



Civil Resolution Tribunal

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File: SC-2019-009471

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Devendra v. ICBC*, 2021 BCCRT 1098

B E T W E E N :

RAGHAVENDRA DEVENDRA

APPLICANTS

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA, Aman Ugre
and Veena Ugre

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred on November 17, 2017 in Surrey, B.C.

2. The cars being driven by the applicant, Raghavendra Devendra, and the respondent, Aman Ugre, collided in the intersection of 80th Avenue and 133A Street. The respondent Veena Ugre owns the vehicle driven by Mr. Ugre.
3. The respondent Insurance Corporation of British Columbia (ICBC) insures Mr. Devendra, Mr. Ugre and Ms. Ugre. ICBC determined that Mr. Devendra was turning left onto 133A Street from the eastbound lane of 80th Avenue, when he struck Mr. Ugre's car which was travelling through the intersection westbound on 80th Avenue. It internally assessed Mr. Devendra 100% at fault for the accident. I am not bound by ICBC's determination.
4. Mr. Devendra denies turning left at the intersection. He says he was stopped at the intersection, looking for street signs, but intending to drive straight on 80th Avenue. He says Mr. Ugre was driving westbound on 80th Avenue through the intersection when he crossed the center line and struck Mr. Devendra's car. The respondents deny Mr. Devendra's version of events.
5. Mr. Devendra says Mr. Ugre is solely responsible for the accident. Mr. Devendra also says ICBC manipulated his statement, destroyed evidence including telephone records, failed to properly investigate the accident and conducted itself in bad faith. Mr. Devendra asks that the Civil Resolution Tribunal (CRT) be ordered to reverse ICBC's liability assessment and restore his pre-accident discounted insurance rate. He also claims \$1,200 in increased insurance premiums, \$300 for his paid deductible and \$1,500 for time spent asking ICBC to change the decision.
6. Mr. Devendra represents himself. An ICBC employee represents all the respondents.

JURISDICTION AND PROCEDURE

7. These are the CRT's formal written reasons. 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. 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.
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. In its Dispute Response, ICBC says it is not a proper party to this dispute. As noted above, Mr. Devendra claims ICBC failed to meet its statutory and contractual duty to investigate the accident and correctly determine fault for the accident and that ICBC acted in bad faith by manipulating and deleting evidence and failing to properly consider Mr. Devendra's position. I find Mr. Devendra's claims are against ICBC as his insurer (see *Innes v. Bui*, 2010 BCCA 322). I find ICBC is properly named as a respondent in this dispute. I address its liability below.

Decision History

12. Mr. Devendra filed his application for dispute resolution with the CRT on November 17, 2019. A few days before that, Mr. Ugre had filed a BC Supreme Court (BCSC) action against Mr. Devendra for personal injury allegedly resulting from the same accident.

13. On April 29, 2020, another tribunal member refused to resolve this CRT dispute under section 11(1)(a) of the CRTA, finding the dispute would be more appropriately resolved by the BCSC (*Devendra v. ICBC*, 2020 BCCRT 465). The tribunal member found that assigning liability for the accident was a necessary element of Mr. Devendra's CRT claims and also likely a necessary element of the BCSC action. The tribunal member reasoned that, because both the CRT and the court were being asked to address liability for the same accident, it could result in different liability findings in the 2 different forums, which is contrary to the CRT's mandate of efficiency and fair decision-making. So, the tribunal member found liability should be determined in the most appropriate forum, which was the BCSC, given that Mr. Ugre's already-filed personal injury claims were likely beyond the CRT's small claims monetary limit of \$5,000. The tribunal member found it would be more appropriate for Mr. Devendra to file his claims in the BCSC.
14. On March 9, 2021 the BCSC set aside the CRT decision refusing to resolve the dispute and remitted the dispute back to the CRT for a decision (*Devendra v. British Columbia Civil Resolution Tribunal*, 2021 BCSC 407). The court found that any liability determination in Mr. Ugre's personal injury action would likely not impact ICBC's internal assessment of fault. The court also found that Mr. Devendra would likely not have "a voice" in the personal injury action in which to dispute liability, because ICBC has a statutory right to defend an insured as it considers appropriate. Further, the court found the personal injury action would not resolve Mr. Devendra's claims against ICBC, for failing to properly investigate the accident. So, the court concluded that Mr. Devendra's claim against ICBC would not be better resolved in the BCSC personal injury action. The court did not otherwise specifically address Mr. Devendra's CRT claims as against the Ugres, and in particular the fact liability for the motor vehicle action is at issue in those claims and also in the BCSC tort action against Mr. Devendra. The court also did not consider whether it would be more appropriate for Mr. Devendra to bring his claims in a separate, but joined, BCSC action, so that the court could determine liability in both actions at the same time.

15. In any event, as noted, the court ordered Mr. Devendra's dispute be remitted to the CRT to make a decision. The parties agree that "all claims" were returned to the CRT.

Appropriate Forum

16. A decision to refuse to resolve a dispute is a summary decision of the CRT, rather than a final one that resolves claims following a hearing (see CRTA section 1). As noted, the BCSC referred this dispute back to the CRT for "a decision". So, I find I continue to have discretion to summarily decide whether I ought to refuse to resolve some or all of Mr. Devendra's claims under section 11(1)(a) of the CRTA.
17. I agree with the tribunal member and find that both the CRT and the BCSC could potentially reach different conclusions about liability for the very same accident, which would generally be undesirable. In particular, liability likely arises in Mr. Ugres's tort claim against Mr. Devendra in the BCSC, and in Mr. Devendra's CRT tort claims against the Ugres. I also agree with the tribunal member and find that, generally, this would be contrary to the CRT's mandate of efficiency and fair decision-making. However, given the history and specific circumstances of this dispute, I find the CRT's mandate for efficiency and timely decision making weighs in favour of not refusing to resolve this decision under section 11(1)(a) of the CRTA, at this time.
18. In particular, all parties were invited to provide further submissions on this dispute, following the court's March 9, 2021 decision. In their submissions, no party raised any concern about the potential for inconsistent liability findings, even though all parties were aware that liability remained an outstanding issue in the BCSC personal injury action. Mr. Devendra asks for liability to be determined at the CRT, knowing that liability is a live issue in the BCSC tort action against him. At the same time, in referring this dispute back to the CRT, the court did not express any concerns about the CRT proceeding with a liability determination in Mr. Devendra's claims against the Ugres, despite the BCSC tort action against Mr. Devendra. Further, in its submissions ICBC says it will refund Mr. Devendra his deductible and increased insurance costs, should the CRT find him 25% or less responsible for the accident. So, I find the respondents agree to have liability determined at the CRT.

19. I have also considered that the accident occurred nearly 4 years ago. I find that requiring Mr. Devendra to file his claims anew in court would only serve to further delay resolution of Mr. Devendra's claims, which is contrary to the CRT's mandate of efficiency and timely decision making. On balance, in these specific circumstances, I find the CRT is the appropriate forum to decide this dispute.

ISSUES

20. The issues in this dispute are:

- a. Is Mr. Ugre wholly or partly responsible for the accident?
- b. Did ICBC breach its statutory obligation or contractual duty to investigate the car accident and assess fault?
- c. If any answer is "yes", what is the appropriate remedy?

EVIDENCE AND ANALYSIS

21. In a civil proceeding like this one, Mr. Devendra as the applicant must prove his claim on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submissions and weighed the evidence, but only refer to that necessary to explain my decision.

Is Mr. Ugre wholly or partially responsible for the accident?

22. Mr. Devendra reported the accident to an ICBC employee (JA) at 11:45 pm on November 17, 2017. According to JA's notes, Mr. Devendra said he was driving but had stopped before the pedestrian crossing, turned his left signal indicator on, and looked for traffic but saw none. He said he was looking right when he felt an impact to his car, then looked behind him and saw debris and the other vehicle pulled over in the westbound lane of 80th Avenue. Mr. Devendra said he turned left onto 133A Street and pulled over.

23. JA noted that, later in the conversation, Mr. Devendra said he did not think he turned his left signal on prior to the impact. Mr. Devendra explained that he had wanted to turn left on 134th Street and was stopped at 133A Street looking for a street sign when the accident happened.
24. Mr. Devendra denies telling JA that he turned his left indicator on while stopped at 133A Street, prior to the accident. In a November 20, 2017 email to ICBC, Mr. Devendra explained that he stopped at the intersection to look for street signs. Mr. Devendra said he only turned his left indicator on after the accident, turning left onto 133A Street to clear the intersection. In his email Mr. Devendra confirmed that he did not see Mr. Ugre's vehicle, and that he was looking to his right when the accident happened. Mr. Devendra said Mr. Ugre must have crossed the center line into Mr. Devendra's lane so that the running board on the driver's side of Mr. Ugre's pick-up truck hit the front left corner of Mr. Devendra's car.
25. Mr. Ugre reported the accident to a different ICBC employee (AK) at 4:16 am on November 18, 2017. According to AK's notes, Mr. Ugre said he was driving westbound on 80th Avenue and saw Mr. Devendra's vehicle stopped on the crosswalk at 133A Street, with his left turn indicator on. Mr. Ugre said there was a car in front of him that went straight through the intersection but when Mr. Ugre entered the intersection, Mr. Devendra turned left and hit Mr. Ugre's vehicle on the driver's side doors. Mr. Ugre reported that both cars pulled over, exchanged information and called the police. Mr. Ugre told AK that Mr. Devendra had agreed the accident was his fault and apologized at the scene. Mr. Devendra denies admitting responsibility for the accident.
26. It is undisputed that the police did not attend the accident scene and that there were no independent witnesses to the accident. Although both drivers took photos of each other's vehicles, they agree this happened after both cars pulled over to the sides of the road, so there are no photos of the actual accident scene itself.
27. Sometime after the accident, ICBC took photos of the vehicles. The photos of ICBC, Mr. Devendra and Mr. Ugre are consistent with each other. Collectively, they show

the front left corner of Mr. Devendra's front bumper has been torn off, the front left headlight scratched and damaged. The photos also show scratches, dents and scrapes along the left side doors, wheel and wheel well and the left side running board of Mr. Ugre's truck.

28. In a December 7, 2017 letter, ICBC determined Mr. Devendra was 100% liable for the accident because he turned left when it was not safe to do so, contrary to section 174 of the *Motor Vehicle Act* (MVA).
29. Mr. Devendra argues that the vehicle damage supports a conclusion that Mr. Ugre drifted sideways into Mr. Devendra's car after crossing the center line. Mr. Devendra says he overheard Mr. Ugre tell his family at the accident scene that the scratches on the side of the truck were there before the accident. The respondents do not address this statement. However, even if the only damage the accident caused to Mr. Ugre's truck is to the running board, I find this does not prove Mr. Devendra's theory of how the accident happened.
30. I find expert evidence is required to prove accident reconstruction based on vehicle damage patterns because I find it is outside the knowledge of an ordinary person (see *Bergen v. Guliker*, 2015 BCCA 283). Mr. Devendra did not submit any expert evidence, although he did submit several diagrams of how he says the accident must have happened, based on the damage to his car and to Mr. Ugre's running board. While I accept that Mr. Devendra is a professional engineer, I find that does not qualify him as an accident reconstruction specialist under the CRT rules. Further, Mr. Devendra has a vested interest in the outcome of this dispute and so I find he is not sufficiently neutral to provide a non-biased opinion. Without expert evidence, I find Mr. Devendra has failed to prove that the vehicle damage shows Mr. Ugre must have sideswiped or drifted into Mr. Devendra's car.
31. The respondents say the vehicle damage shows that Mr. Devendra turned left into Mr. Ugre's truck. It relies on the opinions of an ICBC estimator, Ted Hughes, and the ICBC Claims Operations Estimating Services manager, Wade Adams. The respondents did not submit the qualifications of either person. ICBC's claim notes

include Mr. Hughes' opinion that the material damage to both vehicles is consistent with Mr. Devendra turning left into Mr. Ugre, because Mr. Devendra's vehicle damage is restricted to the front left corner point of impact while Mr. Ugre's damage travels over the side of his truck. I accept that Mr. Hughes is qualified to provide explanations about how accidents likely occurred based on vehicle damage photos, as that is his job as an ICBC estimator. Further, I find Mr. Hughes likely considered Mr. Devendra's version of events, given that Mr. Hughes provided his explanation in the claim notes after the claims adjuster noted Mr. Devendra's explanation of events in the same notes. There is no conflicting expert opinion. So, I give Mr. Hughes' opinion some weight.

32. Both Mr. Devendra and Mr. Ugre provided their statements to ICBC within hours of each other. Given the lack of any other objective or expert evidence, I find Mr. Ugre's statement is supported by Mr. Hughes' vehicle damage opinion. I find it more likely than not that Mr. Devendra was turning left at the intersection when he struck Mr. Ugre's truck.
33. I accept that as a left-turning driver Mr. Devendra had a duty to yield to oncoming traffic in the intersection or so close to the intersection that poses an immediate hazard, under section 174 of the MVA.
34. As set out in the non-binding but persuasive decision of *Wilson v. Reid*, 2020 BCCRT 835, the case law says that if a left-turning driver wishes to blame the straight through 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, which is Mr. Ugre in this case. It is undisputed that Mr. Devendra did not see Mr. Ugre and was not looking at oncoming traffic when the accident occurred. So, find Mr. Devendra has not established that he turned when it was safe for him to do so. Nor is there any indication that Mr. Ugre should have known or anticipated that Mr. Devendra had failed to see him approaching, given another

car travelled through the intersection before Mr. Ugre. So, I find Mr. Devendra is 100% responsible for the accident, based on the evidence before me in this dispute.

35. I dismiss Mr. Devendra's claims against Mr. Ugre and Ms. Ugre.

Did ICBC breach its duty to reasonably investigate the accident?

36. As an insurer, ICBC owes a duty of good faith to Mr. Devendra and 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, an appropriate level of skill, thoroughness and objectivity" to its investigation and fault assessment (*McDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283). The standard is not perfection. 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.

37. Mr. Devendra says ICBC's decision that he was turning left at the intersection was arbitrary.

38. According to the adjuster's December 7, 2017 notes, she considered Mr. Devendra's initial report, Mr. Ugre's initial report, Mr. Devendra's later email and telephone conversation before deciding that Mr. Devendra had his left turn indicator and was turning left onto 133A Street. The notes say the adjuster reviewed the "md" with another employee and found it did not support Mr. Devendra's explanation that Mr. Ugre had drifted sideways and hit Mr. Devendra's car. I infer "md" refers to material damage, or vehicle damage. In the December 7, 2017 letter, the adjuster said Mr. Devendra would likely have seen Mr. Ugre if he had drifted sideways, which Mr. Devendra undisputedly did not. Given these notes, I find ICBC considered all available evidence when making its internal determination of liability. I find the ICBC adjuster was entitled to rely on her understanding that the vehicle damage was consistent with a left turn, based on her conversation with an ICBC estimator.

39. Based on ICBC's claim file and correspondence between ICBC and Mr. Devendra, I find his claim was considered by an adjuster, her supervisor, 2 managers, and the ICBC vice president, all of whom informed Mr. Devendra that they reviewed Mr. Devendra's correspondence on file, his explanations of the accident, the statements from both drivers, the vehicle damage photos and Mr. Hughes' notes about what the damage showed. So, I find ICBC did reasonably consider what little evidence there was about the accident, even if it reached a different conclusion from Mr. Devendra.
40. I disagree with Mr. Devendra that ICBC was obliged to obtain the electronic data recorder (EDR) information from each vehicle and reconstruct the accident. Neither driver reported any injuries at the accident scene and both vehicles were able to drive away, indicating there was not a significant amount of vehicle damage. ICBC says it does not regularly retrieve EDR information from the vehicles in all accidents, which is undisputed. Given the minimal damage and low claim value, I find it was reasonable for ICBC to choose not to obtain the EDR information in this case.
41. I do not find that JA manipulated Mr. Devendra's initial accident report, as Mr. Devendra alleges. JA's notes show, in order, that Mr. Devendra reported having his left turn indicator on, then JA explained the claims process, then Mr. Devendra recalled that he did not turn his indicator on until after the accident. Apart from Mr. Devendra's assertion, there is no indication that JA intentionally changed her notes to misrepresent what Mr. Devendra told her. I give no weight to Mr. Devendra's argument that ICBC changed his initial report to avoid having to further investigate the accident. I say this because ICBC's claim notes show the adjuster continued to work on Mr. Devendra's claim by reviewing the vehicle damage photos and estimates before assigning responsibility. Further, ICBC continued to review Mr. Devendra's claim several times.
42. I do not find that ICBC intentionally destroyed the audio recording of the drivers' first reports of the accident to ICBC. Based on the vice-president's June 13, 2018 letter to Mr. Devendra, and ICBC's emails about Mr. Devendra's freedom of information (FOI) request, I find ICBC's recording system automatically deletes incoming phone calls

after approximately 90 days, which is what occurred here. Mr. Devendra has not shown that this practice is unreasonable. I find this particularly so, given that Mr. Devendra had not yet filed his CRT dispute, and that ICBC informed him how to obtain the recording before the 90 day automatic destruction date, as explained below.

43. I disagree with Mr. Devendra that ICBC ignored his initial requests for the recordings until they had been deleted. I find Mr. Devendra first requested the recordings in a January 22, 2018 letter to an ICBC supervisor who told Mr. Devendra on January 30, 2018 that he needed to submit an FOI request to obtain the recordings. However, Mr. Devendra did not submit his FOI request until April 10, 2018. So, I find any delay in obtaining the recordings is due to Mr. Devendra, and not ICBC.
44. I find there was no requirement for ICBC to assign a manager when Mr. Devendra first requested it on November 22, 2017, because a fault assessment decision had not yet been made. I find ICBC did escalate Mr. Devendra's concerns to management level and did respond to his correspondence. Contrary to Mr. Devendra's allegations, I find ICBC's claim notes show that supervisors and managers returned phone calls, emails, and attempted to explain why they found the vehicle damage supported that Mr. Devendra turned left at the intersection into Mr. Ugre's truck. Mr. Devendra's disagreement with ICBC's decision and explanations does not make them arbitrary, invalid, or non-existent.
45. I find ICBC did not fail to defend Mr. Devendra in this dispute, as he claims. This is because ICBC's statutory duty to defend an insured under section 74 of the *Insurance (Vehicle) Regulation* does not require ICBC to represent Mr. Devendra as an applicant, as is the case in this CRT dispute.
46. Overall, I find ICBC's investigation was proportional and reasonable in the circumstances. I find Mr. Devendra has failed to prove that ICBC acted in bad faith or otherwise breached its duty to Mr. Devendra to reasonably investigate this accident and assign fault. I dismiss Mr. Devendra's claims against ICBC. Given this conclusion, I do not need to address Mr. Devendra's claimed remedies.

47. 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. As Mr. Devendra was unsuccessful in his claims, I find he is not entitled to reimbursement of any CRT fees or dispute-related expenses. The successful respondents paid no fees and claimed no dispute-related expenses.

ORDER

48. I dismiss Mr. Devendra's claims and this dispute.

Sherelle Goodwin, Tribunal Member