



Civil Resolution Tribunal

Date Issued: June 3, 2022

File: SC-2021-008253

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Berrington v. ICBC*, 2022 BCCRT 654

BETWEEN:

CATHERINE BERRINGTON and ALLAN BERRINGTON

APPLICANTS

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred on August 23, 2021. The applicant, Catherine Berrington, was driving a vehicle owned by her husband, Allan Berrington, in a parking lot in Langley, British Columbia. Mrs. Berrington says a third party, HL, was driving in front of her when he reversed his

vehicle into hers. HL denied reversing into Mrs. Berrington. HL is not a party to this dispute.

2. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures both parties involved in the collision. Mrs. Berrington carries basic insurance with ICBC and optional coverage with a third-party insurer. ICBC determined Mrs. Berrington was 100% responsible for the accident. Mrs. Berrington disagrees with ICBC's assessment and seeks reimbursement of the \$1,000 deductible she had to pay to fix Mr. Berrington's car.
3. The applicants are self-represented. ICBC is represented by an employee.

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). 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.
5. 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. In some respects, the parties to this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282 where the court recognized that oral hearings are not necessarily required where credibility is an issue. 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.

6. 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.
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 who is responsible for the August 23, 2021 accident, and if not Mrs. Berrington, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicants must prove their 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.
10. 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 for vehicle damage against other vehicle owners and drivers involved in an accident. However, this ban does not preclude Mrs. Berrington from bringing an action against ICBC, as her insurer.
11. The applicants do not allege ICBC acted unreasonably or improperly in its investigation and assessment of fault. Rather, they disagree with ICBC’s decision. I find Mrs. Berrington’s claim is for first-party coverage under the applicants’ ICBC insurance policy. Under section 174 of the IVA, ICBC must cover the cost of vehicle repairs to the extent that the insured (here, Mrs. Berrington) is not responsible for the accident. In other words, if Mrs. Berrington is not responsible for the accident, the IVA

requires ICBC to pay for her 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 Mrs. Berrington's insurance contract with ICBC require ICBC to correctly determine fault.

12. So, who is responsible for the August 23, 2021 accident?
13. The accident details are in dispute. Mrs. Berrington says she was stopped approximately 2 to 2.5 car lengths behind HL in a hospital parking lot when HL reversed his car, backing up until he struck the front of Mrs. Berrington's vehicle.
14. In contrast, HL says he was attempting to turn right into a parking lot aisle when Mrs. Berrington struck his vehicle from behind. HL denies ever reversing his vehicle. There was no video footage or any non-party witnesses to the accident. As noted, ICBC held Mrs. Berrington 100% responsible for the accident for following HL's vehicle too closely.
15. The main argument Mrs. Berrington makes relates to a specific line in a statement HL gave to ICBC on September 7, 2021. In discussing the accident details with ICBC, HL apparently said "she did not honk at all, that was the most shocking part of it". Mrs. Berrington argues this statement proves HL was reversing at the time the accident occurred, as why else would HL expect Mrs. Berrington to honk.
16. In context, the relevant portions of the statement read as follows (reproduced as written):

When we got out of our vehicles she said that I reversed into her
I asked her how I would have reversed into her
I have a camera so if my vehicle was in reverse I would have seen her vehicle
behind me so I would have known I was in reverse
If I was in her position and someone was reversing I would be honking on my
horn so they would not hit my car
She did not honk at all, that was the most shocking part of it

17. Mrs. Berrington says the fact HL claims he was shocked Mrs. Berrington did not honk her horn at him means HL admits to reversing his vehicle. I cannot agree. First, it is unclear what HL is referring to as being shocking, whether it was that Mrs. Berrington did not honk, or whether it was Mrs. Berrington's allegation HL was reversing at all that was shocking. Second, the statement was provided by HL over the phone and transcribed by an ICBC employee. Although the statement was read back to HL, I find it is less reliable than a statement personally drafted and reviewed. Third, HL provided at least 3 statements about the accident in each of which he denies ever reversing his vehicle. I find these statements are consistent with one another.
18. Mrs. Berrington provided detailed diagrams and submissions about the parking lot layout, the collision location and the parties' vehicles at impact and after. I have reviewed them closely, but I find they do not assist me in determining the movement of the parties' vehicles just before impact. Therefore, other than Mrs. Berrington's own assertion, I find there is insufficient evidence that HL was reversing his vehicle when the accident occurred.
19. Further, I find Mrs. Berrington's own actions inconsistent with HL reversing his vehicle. Mrs. Berrington says she was 2 to 2.5 car lengths behind HL when he allegedly started reversing his car. Mrs. Berrington says she remained stationary while HL was reversing. Mrs. Berrington does not allege HL reversed at a fast pace, however she says by the time she realized he was going to hit her, she did not have time to react. I find it unlikely that Mrs. Berrington would have watched HL slowly reverse 2 to 2.5 car lengths without taking any action to avoid the collision.
20. As noted, Mrs. Berrington bears the onus of proving her version of events is more likely. On balance, I find Mrs. Berrington has not proven HL was reversing his vehicle when the accident happened. As a result, contrary to Mrs. Berrington's submissions, I find *Motor Vehicle Act* (MVA) section 193, which governs reversing vehicles, does not apply.

21. The relevant provision of the MVA is section 162(1), which states that a driver must not cause or permit their vehicle to follow another vehicle more closely than is reasonable in the circumstances.
22. There is generally a presumption of negligence on rear drivers in rear-end collisions, and I find Mrs. Berrington has failed to rebut that presumption. Therefore, I find Mrs. Berrington was 100% responsible for the August 23, 2021 for failing to keep a safe distance between her and HL's vehicles, contrary to section 162 of the MVA.
23. This means that I find ICBC correctly determined fault and the applicants' claim for first-party coverage under Mrs. Berrington's insurance contract must fail.
24. I dismiss the applicants' claims.
25. 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 the applicants were not successful, I find that they are not entitled to reimbursement of their paid tribunal fees. ICBC did not pay any tribunal fees or claim any dispute-related expenses.

ORDER

26. I order the applicants' claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair