



Civil Resolution Tribunal

Date Issued: February 2, 2022

File: SC-2021-006155

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Randhawa v. Singh*, 2022 BCCRT 123

BETWEEN:

RAJBIR RANDHAWA

APPLICANT

AND:

BINESH KUMAR SINGH

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred on October 25, 2020, on Argyle Drive near the intersection with Victoria Drive in

Vancouver, BC. The 2 involved drivers were both travelling east. The applicant, Rajbir Randhawa, says the respondent, Binesh Kumar Singh, crossed over the road's white solid line and "side-swiped" his car on the driver's side. Mr. Randhawa asks for an order that Mr. Singh reimburse him the \$150 deductible his insurer the Insurance Corporation of British Columbia (ICBC) deducted from his "total loss settlement" for his car's value.

2. Mr. Singh says it was Mr. Randhawa who changed lanes and side-swiped his car, while Mr. Singh was in line to turn left onto Victoria Drive. ICBC internally assessed each driver 50% liability, because it could not determine which driver made the lane change. I am not bound by ICBC's decision and it is not a party to this dispute.
3. Mr. Randhawa is represented by a friend. Mr. Singh is represented by an ICBC employee.

JURISDICTION AND PROCEDURE

4. 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.
5. 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. Some of the evidence in this dispute amounts to a "he said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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.

6. 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.
7. Where permitted by 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.
8. Mr. Randhawa submitted evidence late, after the CRT's deadline. Bearing in mind the CRT's flexible mandate, I admit the late evidence as Mr. Singh had an opportunity to respond to it and so is not prejudiced by the admission. I have considered it in my analysis below.
9. Next, I note Mr. Randhawa submits that ICBC was negligent in investigating the accident. Since ICBC is not a party to this dispute and because I am not bound by ICBC's internal determination in any event, I will not address the issue of ICBC's alleged negligence further.
10. Finally, I note Mr. Randhawa pursued a Claims Assessment Review (CAR), an internal ICBC process, to challenge ICBC's earlier determination he was 50% responsible for the accident. I am not bound by the CAR decision, which upheld ICBC's determination.

ISSUES

11. The issues are a) which driver made a lane change and side-swiped the other driver and b) if not Mr. Randhawa, whether Mr. Singh must pay him \$150 for an ICBC deductible.

EVIDENCE AND ANALYSIS

12. In a civil claim like this one, as the applicant Mr. Randhawa 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.
13. First, the accident scene. Both cars were heading east on Argyle Drive towards Victoria Drive. Mr. Singh was in the left lane, intending to turn left in the dedicated left-turn lane at Victoria Drive. Mr. Randhawa was in the right-hand lane, intending to proceed straight through across Victoria Drive. Both drivers say the other driver crossed the solid white line dividing the roadway and side-swiped their car. It was evening and dark outside. There were no witnesses and no dash cam footage.
14. Mr. Randhawa submitted photos of the parties’ cars after the collision. The photo of Mr. Singh’s car shows it is mostly into the right lane with the car’s rear still in the left lane. The photos in evidence also show damage to Mr. Singh’s car’s right front corner, above the wheel. Photos of Mr. Randhawa’s car show scrape damage all down the driver’s side door and fender. Mr. Randhawa did not submit a photo showing his car’s position on the road after the collision.
15. Mr. Randhawa submits that the damage locations on the parties’ vehicles shows Mr. Singh turned his car into Mr. Randhawa’s lane. However, I find accident reconstruction is technical and outside ordinary knowledge (see *Bergen v. Guliker*, 2015 BCCA 283). Here, I find nothing obvious from the submitted evidence, including photos, that allows me to conclude one of the parties was the lane-changing driver that caused the accident. I also cannot tell that Mr. Singh’s vehicle’s position when the photo was taken shows he caused the collision by side-swiping Mr. Randhawa. Notably, there is no expert evidence before me. So, I draw no conclusions from the location of the damage on the parties’ respective vehicles.
16. I turn next to the applicable law. Section 151 of the *Motor Vehicle Act* says a driver must not drive from one lane to another if doing so requires crossing a solid line. As noted above, at the time of the collision the drivers’ lanes were separated by a solid

white line. So, this dispute turns on which driver crossed the white line into the other's lane of travel.

17. In short, Mr. Randhawa argues his version of the accident should be preferred because his statements have been consistent. He says Mr. Singh's statements have been inconsistent and are inaccurate.
18. I turn then to the details of the parties' respective statements. In his initial October 27, 2020 telephone report, Mr. Randhawa said he was eastbound approaching the red light to "travel onto" East 54th Avenue. In his October 28, 2020 telephone statement to ICBC, Mr. Randhawa said he was about 100 meters away from the Victoria Drive intersection, the light turned red and so he started to slow down. Mr. Randhawa said he was the only car in the right lane and there were 4 cars in the left lane that Mr. Singh was driving in. Mr. Randhawa says as he approached the stop line, Mr. Singh attempted to change from the left lane into the right lane hitting Mr. Randhawa's vehicle. Mr. Randhawa does not say where the other 3 cars in Mr. Singh's lane were at the time of the collision.
19. Mr. Randhawa submitted an "additional statement" to the CRT, which is consistent with the above description. In addition, Mr. Randhawa said that at the time of the collision he was "travelling slowly" in the right lane intending to go straight across Victoria Drive. He added the light was red for him as eastbound traffic. He also added that he was on his way home from the grocery store and that while he had travelled on Argyle Street many times before he had never turned left onto Victoria Drive from Argyle Street. I infer he said this to show he had no reason to move his car into the left lane. While the parties refer to "Argyle Street", which is a north-south street, the evidence shows the accident occurred on Argyle Drive which veers off Argyle Street east towards Victoria Drive. Nothing turns on the discrepancy.
20. I accept Mr. Randhawa did not intend to turn left and was instead planning to go straight across Victoria Drive. However, contrary to Mr. Randhawa's apparent assertion, I find this does not determine whether Mr. Randhawa strayed across the white line and side-swiped Mr. Singh.

21. I turn to Mr. Singh's statements. In his initial October 25, 2020 report to ICBC, as set out in ICBC's transcription of the call, Mr. Singh said that it was a side-swipe incident and that Mr. Randhawa was in "2/3 lane" and that Mr. Singh was in "3/3 lane" and that Mr. Randhawa changed into Mr. Singh's lane.
22. In a later October 28, 2020 telephone statement to ICBC, as set out in ICBC's telephone notes, Mr. Singh said that he had turned from 54th Avenue onto Victoria and was driving in his lane, "he changed lanes and hit me, I didn't change lanes".
23. ICBC's November 27, 2020 telephone notes document Mr. Singh's call-back in response to ICBC's message. Mr. Singh said that he was at work and in a rush, which in context I infer refers to the November 27, 2020 telephone call rather than the accident date. According to the telephone notes, Mr. Singh said he was coming from Richmond and was intending to turn left onto Victoria Drive towards his home "when the other driver cut me off". Mr. Singh explained that he had not yet made his left turn and was still on East 54th Avenue when the accident happened. He added that there were 3 cars ahead of him that had already turned.
24. In a third statement, Mr. Singh emailed ICBC's representative in this dispute on November 27, 2021, in response to a phone message. Mr. Singh described the accident as he had on November 27, 2020, adding that "I was turning left onto Victoria and as soon as he tried to switch lanes I went ahead and that's when the collision happened".
25. I agree with Mr. Randhawa that Mr. Singh's statements, as largely documented by ICBC, have varied to some extent. However, apart from once saying he had already turned onto left onto Victoria Drive, I do not find the statements substantially inconsistent. Rather, I find they are increasingly detailed versions of earlier briefer statements. Notably, I find ICBC's record of Mr. Randhawa's own statements also varied to some extent, with further detail but not inconsistent.
26. In any event, on the essential issue I find Mr. Singh was consistent in his evidence that Mr. Randhawa changed into his (Mr. Singh's) lane and side-swiped him. I place

no weight on ICBC's one record of Mr. Singh saying he was already on Victoria Drive. I say this because it is hearsay as ICBC's transcription of what Mr. Singh said and because Mr. Singh otherwise said he had not yet turned left. Further, Mr. Randhawa himself says the accident occurred before Mr. Singh had started to turn left. I also place no weight on the fact that ICBC's notes documented Mr. Singh saying he had photos of the accident, because later he clarified that it was Mr. Randhawa who had photos and because it is undisputed Mr. Singh took no accident scene photos. In the circumstances here, I am not prepared to conclude Mr. Singh was substantially or materially inconsistent in his evidence to ICBC given that ICBC was summarizing what Mr. Singh said in its relatively brief telephone notes.

27. So, I find I am left with an evidentiary tie, meaning I am unable to prefer one party's version of events over the other's. It is impossible here to know with sufficient certainty how the accident happened. I find the prior non-binding CRT cases cited by Mr. Randhawa unhelpful, since they were all fact dependent like the case before me. Since Mr. Randhawa has the burden of proof because he is the applicant, I find it unproven Mr. Singh was responsible for the accident.
28. It follows that I dismiss Mr. Randhawa's claim, and so I do not need to discuss the \$150 deductible in any detail.
29. 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. Mr. Randhawa was unsuccessful and Mr. Singh did not pay fees or claim dispute-related expenses. So, I make no order for fees or expenses.

ORDER

30. I dismiss Mr. Randhawa's claims and this dispute.

Shelley Lopez, Vice Chair