



Civil Resolution Tribunal

Date Issued: May 4, 2022

File: SC-2021-007765

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jassal v. Abby Tires & Auto Repair Ltd.*, 2022 BCCRT 527

BETWEEN:

BIMAL JASSAL

APPLICANT

AND:

ABBY TIRES & AUTO REPAIR LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant, Bimal Jassal, hired the respondent, Abby Tires & Auto Repair Ltd. (Abby), to do an oil change in his car. Mr. Jassal says shortly after the oil change,

his vehicle completely stopped working. Mr. Jassal says it was later discovered the oil pan bolt was loose, and the engine oil leaked causing the engine to seize. Mr. Jassal says Abby's mechanic H admitted the error but said he would only pay \$2,000. Mr. Jassal claims \$3,472 for a new engine and \$1,467.20 in associated labour, for a total of \$4,939.20.

2. Abby says that when Mr. Jassal left after its oil change, "everything was fine" but admits that Mr. Jassal called it about 30 to 45 minutes after he left to say something was wrong with the engine. Abby also argues Mr. Jassal brought his own parts (oil and filter gasket) and that it was the gasket that failed. So, Abby says it is not responsible.
3. Mr. Jassal is self-represented. Abby is represented by a principal or employee, AS.

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). CRTA section 2 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.
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. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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.

6. CRTA section 42 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.
7. 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.

ISSUE

8. The issue in this dispute is whether Abby is responsible for Mr. Jassal's vehicle leaking oil and subsequent engine seizure, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mr. Jassal must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.
10. On January 28, 2021, Abby did a "labour only" oil change in Mr. Jassal's car, for \$20.16. Mr. Jassal says within a couple of hours the oil leaked out and his engine seized. As discussed below, why the oil leaked is at the heart of this dispute.
11. I turn to the applicable law. To prove liability in negligence, Mr. Jassal must show that Abby owed him a duty of care, that Abby breached the standard of care in performing the oil change, that Mr. Jassal sustained a loss (damages), and that Abby's breach caused the loss: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
12. I find Abby clearly owed its customer Mr. Jassal a duty of care. I find the applicable standard of care was to ensure the parts disassembled for the oil change were all properly fit back into the car afterwards. None of this is disputed.

13. Abby submitted screenshots of its webpage which it says shows it is not responsible if the customer provides parts (such as the filter gasket) that are later found to be problematic. Mr. Jassal does not argue the gasket he supplied is faulty or that Abby is responsible if it was faulty. So, I find this policy irrelevant.
14. Rather, the issue in this dispute is whether the engine's undisputed seizure within a small number of hours after the oil change was a result of Abby's technician H failing to properly tighten an oil pan bolt (drain plug), as Mr. Jassal alleges. Here, I note Abby says it was 3 to 4 hours before the engine seized whereas Mr. Jassal says it was about an hour. In the Dispute Response filed at the outset of this proceeding, Abby said Mr. Jassal called it 30 to 45 minutes after the oil change. Given neither party provided any supporting evidence about precisely how long an oil leak would likely take, I find nothing turns on the difference between the parties' evidence on how long it took for the engine to seize.
15. In contrast, Abby argues that the leak's cause was a faulty gasket, noting Mr. Jassal provided the gasket. Mr. Jassal says it would be impossible for a gasket to cause an engine oil leak and subsequent engine seizure. However, he submitted no supporting evidence to show this or explain what a gasket does.
16. Abby submitted a screenshot from a "yourmechanic.com" webpage and other similar webpages which explain that a "drain plug gasket" seals the drain plug located at the bottom of the oil pan, which holds the vehicle's engine oil. Further, if there is oil leaking from the bottom of the oil pan, it says the problem may be a leaky drain plug or gasket.
17. On the evidence before me, I find a loose oil pan bolt (or drain plug) and a faulty gasket are both possible causes of an engine oil leak. I turn then to the evidence of what likely happened with Mr. Jassal's car.
18. Mr. Jassal submitted a photo of a bolt resting on what appears to be a car's engine which Mr. Jassal describes as a "picture of the fallen oil pan bolt at scene". Abby argues this photo was taken when the car is on a hoist (which I cannot tell from the

photo) and that Abby has the “full photo”. However, Abby did not submit that full photo.

19. More importantly, Abby argues that H went to inspect the vehicle at the gas station after the leak and checked the drain plug and found it was “good and tight”. As noted, Mr. Jassal says H admitted his error in failing to tighten the oil pan bolt but only offered to pay a maximum of \$2,000. Abby did not submit a statement from its employee H and provided no explanation for its absence. While Abby says the problem was “the faulty gasket”, it submitted no supporting evidence of this other than the general evidence discussed above that a faulty gasket can be a cause for an oil leak. Parties are told to submit all relevant evidence. Here, I draw an adverse inference against Abby for not providing a statement from H, particularly given Mr. Jassal set out his position about H’s admission at the outset of this proceeding.
20. On balance, given the absence of evidence from Abby’s employee H and because the engine seized so soon after the oil change, I find it likely that H failed to tighten the oil pan bolt as alleged. I find this is an obvious breach of the applicable standard of care. I find Abby is vicariously liable for H’s negligence.
21. On February 1, 2021, Mr. Jassal bought a new engine from Pro Auto Recyclers for \$3,472 and on February 4, 2021 Car West Automotive issued a \$1,467.20 invoice for the engine’s installation and an oil change and filter. These figures total the claimed \$4,939.20.
22. So, I allow Mr. Jassal’s \$4,939.20 total claim for the engine’s replacement and associated installation.
23. The *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. Jassal is entitled to pre-judgment interest under the COIA on the \$4,939.20. Calculated from February 4, 2021 to the date of this decision, this interest equals \$27.63. I note the CRT’s small claims monetary limit of \$5,000 is exclusive of COIA interest and CRT fees.

24. 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. As Mr. Jassal was successful, I allow his claim for reimbursement of \$175 in CRT fees. No dispute-related expenses were claimed.

ORDERS

25. Within 21 days of this decision, I order Abby to pay Mr. Jassal a total of \$5,141.83, broken down as follows:

- a. \$4,939.20 in damages,
- b. \$27.63 in pre-judgment interest under the COIA, and
- c. \$175 in CRT fees.

26. Mr. Jassal is entitled to post-judgment interest, as applicable.

27. 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.

28. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of BC. 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 BC.

Shelley Lopez, Vice Chair