



# Civil Resolution Tribunal

Date Issued: March 22, 2022

File: SC-2021-003782

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Randhawa v. ICBC*, 2022 BCCRT 313

BETWEEN:

HARKAMAL RANDHAWA

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR SUMMARY DECISION

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Tribunal Member:

Micah Carmody

### INTRODUCTION

1. This is a summary decision refusing to resolve a small claims dispute.
2. This dispute is about a motor vehicle accident that happened on May 18, 2019. The applicant, Harkamal Randhawa, was driving a vehicle that collided with a 2003 Toyota

RAV4 (Toyota). The respondent, Insurance Corporation of British Columbia (ICBC), insures the Toyota's owner and driver (third party). At the time of the accident, Mr. Randhawa's vehicle insurance had lapsed. He does not dispute that he was uninsured. He also does not dispute ICBC's determination that he was fully responsible for the accident.

3. As a result of the accident, ICBC considered the Toyota a "total loss". ICBC paid the third party the Toyota's actual cash value. To recover some of the money paid to the third party, ICBC put the Toyota up for auction. ICBC then sought reimbursement from Mr. Randhawa for the cash value less the auction proceeds and other amounts.
4. Mr. Randhawa claims that ICBC overpaid the third party. He says ICBC overestimated the Toyota's value and failed to account for Toyota parts that he says went missing while in ICBC's possession before the auction. Mr. Randhawa seeks \$5,000, so I infer that he argues ICBC overpaid the third party by at least \$5,000. Mr. Randhawa is self-represented.
5. ICBC says Mr. Randhawa is seeking declaratory and injunctive orders that the Civil Resolution Tribunal (CRT) has no jurisdiction to make. ICBC alternatively says the claim should be dismissed for various reasons. ICBC is represented by an employee.

## **JURISDICTION AND PROCEDURE**

6. These are the CRT's formal written reasons. 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. Under CRTA section 11(1)(e), the CRT may refuse to resolve a dispute if satisfactory evidence establishes that the claim or dispute is beyond the CRT's jurisdiction.
10. 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.
11. After the deadline for evidence submission, ICBC submitted a copy of a November 19, 2019 letter to Mr. Randhawa. Mr. Randhawa was given an opportunity to comment on the letter, so in keeping with the CRT's flexible mandate, I considered the letter in this decision.

## **ISSUE**

12. The threshold issue in this dispute is whether I should refuse to resolve the dispute because it is not within the CRT's jurisdiction.
13. If the dispute is within the CRT's jurisdiction, the issue is whether ICBC must pay Mr. Randhawa \$5,000, or any amount.

## **EVIDENCE AND ANALYSIS**

14. As the applicant in this civil proceeding, Mr. Randhawa must prove his claims on a balance of probabilities, meaning more likely than not. I have considered all the

parties' evidence and submissions, but only refer to what is necessary to explain my decision.

15. As noted above, Mr. Randhawa does not dispute ICBC's determination that he was fully responsible for the May 18, 2019 accident. He also does not dispute that was an "uninsured motorist" as defined in section 20 of the *Insurance (Vehicle) Act (IVA)*, which governs claims against uninsured motorists.
16. Section 20 of the IVA empowers ICBC to settle with or consent to judgment in favour of people with claims against uninsured motorists for damages.
17. Section 20(12) of the IVA allows ICBC to send the uninsured motorist a notice demanding reimbursement for damages or costs or both. ICBC sent Mr. Randhawa such a notice on November 19, 2019, demanding \$7,708.56 for vehicle damage. The letter noted that compensation for the third party's injury had yet to be determined.
18. Section 20(11) of the IVA allows ICBC to bring a subrogated claim against the uninsured motorist to recover damages in its own name or in the name of the third-party claimant. That provision also explicitly preserves the uninsured motorist's right to raise defences to ICBC's claims. There is no evidence ICBC has brought a claim at this time.
19. I turn to the CRT's jurisdiction. CRTA section 118 says for small claims disputes the CRT has jurisdiction over claims for debt or damages, recovery of personal property, specific performance of an agreement relating to personal property or services, and relief from opposing claims to personal property.
20. Although Mr. Randhawa seeks \$5,000, it is undisputed that he has not paid ICBC anything toward the \$7,708.56. So, I find this is not a claim for debt or damages. It is also not a claim related to personal property or specific performance of an agreement.
21. I find what Mr. Randhawa really seeks is a declaration that he does not have to pay up to \$5,000 of the amount ICBC demanded in its November 19, 2019 letter. Alternatively, he may be seeking an injunction preventing ICBC from recovering those

amounts. Declaratory and injunctive orders like this are outside the CRT's jurisdiction under CRTA section 118.

22. For these reasons, I refuse to resolve Mr. Randhawa's claims and this dispute under CRTA section 11(1)(e) as I am satisfied they are beyond the CRT's jurisdiction.

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Micah Carmody, Tribunal Member