



# Civil Resolution Tribunal

Date Issued: August 11, 2021

File: SC-2021-000671

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Yin v. ICBC*, 2021 BCCRT 881

**B E T W E E N :**

DESHENG YIN and SHUOMEI BI

**APPLICANTS**

**A N D :**

INSURANCE CORPORATION OF BRITISH COLUMBIA and  
RAMINDER SINGH KHERA

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sarah Orr

## **INTRODUCTION**

1. This is a small claims dispute about liability for a motor vehicle accident. On October 31, 2020, the applicant Shuomei Bi was involved in a motor vehicle accident with the respondent, Raminder Singh Khera, in Delta, BC. Ms. Bi had been travelling southbound and was turning left at an intersection when her vehicle collided with Mr.

Khera's vehicle, who was driving northbound straight through the intersection. The other applicant, Desheng Yin, is a named driver on Ms. Bi's insurance but was not involved in the accident. All parties are insured by the respondent Insurance Corporation of British Columbia (ICBC). ICBC determined that Ms. Bi was 100% at fault for the accident. The applicants paid ICBC a \$300 deductible for repairs to Ms. Bi's vehicle.

2. The applicants say Ms. Bi was not 100% at fault for the accident and claim reimbursement of their \$300 deductible from ICBC.
3. ICBC says it is not the proper party to this dispute but says that in any event Ms. Bi is 100% at fault for the accident. However, ICBC says that if the Civil Resolution Tribunal (CRT) finds Mr. Khera was partially or entirely at fault for the accident, it will refund the applicants' deductible in proportion to the percentage that Mr. Khera is found to be at fault.
4. Mr. Yin and Ms. Bi each represent themselves in this dispute. An ICBC employee represents both ICBC and Mr. Khera.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the 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.
9. As a preliminary matter, I note ICBC's submission that it is not a proper party to this dispute. It relies on the BC Provincial Court decision in *Kristen v. ICBC*, 2018 BCPC 106 in which the court held that in an action to determine liability for a motor vehicle accident the proper defendant is the other driver, not ICBC. However, I find a key issue in this dispute is whether ICBC acted reasonably in assigning full responsibility for the accident to Ms. Bi. In *Innes v. Bui*, 2010 BCCA 322, the BC Court of Appeal determined that whether ICBC acts properly or reasonably in administratively assigning responsibility for an accident to a plaintiff is strictly between the plaintiff and ICBC. On this basis, I find that ICBC is a properly named party to this dispute.

## **ISSUES**

10. The issues in this dispute are:
  - a. Did ICBC breach its statutory obligations or contract of insurance in investigating the accident and assessing fault?
  - b. Was Ms. Bi responsible for the accident, and if not, are the applicants entitled to reimbursement of their \$300 deductible?

## EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision. For the following reasons, I dismiss the applicants' claims.
12. The parties agree on the following facts. The accident occurred at around 6:30 p.m. on October 31, 2020 at the intersection of 112<sup>th</sup> Street and 82<sup>nd</sup> Avenue in Delta, BC, which is controlled by traffic lights. It was dark outside. 112<sup>th</sup> Street runs north-south and 82<sup>nd</sup> Avenue runs east-west. Both 112<sup>th</sup> street and 82<sup>nd</sup> Avenue have one lane of traffic in each direction at the intersection. 82<sup>nd</sup> Avenue has a dedicated bike lane in each direction at the intersection, but 112<sup>th</sup> Street does not have any dedicated bike lanes in that location.
13. Immediately before the accident, Ms. Bi was travelling southbound on 112<sup>th</sup> Street and was stopped at the intersection waiting to turn left onto 82<sup>nd</sup> Avenue eastbound. Mr. Khera was travelling northbound on 112<sup>th</sup> street straight through the intersection and there was a vehicle in front of him waiting to turn left onto 82<sup>nd</sup> Avenue westbound. That vehicle was driven by GY, who saw the accident and provided a witness statement. Immediately before the accident the light was green for both parties.
14. It is undisputed that GY's vehicle was waiting to turn left and Mr. Khera passed GY's vehicle on the right to continue driving straight through the intersection. At roughly the same time, Ms. Bi started to turn left. Mr. Khera braked when he saw Ms. Bi's vehicle, but he could not stop and the front of his vehicle collided with the right side of Ms. Bi's vehicle in the middle of the intersection. The accident caused significant damage to both vehicles, and police attended at the scene but did not issue any traffic violation tickets.

15. ICBC submitted written statements from Ms. Bi, Mr. Khera, and GY, as well as the police report. There is also video footage of the accident in evidence taken from a surveillance camera at a property near the intersection.

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

16. To succeed in their claim against ICBC, the applicants 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 Ms. Bi 100% responsibility for the accident (see *Sing v. McHatten*, 2012 BCCA 286).

17. ICBC owes Ms. Bi 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. The applicants do not provide many details about ICBC’s investigation. They rely on a printout from ICBC’s website explaining liability for a hypothetical “Left turn crash with oncoming vehicle passing on the right” (example). In the example, ICBC said the vehicle passing on the right did so illegally and was responsible for the collision. However, the vehicle being overtaken in the example was not turning left. It is undisputed that GY’s vehicle was waiting to turn left at the time of the accident. So, I find the example is not applicable to the facts in this dispute.

19. The applicants say that in November 2020 Ms. Bi spoke with an ICBC representative on the phone about the example who told her that even if the vehicle being overtaken

on the right in the example was turning left, the overtaking vehicle would still be at fault for the accident. However, Ms. Bi did not provide a statement from this ICBC representative or any notes from their conversation. I find her recollection of a conversation with an unspecified ICBC representative on an unspecified date is insufficient to establish that ICBC breached any of its statutory obligations or its contract of insurance.

20. As noted above, ICBC's evidence shows that it obtained and relied on statements from Ms. Bi, Mr. Singh, GY, and the police in making its liability determination. It also relied on video footage of the accident and multiple photos of the vehicles after the accident. ICBC also relied on sections 158 and 174 of the *Motor Vehicle Act (MVA)* in making its liability determination. Section 158(1)(a) allows a driver to overtake and pass on the right of another vehicle when the vehicle being overtaken is turning left or its driver has signaled their intention to turn left. However, section 158(2) says that despite subsection 158(1), a driver must not overtake and pass another vehicle on the right when the movement cannot be made safely or is done by driving the vehicle off the roadway.
21. Section 174 of the *MVA* says that a driver in an intersection intending to turn left must yield to traffic approaching from the opposite direction that is in the intersection or so close as to be an immediate hazard. However, having yielded and signaled as required by section 171 of the *MVA*, the driver may turn the vehicle to the left, and traffic approaching the intersection from the opposite direction must yield to the vehicle making the left turn.
22. On the evidence before me, I find ICBC had a reasonable basis for its liability determination. I find the applicants have not established that ICBC breached its statutory obligations or its contract of insurance. However, I am not bound by ICBC's liability determination, so I turn now to my own assessment of whether Ms. Bi was responsible for the accident.

***Was Ms. Bi responsible for the accident, and if not, are the applicants entitled to reimbursement of their \$300 deductible?***

23. For the following reasons, I find Ms. Bi was responsible for the accident.
24. The applicants say Mr. Khera was speeding when he overtook GY's vehicle and entered the intersection. The applicants rely on GY's statement in which GY said Mr. Khera "sped up a little" as he passed them. However, GY also said that when they first saw Mr. Khera's vehicle behind them, Mr. Khera was "slowly approaching." I find GY's description is too vague to determine whether Mr. Khera was speeding. I also find that if Mr. Khera was approaching the intersection slowly, he could have sped up to overtake GY's vehicle while still driving at a safe speed. The applicants also rely on the extent of the damage to the 2 vehicles as proof that Mr. Khera was speeding, but I find that without expert evidence such damage on its own is not proof that Mr. Khera was speeding. I also find the video footage of the accident does not show that Mr. Khera was obviously speeding or driving at an unsafe speed when he overtook GY's vehicle.
25. The applicants say Ms. Bi entered the intersection before Mr. Khera did, but I find the video footage of the accident shows Mr. Khera entering the intersection at the same time or slightly before Ms. Bi started turning left.
26. The applicants say Mr. Khera was only legally allowed to overtake GY's vehicle on the right if it was safe to do so, inferring that Mr. Khera did not overtake GY's vehicle safely. However, Mr. Khera and GY both said Mr. Khera stayed within the roadway on 112<sup>th</sup> Street when Mr. Khera overtook GY's vehicle, and the applicants do not dispute this. Aside from their allegation that Mr. Khera was speeding, the applicants do not elaborate on how Mr. Khera overtook GY in an unsafe manner.
27. The applicants say that when Ms. Bi was waiting to turn left GY's vehicle was blocking her view of the oncoming traffic. However, they say that since Mr. Khera's view of the intersection would have been somewhat obscured while he was overtaking GY's vehicle, both parties bore equal responsibility to enter the intersection safely. I find the applicants' position is not supported by the legislation or case law. As noted

above, section 174 of the *MVA* requires a left-turning vehicle at an intersection to yield to oncoming traffic that is in the intersection, or that is so close to the intersection as to pose an immediate hazard. ICBC says Mr. Khera's vehicle posed an immediate hazard to Ms. Bi, so she was required to yield to him. On the evidence before me, I agree.

28. ICBC relies on the CRT's decision in *Wilson v. Reid*, 2020 BCCRT 835, in which 2 vehicles were involved in an accident in almost identical circumstances to the accident in this dispute. In that decision a Vice Chair summarized various court decisions setting out the obligations of a left-turning driver. The Vice Chair confirmed that a dominant driver driving straight through an intersection is entitled to proceed assuming that the left-turning driver will not start their turn until the dominant driver has cleared the intersection. If a left-turning driver wishes to blame the dominant driver for a collision, the left-turning driver must establish that they started turning when it was safe to do so, or that the dominant driver knew or should have known about the left-turning driver's disregard of the law. Any doubt must be resolved in favour of the dominant driver. While *Wilson* is not binding on me, the underlying court decisions cited in that decision are binding on me. I agree with the Vice Chair's reasoning in *Wilson*, and I find it applies to the accident at issue in this dispute.
29. On the evidence before me, I find the applicants have not established that Mr. Khera overtook GY's vehicle in breach of section 158 of the *MVA*. I also find the applicants have not established that Ms. Bi started turning left when it was safe to do so, as required by section 174 of the *MVA*. On balance, I find Ms. Bi is 100% responsible for the accident. So, I find the applicants are not entitled to reimbursement of their deductible, and I dismiss their claim.
30. 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 the applicants were unsuccessful, I find they are not entitled to reimbursement



of their CRT fees. ICBC did not pay any fees. Neither party claimed any dispute-related expenses.

## **ORDER**

31. I dismiss the applicants' claims and this dispute.

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Sarah Orr, Tribunal Member