



Civil Resolution Tribunal

Date Issued: August 11, 2021

File: SC-2021-001782

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rancourt v. ICBC*, 2021 BCCRT 880

B E T W E E N :

DUANE ALBERT MILES RANCOURT

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA and HOI-KIN
LEUNG

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred on 150th Street in Surrey, BC, on January 17, 2021. The applicant, Duane Albert Miles Rancourt, rear-ended the respondent, Hoi-Kin Leung. Mr. Rancourt says that Mr. Leung came to a sudden stop in order to make an illegal U-turn, and that Mr.

Rancourt had no chance to stop. Mr. Leung says that Mr. Rancourt was following too closely. The drivers both say that the accident was the other's fault. Mr. Rancourt claims \$5,000 for lost wages and the cost to repair his vehicle.

2. The other respondent, the Insurance Corporation of British Columbia (ICBC), insures both drivers. ICBC internally concluded that the accident was 100% Mr. Rancourt's fault. ICBC's fault determination is not binding on me. ICBC also says that it is not a proper respondent in this dispute.
3. Mr. Rancourt is self-represented. An ICBC employee represents both respondents.

JURISDICTION AND PROCEDURE

4. 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.
5. 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 sides to this dispute call into question the credibility, or truthfulness, of the other. However, in the circumstances of this dispute, I find that it is not necessary for me to resolve the credibility issues that the parties raised. I therefore decided to hear this dispute through written submissions.
6. 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.

7. 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.
8. I will briefly address ICBC's liability. 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, based on the BC Court of Appeal case *Innes v. Bui*, 2010 BCCA 322. I agree with this approach. However, Mr. Rancourt does not argue that ICBC should be liable because of any contractual or statutory breach. I find that Mr. Rancourt's claim is only about who was at fault for the accident. I find that the only proper respondent for this claim is Mr. Leung. See *Kristen v. ICBC*, 2018 BCPC 106. So, I dismiss Mr. Rancourt's claims against ICBC.

ISSUES

9. The issues in this dispute are:
 - a. Who is responsible for the accident?
 - b. If Mr. Leung is fully or partially at fault, what are Mr. Rancourt's damages?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, Mr. Rancourt as the applicant must prove his 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.
11. The following facts are undisputed. The accident occurred in the late morning of January 17, 2021. The accident occurred on 150th Street, which has 2 lanes in each direction. Both drivers were driving SUVs southbound in the left lane. Mr. Leung stopped to either turn left or start a U-turn across 2 solid yellow lines. Mr. Rancourt rear-ended him. There is no cross street at the accident location.

12. Mr. Rancourt says that he was following Mr. Leung “at a safe distance” when Mr. Leung stopped without warning. He says that Mr. Leung was going to make a U-turn, which would have been “illegal”. He says that Mr. Leung should have made sure it was safe to do so and should not have stopped suddenly. He said he had no time to stop or avoid the accident.
13. Mr. Leung says that he intended to turn left into a parking lot across the street. He says that he put his left signal on and stopped. He said that after 2 seconds, Mr. Rancourt hit him.
14. Mr. Rancourt does not say anything in his evidence in this proceeding about whether Mr. Leung signaled. According to ICBC’s internal notes, Mr. Rancourt said in his initial report to ICBC that Mr. Leung signaled left. Because Mr. Rancourt does not specifically dispute this, I accept that Mr. Leung signaled left shortly before stopping.
15. There is no objective evidence of the accident such as an independent witness or dashcam footage.
16. Mr. Rancourt provided an email that he says is from an RCMP constable who talked to Mr. Rancourt about the accident. This RCMP constable said that they believe that Mr. Leung’s attempted illegal U-turn contributed to the accident. I infer that Mr. Rancourt wants me to rely on the constable’s evidence as expert evidence about who was responsible for the accident. I find that this email does not meet the requirements of expert evidence set out in the CRT’s rules. I say this because there is no evidence of the constable’s qualifications and no evidence of what information the constable relied on for their opinion. In any event, even if I had admitted the evidence, I would not have put any weight on it because who is responsible for the accident is the ultimate issue in this dispute, and that is for the CRT alone to decide. See *Brough v. Richmond*, 2003 BCSC 512.
17. In rear-end accidents, the burden is usually on the rear driver to show that they were not negligent. This is called drawing an inference of negligence, which I find is

appropriate in this dispute. This is because rear drivers must leave enough space to be able to stop safely if there is a sudden or unanticipated stop. See *Cue v. Brietkruez*, 2010 BCSC 617. In the context of left turns, Mr. Leung relies on *Bains v. Chatakanonda*, 2018 BCSC 2412. In that case, the defendant stopped to turn left at a painted traffic island and the plaintiff rear-ended him. The court found that the plaintiff was 100% liable for the accident.

18. Mr. Leung also relies on *Wang v. ICBC*, 2020 BCCRT 824, which has similar facts to this dispute. There, the applicant rear-ended the respondent driver after the respondent stopped suddenly to either turn left or make a U-turn. A CRT vice chair found the applicant 100% liable, regardless of whether the respondent intended to turn left or make a U-turn. This is because either way, the applicant should have left enough room to be able to react to an unexpected stop.
19. Previous CRT disputes are not binding on me, but I find the reasoning in *Wang* persuasive and I adopt it. The evidence is unclear whether Mr. Leung intended to turn left or make a U-turn, but I find that it does not matter to the outcome of this dispute. This is because at the time of the accident, Mr. Leung had not started turning, so Mr. Rancourt would have rear-ended him regardless of his intentions.
20. In any event, Mr. Rancourt had a duty to leave enough room between him and Mr. Leung that he could avoid an accident if Mr. Leung stopped unexpectedly. As the This duty is reflected in section 162 of the MVA, which says that a driver must not follow another vehicle closer than is reasonable in the circumstances.
21. I find that Mr. Rancourt has not provided a non-negligent explanation for why he rear-ended Mr. Leung. I reject Mr. Rancourt's argument that Mr. Leung's failure to give enough notice was the accident's cause. I find that Mr. Leung signaled his intention to turn, although it is unclear how far in advance he did so. As discussed above, Mr. Rancourt should have been aware that Mr. Leung, or any driver, may slow down or stop with little warning. Based on the inference of negligence, I find that Mr. Rancourt failed to keep a safe distance behind Mr. Leung, failed to pay

close enough attention to the road, or both. I find Mr. Rancourt's negligence was the sole cause of the accident. I find that Mr. Rancourt is 100% liable for the accident.

22. Given my conclusion on liability, I find that I do not need to address Mr. Rancourt's damages claims.
23. 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. Mr. Rancourt was unsuccessful, so I dismiss his claim for CRT fees and dispute-related expenses. The respondents did not claim any dispute-related expenses or pay any CRT fees.

ORDER

24. I dismiss Mr. Rancourt's claim, and this dispute.

Eric Regehr, Tribunal Member