



Civil Resolution Tribunal

Date Issued: November 5, 2021

File: SC-2021-002062

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Banwait v. ICBC*, 2021 BCCRT 1173

B E T W E E N :

HARMEET BANWAIT

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA, RONELDA
YVONNE DOUCETTE, and BRIAN ISTACE

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred on January 12, 2021, in Vancouver, BC. The respondent insurer, Insurance

Corporation of British Columbia (ICBC), found the other driver, the respondent Ronelda Yvonne Doucette, 100% responsible on the basis she rear-ended Mr. Banwait. The respondent Brian Istace owns the vehicle driven by Ms. Doucette.

2. This dispute is not about liability for the accident. Rather, it is about whether Mr. Banwait's rear bumper was damaged in the January 12, 2021 accident (2021 accident). ICBC says the damage was pre-existing, and so it assessed Mr. Banwait a \$300 "hit and run" deductible when Mr. Banwait had the bumper repaired.
3. Mr. Banwait claims reimbursement of that \$300 deductible. Ultimately, he says that there was some leftover bumper damage from an earlier December 2016 rear-end accident (2016 accident) that he was also undisputedly not at fault for. So, he denies that the bumper was damaged in a hit and run accident and says he should not have had to pay the \$300 deductible.
4. Mr. Banwait is self-represented. An ICBC employee represents the 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). 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
6. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.

7. Under CRTA section 42, 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 CRTA section 118, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
9. Mr. Banwait submitted late evidence, consisting of photos of what I infer are his car and the other driver's white car in the 2016 accident. He also submitted evidence of his ICBC claim for the 2016 accident. I allow the late evidence as I find it marginally relevant and because ICBC had an opportunity to respond to Mr. Banwait's evidence and so was not prejudiced by it. I note Mr. Banwait advised the CRT that he objected to ICBC's response to his late submission that said it should not be accepted as it was late. Given ICBC is entitled to submit a response to the applicant's late evidence, I have considered all of it. As necessary, I discuss the relevant weight given to evidence below.

ISSUES

10. The issues are whether the claimed damage to Mr. Banwait's vehicle resulted from the 2021 accident, and whether he is entitled to reimbursement of the \$300 deductible he paid for vehicle repairs.

EVIDENCE AND ANALYSIS

11. In a civil claim like this one, as the applicant Mr. Banwait has the burden of proving his claims, on a balance of probabilities (meaning "more likely than not"). I have only referenced below what I find is necessary to give context to my decision.
12. It is undisputed that Ms. Doucette was driving Mr. Istace's car and rear-ended Mr. Banwait's SUV, on January 12, 2021.

13. Mr. Banwait chose to have his vehicle repaired on January 18, 2021, before ICBC had concluded its material damage investigation about whether the claimed damage arose from the 2021 accident. ICBC later concluded that the repaired damage was inconsistent with the rear-end collision on January 12, 2021. So, ICBC categorized the repaired damage as a hit and run. Based on that hit and run conclusion, Mr. Banwait paid a \$300 deductible to a repair shop. As noted, Mr. Banwait claims reimbursement of that \$300 in this dispute.
14. Originally, Mr. Banwait appeared to argue that his rear-bumper damage arose from the 2021 incident. However, in his reply submission, he conceded that ICBC “might be right” there was not “much damage” from the 2021 accident. However, Mr. Banwait argues that damage must have been from the 2016 accident and that it had not been repaired properly before the 2021 accident. In particular, Mr. Banwait says the repair shop that did the 2016 repairs only repaired rather than replace his bumper, and that the scratches in the bumper could not be repaired. After the 2021 accident, the repair shop replaced his rear bumper. So, Mr. Banwait says that since both the 2016 and 2021 rear-end accidents were undisputedly not his fault, he should not have been required to pay any deductible.
15. I turn first to whether the damage repaired in January 2021 arose from the 2021 accident.
16. ICBC relies on opinions from material damage manager Andrew Stewart. ICBC submitted Mr. Stewart’s qualifications, which includes being red seal certified as a body and paint technician and over 36 years’ experience in vehicle repair and damage assessment. ICBC also relies on its material damage estimator Farz Sabet’s opinion, who is an ICBC estimator since 2006 and is also a red seal certified auto body repair technician.
17. Under the CRT’s rules, I accept Mr. Stewart’s and Mr. Sabet’s opinions, about the damage’s source, as expert evidence. Notably, Mr. Banwait does not dispute their expertise or qualifications, and he did not submit any contrary expert opinion. While ICBC employees may not always be sufficiently neutral to give expert evidence, I

find that Mr. Stewart and Mr. Sabet undisputedly were. I note the BC Provincial Court accepted an ICBC employee's evidence as expert evidence in *Roome v. Rajput et al.*, 2013 BCPC 231, as did the CRT in the non-binding decisions in *Kim v. Malcolm*, 2021 BCCRT 527 and *Wadhera v. ICBC*, 2021 BCCRT 645.

18. The heart of the expert opinions is that Mr. Banwait's bumper damage has "hex" bolt imprints, whereas Mr. Istace's vehicle driven by Ms. Doucette has round head Phillips screws on the front bumper. Further, the height of the bolt marks on Mr. Banwait's rear bumper was 11 inches higher than Ms. Istace's bumper's screw heights.
19. As noted above, Mr. Banwait does not dispute ICBC's evidence and appears to now concede the claimed damage did not arise from the 2021 accident. I find Mr. Banwait has not proven it did arise from the 2021 accident.
20. I turn then to whether Mr. Banwait is entitled to reimbursement of the \$300 deductible he paid for ICBC's classification of the repaired damage as being from a hit and run. As noted, he says it was likely remaining damage from the bumper repair he had done after the 2016 rear-end accident. Mr. Banwait does not explain why he did not address the remaining damage sooner. He also says, "it's basically the 1st body shop did not do the repairs properly" but does not explain why the named respondents in this dispute should be held responsible. The fact that the 1st body shop doing repairs after the 2016 accident is an ICBC approved shop is not a legal basis to hold ICBC and the other respondents in this dispute for its repairs.
21. In summary, I find no legal basis to hold ICBC, Ms. Doucette, and Ms. Istace liable under the claim for the January 2021 accident based on residual unrepaired damage from the 2016 accident. Mr. Banwait's remedy for any unrepaired damage following the 2016 accident was against the relevant repair shop or perhaps the driver who rear-ended him, subject to the applicable limitation period. Even if Mr. Banwait could in this CRT dispute claim against ICBC for damages related to the 2016 accident, I find such a claim would be out of time as there is a 2-year limitation period under the *Limitation Act*. I dismiss Mr. Banwait's claims.

22. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Mr. Banwait was unsuccessful, I dismiss his claim for reimbursement of paid CRT fees. The respondents did not pay CRT fees or claim expenses.

ORDER

23. I dismiss Mr. Banwait's claims and this dispute.

Shelley Lopez, Vice Chair