



# Civil Resolution Tribunal

Date Issued: August 10, 2021

File: SC-2021-001336

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Montemayor v. ICBC*, 2021 BCCRT 878

**BETWEEN:**

LIA DANICA MONTEMAYOR and ALONA MONTEMAYOR

**APPLICANTS**

**AND:**

INSURANCE CORPORATION OF BRITISH COLUMBIA and  
MARJAN NAVAB-TEHRANI

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kristin Gardner

### **INTRODUCTION**

1. This small claims dispute is about a motor vehicle accident that occurred on November 23, 2020 in Vancouver, B.C.
2. The applicant, Lia Danica Montemayor (Danica), and the respondent, Marjan Navab-Tehrani, were driving on West 39<sup>th</sup> Avenue at Cambie Street when their two vehicles

collided. The vehicle driven by Danica Montemayor is owned by the other applicant, Alona Montemayor.

3. Given the applicants share the same last name, and meaning no disrespect, I will refer to them as Danica and Alona below, to avoid confusion.
4. The respondent insurer, Insurance Corporation of British Columbia (ICBC), internally determined that Danica was 100% at fault for the accident. I am not bound by ICBC's determination.
5. Danica denies responsibility for the accident and says Ms. Navab-Tehrani is fully at fault for driving directly into her stopped vehicle. The applicants claim a total of \$3,000 for "car damages" but do not specify what this amount is made up of, other than a paid \$500 deductible. The applicants also say their insurance premiums will go up, but they do not claim a specific monetary value for this alleged premium increase.
6. The respondents say that Danica is liable for the accident because she left a stop sign when it was unsafe to do so. ICBC says it is not a proper party to this dispute.
7. Danica represents the applicants. An ICBC employee represents the respondents.

## **JURISDICTION AND PROCEDURE**

8. 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.
9. 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.

10. 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.
11. 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.
12. In its Dispute Response, ICBC says it is not a proper party to this dispute. I disagree. As discussed below, the applicants argue that ICBC's investigation was inadequate and that ICBC incorrectly determined that Danica was at fault for the accident, which I find are claims against ICBC as their insurer (see *Innes v. Bui*, 2010 BCCA 322). So, I find ICBC is a properly named party.

## **ISSUES**

13. The issues in this dispute are:
  - a. Who is responsible for the accident?
  - b. Did ICBC reasonably and appropriately investigate the accident?
  - c. What damages, if any, are the applicants entitled to?

## **EVIDENCE AND ANALYSIS**

14. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. I have read all the evidence and submissions, but I refer below only to what I find relevant and necessary to provide context for my decision.

***Who is responsible for the accident?***

15. It is undisputed that the accident occurred at about 5:00 p.m. on November 23, 2020. Ms. Navab-Tehrani was travelling eastbound on West 39<sup>th</sup> Avenue, attempting to turn left and proceed northbound on Cambie Street. Danica was travelling westbound on West 39<sup>th</sup> Avenue, when she and Ms. Navab-Tehrani collided.
16. At this area of Cambie Street, there are 3 lanes going southbound and 2 through lanes plus a parking lane going northbound. There is also a grassy boulevard separating northbound and southbound traffic on Cambie Street that is approximately 2 car-lengths wide. There are stop signs on West 39<sup>th</sup> Avenue controlling traffic entering Cambie Street, which is a through street. There are no lines on the road in the boulevard area separating eastbound and westbound traffic on West 39<sup>th</sup> Avenue.
17. Ms. Navab-Tehrani says that she left her stop sign, crossed the southbound lanes of Cambie Street, and came to a stop in the centre boulevard. She says she was at the east edge of the boulevard, looking for oncoming traffic to her right so she could make a left turn onto Cambie Street. Ms. Navab-Tehrani says traffic was clear, so she had taken her foot off the brake and was moving slowly forward when Danica's vehicle was suddenly in front of her. It is undisputed that the left front corner of Ms. Navab-Tehrani's vehicle collided with the left front corner of Danica's vehicle. Ms. Navab-Tehrani says Danica was not moving fast, but she described the collision to ICBC as a "solid hit".
18. In contrast, Danica says that she had crossed the northbound lanes of Cambie Street and was in the centre boulevard when she saw Ms. Navab-Tehrani approaching fast from the other direction. Danica says she came to a stop, but Ms. Navab-Tehrani kept coming and despite Danica honking her horn, Ms. Navab-Tehrani drove directly into her stopped vehicle.
19. There was an independent witness to the accident, KB. KB reported to ICBC that she was travelling southbound on Cambie Street and was stopped in traffic at West 39<sup>th</sup> Avenue. She stated that she saw Ms. Navab-Tehrani cross in front of her eastbound

on West 39<sup>th</sup> Avenue and proceed into the boulevard to turn left onto Cambie Street. KB stated that Ms. Navab-Tehrani may not have come to a full stop in the boulevard but was moving slowly. She said just as Ms. Navab-Tehrani started her left turn, Danica crossed northbound Cambie Street to enter the boulevard and collided with Ms. Navab-Tehrani. KB stated that Danica's vehicle was in the left most lane of northbound traffic when the collision occurred.

20. Both parties provided photographs taken at the accident scene. The photographs show Ms. Navab-Tehrani's vehicle in the boulevard area, angled to the left, with the front of her vehicle at the boulevard's eastern edge, about to enter Cambie Street. Danica's vehicle is shown completely in the left lane of northbound traffic on Cambie Street. Ms. Navab-Tehrani says she reversed her vehicle slightly after the impact and that Danica's vehicle position is where the accident happened.
21. Danica disputes that the photographs show where the collision occurred. She says her foot slipped off the brake pedal when Ms. Navab-Tehrani collided with her, pushing her vehicle backward into northbound Cambie Street. Danica provided an unsigned, undated statement from her friend, CO, who was a passenger in her vehicle. CO's statement essentially corroborates what Danica said happened. However, for the following reasons, I find Ms. Navab-Tehrani's version of the accident more persuasive.
22. First, I find the photographs of the vehicles' positions after the collision are more consistent with Ms. Navab-Tehrani's version. Even if Danica's vehicle had been pushed backward somewhat from the force of the collision, I find that does not explain the position of Ms. Navab-Tehrani's vehicle in the photographs. I find there is no evidence before me that Ms. Navab-Tehrani moved her vehicle forward after the collision, which I find would have been necessary if the vehicles collided towards the centre of the boulevard, as Danica alleges.
23. Further, the fact that Ms. Navab-Tehrani's vehicle is angled to the left is consistent with her evidence that she had just started her left turn. I find it is also consistent with the location of the vehicle damage on the left front corner of each vehicle.

24. Next, I give KB's statement significant weight as she is an uninterested, independent witness. I find KB's statement is consistent with both Ms. Navab-Tehrani's version of the accident and the scene photographs. Based on KB's statement, I find that Ms. Navab-Tehrani left her stop sign first and was established in the boulevard area before Danica left her stop sign.
25. I note that Danica argues the vehicle damage confirms Ms. Navab-Tehrani's vehicle was travelling faster than her vehicle. The photographs show Danica's front bumper had a large dent and a crack, and it appeared to have detached on the driver's side. Ms. Navab-Tehrani's vehicle did not appear to have any observable damage, other than perhaps some scratches and a small dent. I find determining vehicle speed from vehicle damage is an issue outside ordinary knowledge that requires expert evidence (see *Bergen v. Fuliker*, 2015 BCCA 283). Here, there is no expert evidence. So, I am unable to conclude that the extent of vehicle damage supports either party's version.
26. On the evidence before me, I find I am unable to accept Danica's version of the accident that Ms. Navab-Tehrani was travelling fast as she entered the boulevard or that Danica was stopped in the boulevard and honked before the collision. Rather, I find the evidence shows that Ms. Navab-Tehrani was already starting her left turn as Danica crossed northbound Cambie Street and tried to enter the boulevard, where she collided with Ms. Navab-Tehrani's turning vehicle.
27. Section 186 of the *Motor Vehicle Act* (MVA) requires drivers to stop at the marked stop line when there is a stop sign at an intersection. Section 169 of the MVA says a person must not move a stopped vehicle unless the movement can be made with reasonable safety. Section 144 of the MVA says a person must not drive on a highway without due care and attention.
28. Given that I have found Ms. Navab-Tehrani was already in the boulevard area before Danica left her stop sign, I find Danica was obligated under section 169 of the MVA to ensure it was reasonably safe to leave her stopped position at the stop sign before travelling across Cambie Street. I also accept Ms. Navab-Tehrani's evidence, and KB's statement, that Ms. Navab-Tehrani had her left turn signal on. I find that Danica

breached sections 144 and 169 of the MVA by leaving her stop sign when Ms. Navab-Tehrani was in the process of making a left turn in front of Danica's vehicle. Therefore, I find Danica was negligent, and she bears responsibility for the accident.

29. As for whether Ms. Navab-Tehrani also bears any responsibility, I note that left turning drivers can reasonably assume that approaching drivers will obey the rules of the road, unless there is reason to know otherwise (see *Yamakami v. Whitley*, 2012 BCSC 57 at paragraph 38). While this does not relieve Ms. Navab-Tehrani from keeping a reasonable lookout, I find Ms. Navab-Tehrani was the dominant driver with the right of way. On the evidence before me, I find Ms. Navab-Tehrani reasonably assumed that Danica would remain at her stop sign until Ms. Navab-Tehrani had completed her left turn. On balance, I find Danica has not proven that Ms. Navab-Tehrani negligently contributed to the accident.

30. I find Danica is 100% responsible for the accident.

***Did ICBC reasonably and appropriately investigate the accident?***

31. As noted, the applicants take issue with how ICBC investigated the accident. It is well established that ICBC must act properly and reasonably in assigning fault (*Singh v. McHatten*, 2012 BCCA 286). As part of this obligation, ICBC must reasonably investigate a claim. In doing so, ICBC is not expected to investigate with the "skill and forensic proficiency of a detective". Rather, ICBC must bring "reasonable diligence, fairness, and appropriate level of skill, diligence and objectivity" (*McDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283). I find that the steps ICBC must take to reasonably investigate an accident depends, in part, on the severity of the accident and the amount at stake.

32. The applicants say that ICBC improperly failed to get a statement from Danica's passenger, and that ICBC improperly relied KB's statement, which they say was unreliable. The applicants also say that ICBC did not explain how it reached its liability decision.

33. ICBC says it declined to take CO's statement because she was not independent. Given ICBC had an independent witness in this case (KB), I find that obtaining a statement from CO was unlikely to change the outcome of ICBC's investigation. As noted, CO's statement, which the applicants provided for this dispute, corroborates Danica's version of events, which I infer was what ICBC anticipated. Under the circumstances here, I find ICBC's decision not to take CO's statement was reasonable.
34. The applicants question the reliability of KB's statement because Danica did not see KB at the accident scene and because KB gave ICBC 2 separate statements. I disagree that these factors render KB's statement unreliable. I find just because Danica did not see it happen, is insufficient to conclude that KB did not give Ms. Navab-Tehrani her information at the scene. Further, ICBC's notes show KB provided an initial email statement and then a later statement by telephone. I find there are no significant inconsistencies between KB's 2 statements. Overall, I find ICBC reasonably relied on KB's statement in its liability investigation, particularly given that it was consistent with the photographic evidence showing the vehicles' positions after the collision.
35. The applicants also argue that ICBC did not provide a satisfactory explanation for why their vehicle sustained more damage than Ms. Navab-Tehrani's vehicle. The applicants submit it is a "scientific fact" that a slower vehicle will sustain more damage when hit by a faster vehicle. The applicants did not provide the source of this alleged scientific fact.
36. ICBC says the issues of vehicle speed and extent of vehicle damage require expert opinion evidence. As noted, I agree. Given that ICBC is not required to investigate with the proficiency of a detective, I find ICBC was not obligated to obtain an expert opinion to determine each vehicle's speed and the resulting vehicle damage. Rather, I find ICBC reasonably relied on the parties' statements, the independent witness, and accident scene photographs in determining liability.



37. On balance, while I acknowledge that the applicants disagree with ICBC's liability determination, I find they have not proven that ICBC's investigation was unreasonable. For these reasons, I dismiss the applicants' claims against ICBC.
38. Given that I have found Danica 100% at fault for the accident, and I have dismissed the applicants' claims against ICBC, I find the applicants are not entitled to any damages. I dismiss the applicants' claims.
39. 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. The applicants were unsuccessful and so I dismiss their claim for CRT fees. Neither party claimed any dispute-related expenses.

## **ORDER**

40. I dismiss the applicants' claims, and this dispute.

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Kristin Gardner, Tribunal Member