



Civil Resolution Tribunal

Date Issued: April 26, 2022

File: SC-2021-005971

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Stuart v. ICBC*, 2022 BCCRT 485

BETWEEN:

LISABETH STUART

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and LEONARD
AEICHELE

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that happened on July 18, 2020 in Vernon, British Columbia.

2. The applicant, Lisabeth Stuart, says her vehicle was damaged due to the negligence of the respondent, Leonard Aeichele, while Mr. Aeichele was turning left in front of Ms. Stuart.
3. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures both Ms. Stuart and Mr. Aeichele, and internally concluded Ms. Stuart was 100% responsible for the accident for failing to yield the right of way while entering an intersection from a stop sign.
4. Ms. Stuart says Mr. Aeichele should be found solely responsible for the accident, and seeks reimbursement of her \$300 deductible.
5. Ms. Stuart is represented by her husband, Thomas Stuart. The respondents are represented by an ICBC 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
7. Section 39 of the CRTA says that 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.
8. Section 42 of the CRTA says that 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.

Claim against ICBC

10. Ms. Stuart named ICBC as a party to this dispute, but other than stating she believes “ICBC’s assessment of the accident was initially substandard”, did not make any allegations against it, or claim any specific remedy from it. Therefore, I dismiss Ms. Stuart’s claims against ICBC.

ISSUE

11. The issue in this dispute is who is responsible for the July 18, 2020 accident, and if not Ms. Stuart, whether she is entitled to reimbursement of her \$300 insurance deductible.

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant Ms. Stuart must prove her claims on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
13. The accident details are largely not in dispute. Ms. Stuart was driving eastbound on 28th Avenue and stopped for a stop sign at 34th Street, intending to turn left to continue southbound on 34th Street. Mr. Aeichele was traveling southbound on 34th Street when he turned left onto 28th Avenue and the parties’ vehicles collided.

14. Ms. Stuart says Mr. Aeichele was not paying attention and took his left turn too fast, and too sharply, and collided with her stationary vehicle. Ms. Stuart believes her vehicle was just past the stop line.
15. In contrast, Mr. Aeichele's oral statement to the RCMP at the scene and his undated and unsigned statement to ICBC both state that he started to make his left turn when Ms. Stuart started moving her car forward into the intersection and the vehicles collided. Mr. Aeichele told the RCMP Ms. Stuart's vehicle was across the crosswalk when the accident occurred.
16. There were 2 witnesses to the accident who provided statements. In statements to both ICBC and the RCMP, JB stated that Ms. Stuart was well forward of the stop line, with her vehicle past the crosswalk. JB also stated Mr. Aeichele took the corner quickly and "cut the corner". In their initial statement to ICBC, VL stated that Ms. Stuart's vehicle was "stopped past the crosswalk" in its own lane, not over the centre line. In a later statement submitted by Ms. Stuart, VL stated Ms. Stuart was "stopped past the stop line but short of the crosswalk". In both statements, VL stated Mr. Aeichele turned left sharply and at a fast pace.
17. The respondents say VL's later statement is less reliable as it was typed out by Ms. Stuart or her husband, which is not denied. In response, the Stuarts say they approached VL for a better statement because they thought the one made to ICBC was too vague. In the circumstances, where the statements differ, I prefer the statement VL made to ICBC as it was closer in time to the accident and not influenced by the Stuarts. However, I note the only difference appears to be the location of Ms. Stuart's vehicle at the time of collision.
18. Ms. Stuart argues that the location of the accident's debris shows that her vehicle was closer to the stop line than the front of the crosswalk. I disagree for two reasons. First, the photos in evidence Ms. Stuart says show the debris pattern only show tiny pieces of "debris" that are not obviously from the accident, nor are they easily seen in any sort of pattern. Second, I find whether a vehicle's position prior to an accident can be discerned from a particular debris spray pattern is outside ordinary knowledge

that would require expert evidence, and none was submitted (see: *Bergen v. Guliker*, 2015 BCCA 283).

19. On balance, I find Ms. Stuart's vehicle was stopped past the crosswalk, consistent with the witnesses' evidence. I also accept the witnesses' evidence that Mr. Aeichele made his left turn at a fast speed and while cutting the corner too closely, which he does not deny.
20. So, who is responsible for the July 18, 2020 accident?
21. Section 186(a) of the *Motor Vehicle Act* (MVA) says that if there is a stop sign at an intersection, a driver must stop at the marked stop line, if any. Additionally, section 175 says that a vehicle entering a through highway (here, 34th Street), must stop in compliance with section 186, and must yield the right of way to traffic that has entered the intersection or is so close that it constitutes an immediate hazard. As noted above, I find Ms. Stuart's vehicle came to a stop well past the stop line, with the nose of her vehicle past the front of the crosswalk. Additionally, in her oral statement to the RCMP, Ms. Stuart admitted to not knowing where Mr. Aeichele's vehicle came from, first believing it came from an alley off 28th Avenue, until she was told it came from 34th Street. I find Ms. Stuart failed to comply with sections 186 and 175 of the MVA when she failed to stop her vehicle behind the stop line, as required. Even if Ms. Stuart initially stopped behind the stop line, I find the accident occurred while her vehicle was past the front end of the crosswalk, encroaching into the intersection. I find Ms. Stuart moved her vehicle into that position without adequately checking for immediate hazards in the intersection, such as Mr. Aeichele's vehicle.
22. I also find Mr. Aeichele breached his obligations under the MVA. As noted above, the witnesses both state Mr. Aeichele made a tight and fast left turn, cutting across Ms. Stuart's lane of travel. Again, Mr. Aeichele does not deny this.
23. Section 165 of the MVA says that, when turning left, a driver must turn the vehicle so that it leaves the intersection to the right of the marked centre line of the roadway being entered, or if there is no marked centre line, then to the right of the centre line

of the roadway being entered. Here, I find Mr. Aeichele “cut the corner” too closely, and when making his left turn, turned at least partially to the left of the centre line of 28th Avenue, and not to the right as required by section 165.

24. I find both Ms. Stuart’s and Mr. Aeichele’s breaches of the MVA contributed to the July 18, 2020 accident, and I find them each equally responsible for it.
25. Ms. Stuart claims reimbursement of her \$300 deductible. Although she did not provide any evidence that she paid this amount, the respondents did not dispute it, so I accept that she did. As I have found Mr. Aeichele 50% responsible for the accident, I find he must reimburse Ms. Stuart 50% of her deductible, for a total of \$150.
26. The *Court Order Interest Act* (COIA) applies to the CRT. I find Ms. Stuart is entitled to pre-judgment interest under the COIA on the \$150. However, as Ms. Stuart did not provide any evidence of when the deductible was paid, on a judgment basis I award pre-judgment interest from the date Ms. Stuart submitted her application for dispute resolution, which was August 2, 2021. This equals \$0.49.
27. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As Ms. Stuart was partially successful, I find that she is entitled to reimbursement of half her paid tribunal fees, for a total of \$62.50. Ms. Stuart also claimed \$121.50 for the RCMP’s file, but provided no invoice or receipt. Therefore, I make no award for dispute-related expenses.

ORDERS

28. Within 30 days of the date of this decision, I order the respondent, Leonard Aeichele, to pay the applicant, Lisabeth Stuart, a total of \$212.99, broken down as follows:
 - a. \$150 in debt,
 - b. \$0.49 in pre-judgment interest under the *Court Order Interest Act*, and

c. \$62.50 in tribunal fees.

29. Ms. Stuart is also entitled to post-judgment interest, as applicable.

30. Ms. Stuart's claims against ICBC are dismissed.

31. Under section 48 of the CRTA, the CRT will not provide the parties with the order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision.

32. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Andrea Ritchie, Vice Chair