



Civil Resolution Tribunal

Date Issued: August 24, 2021

File: SC-2021-000138

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Grossi v. ICBC*, 2021 BCCRT 930

B E T W E E N :

ALDO GROSSI

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA and
KYLE GALPIN

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident between the applicant, Aldo Grossi, and the respondent, Kyle Galpin. The parties were both driving north on Highway 97 in Summerland, BC, on August 11, 2020, and collided at an intersection. Mr. Galpin says that Mr. Grossi unsafely changed lanes in front of Mr.

Galpin's vehicle. Mr. Grossi says that he stopped in front of Mr. Galpin because he thought Mr. Galpin was in "medical distress". Mr. Grossi says that Mr. Galpin then ran into him. The drivers each say that the accident was entirely the other's fault.

2. The other respondent, the Insurance Corporation of British Columbia (ICBC), insures both parties. ICBC internally determined that Mr. Grossi was fully at fault for the accident. ICBC's determination is not binding on me.
3. Mr. Grossi claims \$300, the deductible he paid when ICBC wrote off his car. He also claims \$4,700 in increased insurance premiums. The respondents ask that I dismiss Mr. Grossi's claims because Mr. Galpin was not at fault. They also say that the CRT does not have jurisdiction to make orders about Mr. Grossi's insurance premiums.
4. Mr. Grossi is self-represented. An ICBC employee represents both respondents.

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. In some respects, both drivers 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 *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.

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 pay money or to do or stop doing something. The tribunal's order may include any terms or conditions the CRT considers appropriate.
9. 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. Grossi does not make any allegations about ICBC or its investigation. Rather, I find his claim is only about who was at fault for the accident. I find that the only proper respondent for this claim is Mr. Galpin. See *Kristen v. ICBC*, 2018 BCPC 106. So, I dismiss Mr. Grossi's claims against ICBC.

ISSUES

10. The issues in this dispute are:
 - a. Who was responsible for the accident?
 - b. If Mr. Galpin was fully or partially responsible, what are Mr. Grossi's damages?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, Mr. Grossi 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.
12. The accident occurred on Highway 97 in Summerland at a lighted intersection. There are 2 lanes in each direction, with a dedicated left turn lane each way. Before the intersection, there are yellow warning lights to alert northbound drivers if the light will soon turn red. It is undisputed that the parties had been driving near each other for around 10 minutes before the accident.
13. Mr. Grossi provided ICBC with a signed statement dated February 24, 2021, which describes the accident in more detail than Mr. Grossi's submissions in this dispute. He says in his submissions that his "report will explain in more detail", so I accept the February 24, 2021 statement as Mr. Grossi's evidence about how the accident happened.
14. Mr. Grossi says that as the parties were driving northbound from Penticton, Mr. Galpin was "all over the place". He says that at one point, Mr. Galpin swerved from the left lane towards the right lane where Mr. Grossi was driving, and Mr. Grossi had to react suddenly to avoid a collision. Mr. Grossi says that based on Mr. Galpin's driving, he believed that Mr. Galpin was in medical distress. As the parties approached the intersection, Mr. Grossi was behind Mr. Galpin in the left lane. Mr. Grossi says that Mr. Galpin stopped "out of nowhere" 3 to 4 car lengths before the intersection. Mr. Grossi says that he quickly changed into the right lane to avoid Mr. Galpin and then pulled back in front of Mr. Galpin at an angle and stopped his car. He says that he "wanted to see what was wrong" with Mr. Galpin. Then, he says that Mr. Galpin "took off" and drove into Mr. Grossi's car.
15. In contrast, Mr. Galpin says that Mr. Grossi was driving erratically, so he turned on his dashcam. At one point, Mr. Galpin says that he pulled up beside Mr. Grossi and saw that Mr. Grossi was on the phone. Mr. Galpin says that he motioned to Mr.

Grossi to hang up, and in response, Mr. Grossi made a rude gesture and swerved his car at him. In response, Mr. Galpin says that he swerved back. He says that after this exchange, Mr. Grossi slowed down and changed into the left lane and began tailgating Mr. Galpin. Mr. Galpin says that as he approached the intersection, he began to slow down because the light was about to change. He says that Mr. Grossi had to veer into the right lane to avoid rear-ending Mr. Galpin. He says that he was almost stopped when Mr. Grossi swerved back into the left lane, hitting the right front corner of Mr. Galpin's car. Mr. Galpin says he had no chance to avoid the collision.

16. It is undisputed that Mr. Grossi's car came to rest facing west in the left turn lane, having spun 90 degrees from the impact. The damage to Mr. Grossi's car was around the left rear wheel well and left rear bumper. The damage to Mr. Galpin's vehicle was to the front bumper.
17. The police attended and issued Mr. Grossi tickets for 3 *Motor Vehicle Act* (MVA) breaches:
 - a. Section 144(1)(a), for driving without due care and attention.
 - b. Section 151(a), for changing lanes unsafely.
 - c. Section 214.2(1), for using an electronic device while driving.
18. Mr. Grossi says that he challenged the tickets, but there is no evidence about their current status. It is undisputed that the police did not directly observe the accident. I therefore place no weight on the tickets as evidence about what happened.
19. As mentioned above, Mr. Galpin provided dashcam footage of the accident. The video starts about a minute before the accident and includes the swerving incident that both parties describe in their evidence. Mr. Galpin argues that this incident is irrelevant because it took place well before the accident. I agree. I find that it does not matter who started the swerving incident or whether Mr. Grossi was on the phone at that time because it was more than 30 seconds before the accident. I also note that the parties disagree about whether Mr. Galpin tried to flee the scene after

the accident. I find that in the circumstances here this is also irrelevant to determining fault.

20. I turn then to the dashcam footage. I find that this evidence shows the yellow warning lights flashing well before Mr. Galpin gets to the intersection. While the dashcam video does not record Mr. Galpin's speed, I find that he did not stop "out of nowhere" as Mr. Grossi alleges. Rather, I find that he slowed down from highway speed to reasonably prepare to stop at the light, which was going to turn red. I find that Mr. Galpin was still slowing down when Mr. Grossi suddenly cut directly in front of him. In other words, I do not agree with Mr. Grossi that Mr. Galpin was already stopped when Mr. Grossi changed lanes. I agree with Mr. Galpin that he had no opportunity to react to Mr. Grossi's sudden lane change.
21. As mentioned above, Mr. Grossi says that he changed lanes front of Mr. Galpin because he thought Mr. Galpin was in medical distress. He does not thoroughly explain what he means by this, but presumably his explanation is that he wanted to stop Mr. Galpin from continuing on the highway. I do not accept this explanation. First, from the dashcam footage I find that Mr. Grossi's demeanour and expression appeared angry when he cut in front of Mr. Galpin, which is inconsistent with his explanation that he was concerned about Mr. Galpin's health or safety. Second, I find that the dashcam footage does not show Mr. Galpin driving in a way that reasonably suggested that he was in medical distress. Other than the swerving incident, I find that there was nothing unusual about Mr. Galpin's driving. I therefore cannot find that Mr. Grossi genuinely believed that Mr. Galpin was in medical distress. Even if he did, I find he had no reason to believe that it was necessary to take the drastic action of cutting in front Mr. Galpin's moving vehicle to stop him.
22. So, whatever Mr. Grossi's explanation for his lane change, I find that it was an unsafe maneuver. I find that Mr. Grossi breached section 151(a) of the MVA by making a lane change when it was not safe to do so. I find that his actions fell below the standard of care of a reasonable driver in the circumstances.

23. As for Mr. Galpin, I find that he could not have avoided the accident once Mr. Grossi changed lanes in front of him. In short, I find no basis for finding him contributorily negligent.
24. For these reasons, I find that Mr. Grossi was entirely at fault for the accident. Having reached this conclusion, I do not need to address the parties' arguments about Mr. Grossi's damages.
25. 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. Grossi 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

26. I dismiss Mr. Grossi's claims, and this dispute.

Eric Regehr, Tribunal Member