



Civil Resolution Tribunal

Date Issued: July 19, 2021

File: SC-2020-008005

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Paul v. Wong*, 2021 BCCRT 787

B E T W E E N :

BLAIR PAUL

APPLICANT

A N D :

PAUL OLIVER WONG and INSURANCE CORPORATION OF BRITISH
COLUMBIA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This small claims dispute is about a motor vehicle collision that occurred on February 12, 2020 in New Westminster, British Columbia.
2. The applicant, Blair Paul, says the respondent, Paul Oliver Wong, rear-ended his car on the Pattullo Bridge. In contrast, Mr. Wong says Mr. Paul cut in front of him from a

side road, and then immediately braked, causing the collision. Both parties say the other is fully responsible for the collision.

3. Mr. Paul claims reimbursement of his \$500 insurance deductible.
4. The other respondent, Insurance Corporation of British Columbia (ICBC), insures both Mr. Paul and Mr. Wong. ICBC internally determined that Mr. Paul was 100% liable for the collision. I am not bound by ICBC's determination.
5. Mr. Wong and ICBC say that ICBC correctly determined fault. They say Mr. Paul moved into Mr. Wong's path and took away his safe stopping distance, causing the collision. ICBC also says that it is not a proper party to this dispute.
6. Mr. Paul is self-represented. The respondents are both represented by an ICBC employee.

JURISDICTION AND PROCEDURE

7. 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.
8. 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 to 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 in *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.

9. 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.
10. 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.
11. As a preliminary matter, I will address ICBC's submissions that it is not a proper respondent to this dispute. The CRT has consistently found that an insured may claim against ICBC if they believe that ICBC did not meet its statutory or contractual obligations to reasonably investigate a collision. I agree with this approach. However, Mr. Paul does not argue that ICBC's investigation was unreasonable and does not claim any remedies against ICBC. I find Mr. Paul's claim is solely about who was at fault for the collision. I find that the proper respondent for this claim is Mr. Wong (see *Kristen v. ICBC*, 2018 BCPC 106). So, I dismiss Mr. Paul's claims against ICBC.

ISSUES

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

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, the applicant Mr. Paul 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.

14. The parties agreed in a statement of facts that the collision occurred on the Pattullo Bridge. I find from the unchallenged evidence that Mr. Paul was driving a white car and Mr. Wong was driving a small black truck. It is undisputed that at the time the collision occurred, Mr. Wong was travelling on Highway 1A, the through highway that leads onto the Pattullo Bridge, and Mr. Paul was entering onto the Pattullo Bridge from Columbia Street, a side street with a stop sign.
15. According to Mr. Wong, he was travelling in the right lane approaching the Pattullo Bridge when Mr. Paul cut in front of him from Columbia Street, with less than one car length of space. Mr. Wong says he honked at Mr. Paul, Mr. Paul slammed on the brakes, skidded, then came to a complete stop. Mr. Wong says he was not able to stop in time and rear-ended Mr. Paul.
16. The evidence before me includes a February 14, 2020 witness statement from JN, which was provided to ICBC over the phone. It is written from JN's perspective. I accept that JN's statement was supplied to ICBC during ICBC's investigation of the collision. JN's business card is also in evidence, and I infer it was provided to Mr. Wong at the collision scene. 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 and accept JN's hearsay statement. I also note that ICBC attempted to follow up and obtain a signed statement from JN in December, 2020. However, JN had recently passed away.
17. JN made the following observations about the collision. JN was heading toward the Pattullo Bridge. A white car was waiting on the on-ramp to the Pattullo Bridge. It started to jump out in front of JN, but stopped because JN was too close. The white car then proceeded to enter the roadway and cut off the truck travelling behind JN. The driver of the truck honked. JN looked in their rear view mirror and saw the white car swaying back and forth for 2 to 3 seconds, then jam on its brakes and stop. The truck had no chance to avoid hitting the white car and rear-ended the white car. JN

told the driver of the truck, Mr. Wong, that they would be a witness if needed. JN did not say that they stopped or slowed down in front of Mr. Paul prior to the collision.

Analysis

18. Mr. Paul says Mr. Wong rear-ended him so he was not at fault. Although Mr. Paul does not explicitly say so, I find it is implicit in his argument that because his vehicle was struck from behind, there is a presumption of negligence that Mr. Wong must rebut: *Singleton v. Morris*, 2010 BCCA 48. Generally, the basis for finding the rear-following driver at fault is that they must leave enough following distance to avoid a collision, even if the leading driver makes a sudden stop: *Skinner v. Fu*, 2010 BCCA 321. However, it is not automatic that the rear-ending party is liable for an accident.
19. Mr. Wong relies on section 175 of the *Motor Vehicle Act*, which requires a driver entering a through highway to yield the right of way to traffic that is approaching so closely that it constitutes an immediate hazard. Mr. Wong argues that there was not sufficient space for Mr. Paul to enter onto the Pattullo Bridge, and when he did so, he took away Mr. Wong's safe following distance.
20. Mr. Paul says he had enough time to "yield" onto the Pattullo Bridge safely in front of Mr. Wong's truck, with three car lengths or more. Inconsistently, Mr. Paul also says Mr. Wong was travelling "way too fast" to stop in time. Mr. Paul says Mr. Wong was tailgating him, and he slowed down because the truck in front of him applied the brakes, and that is when Mr. Wong rear-ended him. Mr. Paul submitted a photograph of a sign which I find indicates vehicles should slow to 30 kilometers per hour on the curve leading onto the Pattullo Bridge. Photographs in evidence indicate the speed limit on the Pattullo Bridge is 50 kilometers per hour. However, I find that nothing turns on whether the speed limit is 30 or 50 kilometers per hour. I say this because I find Mr. Paul, as the driver of the vehicle entering onto the through highway, should have observed Mr. Wong's speed when he decided whether it was safe to enter onto the Pattullo Bridge in front of Mr. Wong, who had the right of way.

21. Both parties seek to rely on photographs from the collision scene to prove that the other is at fault. Mr. Paul says the photographs show that the collision occurred well past the intersection, which he says proves that he safely entered onto the Pattullo Bridge. Mr. Wong says the photographs show that the collision occurred shortly after the intersection, which proves that Mr. Paul cut in front of him and took away his safe following distance. Mr. Wong also relies on measurements taken by an independent adjuster hired by ICBC that indicate the collision occurred approximately 40 meters past the Columbia Street intersection. However, without expert evidence, I find I cannot draw any conclusions from the photographs or measurements in evidence because I find they do not clearly support either party's account of what happened.
22. I find that the key issue to determine is whether Mr. Paul took away Mr. Wong's safe following distance when he entered onto the Pattullo Bridge from Columbia Street. While Mr. Wong suggests that Mr. Paul may not have stopped at the stop sign on Columbia Street before entering onto the Pattullo Bridge, I find that the evidence from the independent witness, JN, does not support this.
23. I find both Mr. Wong's and Mr. Paul's versions of events plausible. However, JN's evidence is consistent with Mr. Wong's account that Mr. Paul cut in front of Mr. Wong's truck from Columbia Street and took away his safe following distance. Here, I place significant weight on JN's statement because they are a disinterested party. I find this is sufficient to rebut the presumption of negligence against Mr. Wong.
24. On the evidence before me, I find Mr. Paul has not met his burden of proving that Mr. Wong was at fault for the collision, and his claim must be dismissed. It follows that Mr. Paul is not entitled to any reimbursement of his \$500 insurance deductible.
25. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. Mr. Wong was successful but did not pay fees or claim expenses. I dismiss Mr. Paul's claim for reimbursement of CRT fees.

ORDER

26. I dismiss Mr. Paul's claims and this dispute.

Leah Volkers, Tribunal Member