



# Civil Resolution Tribunal

Date Issued: May 20, 2022

File: SC-2021-008555

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dusdal v. ICBC*, 2022 BCCRT 602

BETWEEN:

JACOB DUSDAL

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred on October 8, 2021 in Campbell River, British Columbia. The applicant, Jacob Dusdal, was following a vehicle driven by a third party, RS, when RS's vehicle stopped and Mr. Dusdal rear-ended it. RS is not named as a party in this dispute.

2. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures both vehicles involved in the accident. ICBC determined both Mr. Dusdal and RS were equally responsible for the accident. Mr. Dusdal disagrees with ICBC's assessment and seeks reimbursement for the \$1,250 deductible he had to pay to fix his car.
3. The respondent insurer's name is shown as "Insurance Corporation of British Columbia" on the Dispute Notice. However, I find that this was a typographical error, and that the correct reference is to "British Columbia". I have amended the style of cause accordingly.
4. Mr. Dusdal is self-represented. ICBC is represented by an employee.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.
7. 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.

8. 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**

9. The issue in this dispute is who is responsible for the October 8, 2021 accident, and if not Mr. Dusdal, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant Mr. Dusdal must prove his claims on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ submitted evidence and arguments, I have only addressed those necessary to explain my decision.
11. As of May 1, 2021, ICBC’s vehicle insurance scheme changed. Part of the changes included an amendment to the *Insurance (Vehicle) Act (IVA)* to impose a general ban on drivers bringing actions against other vehicle owners and operators involved in an accident for vehicle damage. However, this ban does not preclude Mr. Dusdal from bringing an action against ICBC, as his insurer.
12. I find Mr. Dusdal’s claim is for first-party coverage under his ICBC insurance policy. Under section 174 of the IVA, ICBC must cover the cost of vehicle repairs to the extent that the insured (here, Mr. Dusdal) is not responsible for the accident. In other words, if Mr. Dusdal is not responsible for the accident, the IVA requires ICBC to pay for his vehicle repairs, including the deductible. Further, because the IVA requires ICBC to indemnify an insured for vehicle damage based on the insured’s degree of fault, I find the IVA and Mr. Dusdal’s insurance contract with ICBC require ICBC to correctly determine fault.

13. So, who is responsible for the October 8, 2021 accident?
14. It is undisputed that Mr. Dusdal was driving behind RS for some time before the collision occurred. The evidence is that the parties were involved in somewhat of a conflict while driving prior to the accident. Mr. Dusdal says RS was driving erratically, and that he (Mr. Dusdal) gave RS a “fairly polite honk” while RS drove slowly and inconsistently. In a statement Mr. Dusdal provided in evidence, he stated that while driving on Lal Road he honked at RS for driving slowly, and Mr. Dusdal subsequently tried to “very slowly” pass RS on the left when RS “suddenly” drove forwards to “block” Mr. Dusdal. Mr. Dusdal said he then tried to reverse his vehicle to go a different direction and RS backed up to again block Mr. Dusdal. When the parties started driving forward again on Galerno Road, the accident occurred.
15. In RS’s signed statement dated November 23, 2021, RS said he was driving on South Murphy Street with Mr. Dusdal following closely behind him. To allow Mr. Dusdal to pass him, RS said he turned left onto Lal Road, thinking Mr. Dusdal would continue on South Murphy Street. However, Mr. Dusdal also turned left onto Lal Road. RS said he then turned right onto Galerno Road when Mr. Dusdal tried to overtake RS’s vehicle on the left while RS turned. RS said there was not enough room for two vehicles during that turn, so as he (RS) completed his turn, Mr. Dusdal pulled back behind RS’s vehicle.
16. While continuing straight on Galerno Road, RS said there was a parked car to his right and when he maneuvered his vehicle to the left to go around it, he noticed what he thought was a cat coming out from under the parked car, so he “applied his brakes firmly but not spiked”, then he was hit from behind by Mr. Dusdal.
17. Mr. Dusdal argues there was no cat or other hazard, and that RS negligently stopped his vehicle in the middle of the road causing the accident.

18. I turn to the relevant sections of the *Motor Vehicle Act* (MVA):
  - a. Section 144(1) says that a person must not drive a vehicle on a highway without due care and attention, without reasonable consideration for other persons using the highway, or at a speed that is excessive relative to the conditions.
  - b. Section 162(1) says a driver of a vehicle must not follow another vehicle more closely than is reasonable and prudent, having due regard for the conditions.
19. It is generally accepted that a following driver will be found at fault for failing to avoid a collision with a vehicle that has stopped quickly in front of it (see: *Chauhan v. Welock*, 2020 BCSC 1125 and *Skinner v. Fu*, 2010 BCCA 321). This is because the duty under section 162 of the MVA to maintain a safe following distance requires drivers to allow for emergencies that may arise, including sudden stops. In *Skinner*, the court specifically stated that “normally a sudden stop does not create an unreasonable risk of harm” (paragraph 23).
20. It is possible in some situations for the following driver to rebut the presumption that they were negligent. Here, Mr. Dusdal says that RS did not stop for a cat, but rather was intending to block the road for Mr. Dusdal. Mr. Dusdal says if RS had not pulled toward the middle of the road and stopped suddenly, the accident would not have occurred.
21. I find both parties bear responsibility in this case. I find it likely that RS was driving negligently in positioning his vehicle and stopping in the middle of the road. Although there is no cat seen in the video footage, I find that does not mean one was not present. I also note from the video footage the stop is not overly sudden. However, given the circumstances, I find RS stopping in the manner he did was in breach of section 144 of the MVA.
22. But, I also find Mr. Dusdal was negligent in the circumstances. I say this because Mr. Dusdal’s own account of RS’s driving behaviour leading up to the accident should have led Mr. Dusdal to keep a greater distance between their vehicles. Whether RS saw a cat, other hazard, or stopped for no reason, I find Mr. Dusdal was following too

closely behind RS given the events that had already occurred. I find Mr. Dusdal and RS were equally responsible for the October 8, 2021 accident.

23. This means that I find ICBC correctly determined fault and Mr. Dusdal's claim for first-party coverage under his insurance contract must fail.
24. To the extent Mr. Dusdal argues ICBC failed to consider all the evidence in making its decision, I disagree. ICBC has a statutory and contractual obligation to conduct a fair and reasonable investigation of accident claims. ICBC owes Mr. Dusdal a duty of utmost good faith, which requires ICBC to act fairly, both in how it investigates and assesses the claim, and in its decision about whether to pay the claim (see: *Bhasin v. Hymew*, 2014 SCC 71 at paragraphs 22, 55 and 93).
25. The evidence is that ICBC looked at all evidence available, including the video footage submitted by Mr. Dusdal. I acknowledge that Mr. Dusdal says the initial adjuster found RS solely responsible but the subsequent manager changed the liability finding to equal fault. Mr. Dusdal argues it was the initial adjuster's responsibility to make the fault assessment, not the manager's. I find there is no merit to this argument. There is no indication the manager who made the decision was not qualified or that a fault assessment was not within the manager's role at ICBC.
26. I find Mr. Dusdal has not proven ICBC breached its statutory obligations or its contract of insurance in conducting its investigation and liability assessment.
27. For all of these reasons, I dismiss Mr. Dusdal's claims.
28. 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 Mr. Dusdal was not successful, I find that he is not entitled to reimbursement of his paid tribunal fees. ICBC did not pay any tribunal fees, and neither party claimed dispute-related expenses.

**ORDER**

29. I order Mr. Dusdal's claims, and this dispute, dismissed.

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Andrea Ritchie, Vice Chair