



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Sharma v. ICBC*, 2022 BCCRT 12

B E T W E E N :

VISHAL SHARMA

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA, SATNAM
SINGH CHATHA and HARPREET BHAGHTANA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred in a parking lot on April 3, 2019. Vishal Sharma was reversing out of a parking stall when he collided with a vehicle driven by Harpreet Bhaghtana and owned by Satnam Singh Chatha.ⁱ The Insurance Corporation of British Columbia (ICBC) insures Mr. Sharma,

Bhaghtana and Chatha. ICBC internally determined that the accident was entirely Mr. Sharma's fault. ICBC's determination is not binding on me.

2. Mr. Sharma disagrees with ICBC's liability determination. He says that Bhaghtana caused the accident by running into his vehicle while Mr. Sharma was backing out of the parking stall. The respondents say that Mr. Sharma caused the accident by reversing out of the parking stall when it was unsafe to do so.
3. Mr. Sharma claims \$2,443.90 in increased insurance premiums and \$1,237.28 for the damage to his vehicle. The respondents ask that I dismiss Mr. Sharma's claims.
4. Mr. Sharma is self-represented. The respondents are all represented by an ICBC employee.

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 parties of this dispute 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 CRT's order may include any terms or conditions the CRT considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. Who was responsible for the accident?
 - b. Did ICBC reasonably investigate the accident?
 - c. What are Mr. Sharma's damages?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, Mr. Sharma 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.

Who was responsible for the accident?

11. The accident occurred in a parking lot in Surrey, BC, in the afternoon of April 3, 2019. It is undisputed that Mr. Sharma and Bhaghtana collided as Mr. Sharma was backing out of a parking stall and Bhaghtana was travelling past in the aisle of the parking lot. Chatha was Bhaghtana's passenger at the time.

12. Mr. Sharma and Chatha each gave brief statements to ICBC immediately after the accident. Mr. Sharma said that he was backing out of a parking stall when Bhaghtana drove into his vehicle. He said that he was 40% out of the stall. Chatha said that Bhaghtana was driving through the parking lot's aisle when Mr. Sharma backed into the side of Chatha's vehicle. Bhaghtana did not give a statement to ICBC.
13. Chatha did not provide a more detailed statement. There is no evidence from Bhaghtana in this dispute. There are no other witnesses and no video footage of the accident.
14. On March 28, 2021, Mr. Sharma emailed ICBC a detailed written argument outlining his position. From context, I find that Mr. Sharma adopts these arguments as part of his submissions in this dispute.
15. Mr. Sharma says that he did a full shoulder check before beginning to back out and there were no vehicles around. He says that he had already begun to angle his vehicle when the accident happened. He says that he was occupying the aisle. He says that Bhaghtana tried to swerve around his vehicle and hit him.
16. Mr. Sharma relies primarily on where each vehicle was damaged to support his account. He says that the contact point on his vehicle was the left corner of the rear bumper while the damage to Chatha's vehicle was to the right rear wheel. He says that this proves that he had started turning his vehicle.
17. I disagree that the main point of contact was the corner of Mr. Sharma's bumper. Photos taken immediately after the accident show that the visible damage runs along the left side of the rear bumper. Mr. Sharma's own notes indicate that this is the "main" point of contact. While I accept that Mr. Sharma may have started angling his vehicle, I find that the damage on both vehicles clearly shows that Mr. Sharma backed into Bhaghtana. I return to this issue below.

18. I note here that Mr. Sharma also makes detailed arguments about the extent of the damage to Chatha's vehicle. According to ICBC's records, ICBC paid to repair scrapes to Chatha's vehicle's rear right wheel well. Mr. Sharma says that this was pre-existing damage. I find that nothing turns on this point because Mr. Sharma admits that his vehicle contacted Chatha's vehicle's rear right wheel. I find that it makes no difference to this dispute whether Mr. Sharma's vehicle hit the body of Chatha's vehicle as well as the wheel itself. As for Mr. Sharma's allegation that Chatha defrauded ICBC by having ICBC pay to repair the wheel well, I find that this is an issue between Chatha and ICBC.
19. Mr. Sharma also says that Chatha confessed that the accident was Bhaghtana's fault and offered to pay to fix Mr. Sharma's vehicle without involving ICBC, which Mr. Sharma refused. Mr. Sharma also says that Bhaghtana attempted to leave the accident scene. As mentioned above, Bhaghtana and Chatha did not provide written statements for this dispute, so Mr. Sharma's evidence about what happened after the accident is undisputed and I accept it. However, as mentioned above, Chatha was a passenger so I find he would have had less reason to be paying close attention to what was happening before the accident. There is no evidence that Bhaghtana admitted fault. I therefore find that this evidence is not determinative, as discussed more below.
20. Finally, Mr. Sharma says that Bhaghtana was not displaying a learner's sign as required, refused to provide Mr. Sharma with their driver's license, and may not have been a listed driver on Chatha's insurance. I agree with the respondents that none of these issues are relevant to the question of who was responsible for the collision.
21. The respondents rely on 2 sections of the *Motor Vehicle Act* (MVA). Section 169 says that a person must not start a stopped vehicle unless it can be done so safely. Section 193 says that a driver must not move a vehicle backwards unless it can be done so safely.

22. I find that section 193 is directly relevant to this dispute. Section 193 imposes a high standard of care on a reversing driver because reversing is riskier than driving forward. The expectations of a reasonable driver depend on the circumstances. Backing up in a parking lot, where there are often pedestrians and other vehicles, requires considerable diligence. See *Araujo v. Vincent*, 2012 BCSC 1836, at paragraphs 34 to 36. This high standard applies the entire time the driver is reversing, not just when they start. See *Carson v. Henyecz*, 2012 BCSC 314, at paragraph 99. That said, I agree with Mr. Sharma that this does not mean that a reversing driver is automatically at fault.
23. With those principles in mind, I find that Mr. Sharma was fully responsible for the accident. I find that the point of impact shows that he reversed into the side of Chatha's vehicle. I find it particularly important that the point of impact was Chatha's rear wheel, because this shows that Bhaghtana had mostly passed Mr. Sharma when the collision occurred. I find that this shows Mr. Sharma had ample opportunity to see Chatha's vehicle behind him and that he should have stopped reversing. I also find that this is inconsistent with Mr. Sharma's allegation that Bhaghtana tried to swerve around his reversing vehicle. I find that this clear physical evidence outweighs Chatha's admission at the accident scene, Bhaghtana's post-accident behaviour, and the lack of detailed evidence from either Chatha or Bhaghtana.

Did ICBC reasonably investigate the accident?

24. Mr. Sharma also takes issue with how ICBC investigated the accident. It is well-established that ICBC must act properly and reasonably in assigning fault (*Singh v. McHatten*, 2012 BCCA 286, referring to *Innes v. Bui*, 2010 BCCA 322). 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, diligence and objectivity" (*McDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283).

25. In this dispute, ICBC undisputedly made a very quick liability determination after the accident based only on the brief initial statements from Mr. Sharma and Chatha. According to ICBC's file notes, an adjuster phoned Mr. Sharma the day after the accident to tell him it had held him fully liable for the accident and left a voicemail for Mr. Sharma to call back. According to ICBC, Mr. Sharma did not return the call. Mr. Sharma says that he did not receive a phone call but does not say whether he received a voicemail. I find that ICBC likely did leave a voicemail because there is a note from the time to this effect.
26. On April 12, 2019, ICBC mailed a letter explaining its liability decision to Mr. Sharma, but for reasons that are not explained, it went to a lawyer's office and not to Mr. Sharma's home. Mr. Sharma says he never received the letter. ICBC mailed a similar letter to the registered owner of the vehicle, who lived at the same address as Mr. Sharma. Mr. Sharma denies that they received this letter and says that there was a typo in the letter's address line.
27. Mr. Sharma says that he first learned that ICBC had found him liable for the accident in March 2021, when he decided to insure the vehicle after leaving it uninsured for a period of time. When he applied for insurance, he found out that his premium would be higher because of the at-fault accident on his record.
28. Mr. Sharma argues that ICBC acted unreasonably by failing to assign an adjuster to physically inspect the 2 vehicles. I disagree for 2 reasons. First, it is undisputed that the ICBC adjuster who took Mr. Sharma's initial statement told him that ICBC would likely find him liable. Given that it had also left a voicemail, I find that it was reasonable for ICBC to assume that Mr. Sharma was aware of ICBC's determination and did not dispute it, even if Mr. Sharma had not received written confirmation. In other words, I find that there was no reason for ICBC to follow up further. I find that assigning an adjuster to investigate further would have been a waste of time and resources in the circumstances.

29. Second, I find that the extent of ICBC's obligation to investigate varies with an accident's severity. Here, there were no injuries and very minor vehicle damage. I find that ICBC was not required to physically inspect either vehicle, given how minor the collision was.
30. Mr. Sharma also argues that the ICBC adjuster's notes of his initial report do not record everything he said. In particular, he says that they leave out his allegation that Chatha admitted fault and offered to pay for Mr. Sharma's repairs. He says that ICBC should have provided the CRT with recordings of the phone calls, but ICBC says that those recordings do not exist. There is no evidence for me to conclude that ICBC is being untruthful and hiding these recordings. In any event, even if they do exist, I find it unlikely that they would have changed ICBC's liability assessment.
31. Finally, Mr. Sharma argues that ICBC should have conducted a full liability review after he provided them with a more detailed statement in March 2021. However, ICBC sent Mr. Sharma a letter after receiving his written arguments. While ICBC did not address his arguments in detail, the letter stated that ICBC had reviewed the information Mr. Sharma provided and decided not to change its initial determination. I find that this shows that ICBC did consider Mr. Sharma's arguments and simply did not agree with them. I find nothing unreasonable in this decision.
32. Having reached these conclusions, I find it unnecessary to address the parties' arguments about damages. I also find it unnecessary to consider whether Mr. Sharma had standing, or the legal right, to claim the repair costs since he did not own the vehicle at the time of the accident.
33. 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. The applicant was unsuccessful, so I dismiss his claim for CRT fees and dispute-related expenses. The respondent did not claim any dispute-related expenses or pay any CRT fees.

ORDER

34. I dismiss Mr. Sharma's claims, and this dispute.

Eric Regehr, Tribunal Member

ⁱ The CRT has a policy to use inclusive language that does not make assumptions about a person's gender. As part of that commitment, the CRT asks parties to identify their pronouns and titles to ensure that the CRT respectfully addresses them throughout the process, including in published decisions. As mentioned above, Satnam Singh Chatha and Harpreet Bhaghtana are represented by ICBC. ICBC did not provide their pronouns and titles. Because of this, I will address them by their last names and use gender neutral pronouns throughout this decision, intending no disrespect.