



# Civil Resolution Tribunal

Date Issued: December 17, 2021

File: SC-2021-004939

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wu v. ICBC*, 2021 BCCRT 1320

B E T W E E N :

SHI QING WU

**APPLICANT**

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred on May 11, 2021 in Delta, British Columbia. The applicant, She Qing Wu, was driving his SUV through the intersection of Highway 91 and Nordel Way when he was involved in an accident with a truck. Mr. Wu named the truck's driver, ID, as a respondent in the

original Dispute Notice, but he later amended the Dispute Notice to remove ID as a party. I discuss this further below.

2. The respondent, Insurance Corporation of British Columbia (ICBC), insures the vehicles involved in the accident. ICBC internally determined that Mr. Wu was fully responsible for the accident.
3. Mr. Wu argues that ICBC improperly assessed the evidence and wrongly determined fault for the accident. Mr. Wu says ICBC should have found ID responsible for the accident. Mr. Wu claims \$1,571.60 for reimbursement of his deductible and GST charged.
4. ICBC says it acted fairly and with utmost good faith in conducting its investigation and assessment of Mr. Wu's claim. ICBC says that based on the evidence, it properly determined Mr. Wu was responsible for the accident. ICBC also says it is not a proper party to this dispute.
5. Mr. Wu is self-represented. ICBC is represented by an employee.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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.

8. 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.
9. 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.

## **ISSUES**

10. The issues in this dispute are:
  - a. Is ICBC a proper party to this dispute?
  - b. Who is responsible for the accident?
  - c. Did ICBC breach its statutory and contractual obligations in assessing fault?

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, the applicant Mr. Wu must prove his claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ evidence and submissions, but I refer only to what is necessary to explain my decision.

### ***Is ICBC a proper party?***

12. As noted, in its Dispute Response ICBC says it is not a proper party to this dispute. It says Mr. Wu’s claim should be against ID and the truck’s owner. While Mr. Wu initially named ID, he amended the Dispute Notice to remove ID as a respondent.

13. As of May 1, 2021, ICBC's vehicle insurance scheme changed. Part of the changes included an amendment to the *Insurance (Vehicle) Act* (IVA) to impose a general ban on drivers bringing actions for vehicle damage against other vehicle owners and operators involved in an accident. Specifically, section 172(1) of the IVA says a person has no right of action and must not commence or maintain proceedings for vehicle damage sustained in an accident that occurred on a highway and involved at least 2 vehicles. I find Mr. Wu's accident involved 2 vehicles, and it occurred on a highway as that term is defined in the IVA.
14. IVA section 172(2) says the general ban does not apply to proceedings brought against individuals who, at the time of the accident, are not owners, renters named in an owner's certificate, occupants or operators of vehicles involved in an accident. I find those exceptions do not apply to ID, as the truck's operator, or the truck's owner. Therefore, I find IVA section 172 prevents Mr. Wu from pursuing a CRT dispute for his vehicle damage against the truck's owner and ID.
15. However, I find ICBC is not an owner, renter named in an owner's certificate, occupant, or operator of a vehicle involved in an accident. Therefore, I find the general ban on bringing proceedings for vehicle damage in section 172(1) does not apply to preclude bringing a CRT dispute against ICBC for vehicle damage.
16. I find Mr. Wu's claim is for first-party coverage, as under section 174 of the IVA, ICBC must cover the cost of vehicle repairs to the extent that the insured is not responsible for the accident. In other words, if Mr. Wu is not liable for the accident, the IVA requires ICBC to pay for his vehicle repairs, including the deductible. Further, because the IVA requires ICBC to indemnify an insured for vehicle damage based on the insured's degree of fault, I find the IVA and Mr. Wu's insurance contract with ICBC require ICBC to correctly determine fault. Therefore, I find Mr. Wu's claim is that ICBC breached their contract by incorrectly determining fault for the accident.
17. I find that Mr. Wu also alleges ICBC failed to fairly and reasonably investigate the accident, in breach of its statutory and contractual obligations. For all these reasons, I find ICBC is a properly named party to this dispute.

### ***Who is responsible for the accident?***

18. The circumstances of the accident were as follows. Mr. Wu was driving southwest on the Highway 91 Connector and came to a stop for a red light at the intersection of Nordel Way. The Highway 91 Connector has 3 straight-through lanes and 2 left turn lanes. Mr. Wu was in the left-most straight-through lane. There were no vehicles in front of Mr. Wu. There was a bus in the lane to his left, waiting to turn left. ID was driving a truck with a semi-trailer in the middle lane to Mr. Wu's right, and there was a car in the far-right lane. This is all undisputed.
19. When the light turned green, Mr. Wu and the vehicles to his left and right all started moving forward. In about the middle of the intersection, Mr. Wu says ID moved left into his lane and the truck's front bumper collided with his rear passenger side wheel. In contrast, ICBC says that Mr. Wu moved to his right and encroached into the middle lane, colliding with ID's truck.
20. There were 2 witnesses to the accident who provided statements: the driver of the car in the far-right lane, SJ, and the driver of a truck that was about 5 cars behind Mr. Wu, SA.
21. SJ stated that when the light turned green and she moved forward into the intersection, the truck beside her suddenly started to move towards her lane and began honking, just before she heard a crash. She stated the truck braked and Mr. Wu's vehicle came across the front of the truck and into her lane, so SJ had to slam on her brakes to avoid hitting it.
22. Mr. Wu objects to SJ's statement because she admits she could not see Mr. Wu before the collision. He says this makes her conclusion that he moved into the middle lane unreliable because she did not actually see him do so. ICBC says it relied on SJ's statement because she also indicated she did not see the truck move to the left as it moved through the intersection. Contrary to Mr. Wu's submission, I find SJ likely would have noticed the truck move left, before swerving back toward her and honking, had it done so.

23. SA stated that as traffic started to move forward when the light turned green, he saw Mr. Wu accelerate quickly and try to change lanes from left to right. SA said the back of Mr. Wu's vehicle clipped the truck's front bumper as Mr. Wu changed lanes into the middle lane.
24. Mr. Wu objects to SA's statement because he says SA and ID worked for the same company. I infer it is Mr. Wu's position that SA is not independent. However, I find ICBC's file notes show ICBC confirmed that SA and ID worked for different, though affiliated companies, and they did not previously know each other. On balance, I find SA was an independent witness.
25. Mr. Wu also provided dash cam footage taken from his own vehicle. The footage is of some assistance even though the view is out Mr. Wu's front windshield, so it does not show the collision with the rear of Mr. Wu's vehicle.
26. The footage shows Mr. Wu move into the intersection and pull slightly ahead of the truck to his right. There are dotted lines on the road showing the lane for the right-most straight-through traffic. However, there are no lines on the road showing the lanes for the middle or far-left lanes of straight-through traffic in the intersection.
27. From the footage and other photographs and maps in evidence, I find in order to remain in the far-left straight-through lane, Mr. Wu was required to move his vehicle to the left as he travelled through the intersection. However, I find the dash cam footage shows Mr. Wu did not move left. Rather, I find Mr. Wu initially drove straight, and then moved slightly to the right, which caused him to encroach into the truck's path, as they proceeded through the intersection. At the moment of impact, I find Mr. Wu's vehicle was pointed directly toward the centre of the middle lane on the other side of the intersection, not the far-left lane.
28. Mr. Wu says that as he travelled through the intersection, he was unable to move his vehicle to the left until the dotted line guiding left-turning traffic curved to the left. He says because there was a bus beside him turning left, he was unable to move left any earlier and the accident happened because ID moved to the left too early.

29. I do not accept Mr. Wu's submission. As noted, I find the dash cam footage shows Mr. Wu moved his vehicle to the right, towards ID's lane, as they proceeded through the intersection. I find that had Mr. Wu remained immediately to the right of the left-turn lane, there was enough room for him to angle his vehicle to the left as he travelled through the intersection without crossing into the bus's path.
30. On balance, I find the evidence supports a conclusion that Mr. Wu failed to appreciate that he had to move to the left to remain in the far-left lane on the other side of the intersection. I find, instead, Mr. Wu steered his vehicle toward the middle lane on the other side of the intersection. In doing so, I find Mr. Wu was not paying proper attention to the road or the traffic beside him, and his actions fell below the standard expected of a reasonable and careful driver in the circumstances. I find Mr. Wu was negligent and his negligence caused the accident.
31. Further, I find there is insufficient evidence to conclude that ID moved his truck to the left too early. I accept SJ's and SA's statements, both of which support ID's version that it was Mr. Wu who tried to move into the middle lane. Given Mr. Wu's actions and that SJ was to ID's immediate right, I find there was nothing ID could have done to avoid the collision. I find Mr. Wu has not proven that ID was negligent or that he contributed to the accident.
32. Therefore, I find Mr. Wu was solely responsible for the accident. This means that I find ICBC correctly determined fault and Mr. Wu's claim for first-party coverage under his insurance contract must fail.

***Did ICBC breach its statutory and contractual obligations?***

33. As noted, ICBC also has a statutory and contractual obligation to conduct a fair and reasonable investigation of accident claims. ICBC owes Mr. Wu a duty of utmost good faith, which requires ICBC to act fairly, both in how it investigates and assesses the claim, and in its decision about whether to pay the claim (see *Bhasin v. Hrynew*, 2014 SCC 71 at paragraphs 22, 55, and 93).

34. The evidence shows ICBC sent Mr. Wu a May 19, 2021 letter advising that ICBC had found him 100% at fault for the accident. I find from ICBC's claim file notes in evidence that in reaching its liability decision, ICBC had reviewed Mr. Wu's and ID's statements, the dash cam footage, and the statements from SJ and SA.
35. ICBC's file notes also show that ICBC compared the dash cam footage and witness statements to Google Maps, and that it discussed all the evidence with Mr. Wu for almost one hour over the phone on May 13, 2021.
36. According to ICBC's file notes, an ICBC supervisor reviewed the dash cam footage and witness statements on May 18, 2021, and the supervisor agreed that Mr. Wu was fully responsible for the accident. Mr. Wu emailed ICBC further arguments and objections to the liability finding. On May 19, 2021, ICBC discussed Mr. Wu's objections with him for as further 2 hours over the phone. The notes indicate that ICBC interpreted the dash cam footage differently than Mr. Wu, and it would "likely not be resolved with discussion". It was then that ICBC sent its May 19, 2021 letter to Mr. Wu confirming its liability decision.
37. Mr. Wu also complains that the 3 ICBC employees he spoke to about the liability assessment had inconsistent reasons for finding he was at fault. However, I find the noted inconsistencies are trivial and do not change the overall consensus among the ICBC employees that the dash cam footage showed that Mr. Wu encroached into ID's lane, the independent witnesses supported ID's version of the accident, and there was no evidence that ID moved into Mr. Wu's lane.
38. I acknowledge that Mr. Wu disagrees with ICBC's assessment of the evidence and its liability determination. However, I find Mr. Wu has not shown that ICBC's investigation was unreasonable, that it failed to review relevant information, or that it did not fully consider Mr. Wu's version of the accident. Rather, I find the evidence shows ICBC reasonably relied on statements from the parties involved in the accident, independent witnesses, and the dash cam footage. I find Mr. Wu has not proven ICBC breached its statutory obligations or its contract of insurance in conducting its investigation and liability assessment.

39. Given all of the above, I dismiss Mr. Wu's claims.

40. 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. Wu was unsuccessful and so I dismiss his claim for CRT fees. As the successful party, ICBC did not pay any fees or claim any dispute-related expenses, so I make no order.

## **ORDER**

41. I dismiss Mr. Wu's claims and this dispute.

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Kristin Gardner, Tribunal Member