Tariff, Mr. Homayoon had the option to pay out the value of his claim before August 31, 2020 in order to erase it from his driver history. The evidence shows ICBC informed Mr. Homayoon of this option on October 28, 2019. It is unclear on the evidence before me whether Mr. Homayoon elected to pay out the value of his claim, but it is undisputed that ICBC informed him of his option to do so. While Mr. Homayoon may not have liked this option, I find he was given the option to take advantage of the very internal mechanism he alleges is absent from the new IRM system.

20. While I appreciate that Mr. Homayoon believes ICBC's new IRM system is unfair to him based on his driving history, I find he has not established that ICBC made any negligent misrepresentations or is otherwise liable to compensate him for the amount claimed. I dismiss Mr. Homayoon's claims.
21. 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. Since Mr. Homayoon was unsuccessful, I find he is not entitled to reimbursement of his CRT fees. He did not claim any dispute-related expenses.

## **ORDER**

22. I dismiss Mr. Homayoon's claims and this dispute.

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Sarah Orr, Tribunal Member