



# Civil Resolution Tribunal

Date Issued: March 22, 2022

File: SC-2021-005845

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *You v. ICBC*, 2022 BCCRT 311

BETWEEN:

DONG BUM YOU

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This is a small claims dispute about a motor vehicle accident that occurred on June 16, 2020. The collision occurred between HP and AG, who are not parties to this dispute. At the time of the collision, HP was driving a vehicle owned by the applicant, Dong Bum You.

2. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insured Mr. You's vehicle. Initially, ICBC internally determined that HP was fully responsible for the accident. Mr. You and HP brought a CRT dispute against AG to dispute liability, during which process the parties came to an agreement about liability, and ICBC amended its determination to find HP and AG each 50% liable.
3. Mr. You says that ICBC breached its duty of good faith by conducting an unfair investigation into the accident. Mr. You claims \$5,000 in punitive damages.
4. ICBC denies any breach of contract or statutory duty and says it dealt with the applicant appropriately, fairly, and in good faith. ICBC says the circumstances of this case do not warrant punitive damages.
5. Mr. You 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.
10. Mr. You submits that HP suffered mental distress from ICBC's alleged mishandling of its investigation. However, Mr. You did not claim damages for mental distress in the Dispute Notice. I also find that Mr. You does not have standing (legal authority) to bring a claim on HP's behalf. For these reasons, I have not considered this allegation, and I do not address HP's alleged mental distress in my analysis below.

## **ISSUE**

11. The issue in this dispute is whether ICBC breached its statutory obligations or contract of insurance in investigating the accident and assigning fault, and if so, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

12. In a civil proceeding like this one, the applicant Mr. You 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 I find is necessary to explain my decision.
13. As noted, Mr. You seeks \$5,000 in punitive damages for ICBC's alleged breach of its duty of good faith. The courts have held that insurers owe their insureds a duty of good faith, which requires ICBC to act fairly, both in how it investigates and assesses a claim and as to its decision about whether to pay the claim (see *Bhasin v. Hrynew*, 2014 SCC 71 at paragraphs 33, 55, and 93). As noted in the Continuing Legal Education Society of BC's '*BC Motor Vehicle Accident Claims Practice Manual*', an insurer is not expected to investigate a claim with the skill and forensic proficiency of

a detective. An insurer must bring “reasonable diligence, fairness, an appropriate level of skill, thoroughness, and objectivity to the investigation and the assessment of the collected information” (see *McDonald v. Insurance Corp. of British Columbia*, 2012 BCSC 283).

14. The basis of Mr. You’s claim appears to be that it took more than 3 months for ICBC to acknowledge that AG was partly responsible for the accident, when Mr. You says that should have been clear from the outset. I set out the relevant timeline below.
15. ICBC’s claim file notes in evidence show that HP and AG provided conflicting accounts of how the June 16, 2020 accident occurred. Each stated that the other reversed into their stationary vehicle. Mr. You was not present when the accident happened.
16. It is undisputed that an ICBC estimator, GF, reviewed 3 photos of the vehicle damage on July 8, 2020 and concluded that the pictures did not appear to support one version of the accident over the other. However, after reviewing additional photos and a diagram AG provided the following day, GF noted that on the “balance of probabilities” the damage seemed consistent with AG’s version that his vehicle was stopped, and HP was moving backwards at the time of the collision.
17. Mr. You disagreed with GF’s conclusion and sent several emails to the ICBC adjuster AY, including an attached document setting out his views about how the vehicle damage and accident dynamics supported HP’s version (Mr. You’s analysis). AY spoke with Mr. You on the phone and then referred the claim, with Mr. You’s analysis, to an ICBC manager, MG, at Mr. You’s request.
18. ICBC’s file notes show that MG spoke with Mr. You for an hour on July 30. Mr. You still disagreed with GF’s interpretation of the vehicle damage, so MG agreed to have another estimator look at the claim. On July 31, ICBC estimator MM noted he reviewed the photos in the file, and he agreed that the damage appeared consistent with Mr. You’s vehicle being in motion at the time of impact. ICBC sent Mr. You an August 6, 2020 letter stating that HP had been found 100% liable for the accident.

19. In an August 11 telephone note, MG assured Mr. You that she had spoken to MM personally to outline Mr. You's concerns about the vehicle damage, but that MM agreed with GF's assessment. Nevertheless, MG referred the file to a material damage manager, JB, for final review. JB concluded that, based on the vehicle damage, it was his opinion that Mr. You's vehicle was likely not moving at the time of the collision.
20. The adjuster AY then asked the 3 estimators who had reviewed the file to try to come to a consensus on the vehicle damage and which vehicle was moving. However, before they could do so, Mr. You and HP brought the above-mentioned CRT dispute against AG about liability and HP's claimed injuries from the accident. That dispute was resolved through facilitation and no final decision was issued.
21. ICBC sent Mr. You and HP an October 20, 2020 letter confirming that ICBC had recorded HP as being 50% liable for the accident. While it appears that Mr. You does not fully agree with this determination either, whether this determination was correct is not before me in this dispute. Rather, the question is whether ICBC acted unfairly in conducting its investigation and assessment of liability, such that ICBC breached its duty of good faith.
22. On the evidence before me, I am not satisfied that Mr. You has established any breach of the ICBC's duty of good faith. My reasons follow.
23. Mr. You argues that ICBC did not properly consider all the evidence, as MG failed to confirm that she and the estimator had reviewed and considered his analysis document. Mr. You also says MG should have allowed him to speak with the estimators about their conclusions, and her failure to do so was unjust. He essentially argues that these factors delayed ICBC's investigation and proper liability determination.
24. First, I find it was unnecessary for MG to provide Mr. You's analysis to the estimator MM for the purpose of his vehicle damage assessment. The document is Mr. You's own accident reconstruction analysis based on his interpretation of the vehicle

damage photos and driver statements. There is no evidence that Mr. You has any expertise in accident reconstruction. I find MG was not obligated to provide MM with every piece of available evidence, or arrange for MM to speak with Mr. You about his opinion, for ICBC to discharge its obligations of reasonable diligence, fairness, and thoroughness.

25. In any event, I accept ICBC's evidence that it saved an electronic copy of Mr. You's analysis to his file, and that MM had access to it when he was asked to provide his opinion on the vehicle damage. Further, even if MM did not specifically review Mr. You's analysis, based on MG's August 11 telephone note discussed above, I find she likely communicated Mr. You's concerns to MM before he came to his opinion. I also find the evidence shows that MG considered Mr. You's analysis, but simply relied more heavily on the opinions of GF and MM in concluding that HP was at fault.
26. Mr. You also suggests that JB's opinion, which was consistent with Mr. You's analysis, was "unjustly overruled". However, I find JB did not review the file until after ICBC had already made its initial liability determination. I find that ICBC did not disregard or overrule JB's opinion. In fact, ICBC amended its liability finding in HP's favour to take JB's conclusion into account. Given the timing of Mr. You's first CRT dispute, I find that 2 months for ICBC to amend its liability determination was not obviously unreasonable.
27. Finally, Mr. You submits that ICBC's initial liability determination may have been the result of discrimination or racial bias, given he and HP are of "foreign origin". I find this very serious allegation is purely speculative, and there is no basis in the evidence to draw any such conclusion.
28. I acknowledge that Mr. You disagreed with ICBC's initial liability decision to hold HP fully at fault, and that both he and HP likely experienced some stress during ICBC's investigation process. However, I agree with ICBC that just because its estimators and adjusters came to a different conclusion than Mr. You about how the accident happened, does not mean that ICBC failed to consider all available evidence or that it breached its duty of good faith.

29. I find the evidence shows ICBC reasonably considered Mr. You's analysis and arguments, and it appropriately referred the file to different estimators and a manager for further opinions. Overall, I find that ICBC's investigation was reasonable, unbiased, and fair. So, I find I must dismiss Mr. You's claims against ICBC.
30. I also note that I would not have awarded Mr. You's requested remedy in any event. Punitive damages are meant to punish extreme conduct worthy of condemnation, and they can only be awarded when the behaviour is harsh, vindictive, reprehensible or malicious (see *Vorvis v. ICBC*, [1985] 1 SCR 1085). Given this, awards for punitive damages are rare. Even if I had found ICBC acted unreasonably in its investigation of the accident and assessment of fault, I find there is insufficient evidence of behaviour at a level that would warrant an award of punitive damages in this case.
31. 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. You was unsuccessful and so I dismiss his claim for CRT fees. ICBC did not pay any CRT fees or claim dispute-related expenses.

## **ORDER**

32. I dismiss Mr. You's claims and this dispute.

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Kristin Gardner, Tribunal Member