



Civil Resolution Tribunal

Date Issued: July 4, 2022

File: SC-2022-000100

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Crisp v. ICBC*, 2022 BCCRT 767

BETWEEN:

MARK CRISP

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Acting Chair and Vice Chair

INTRODUCTION

1. This small claims dispute is about an August 18, 2021 motor vehicle accident that occurred in Vancouver, BC. The applicant, Mark Crisp, says the respondent insurer,

Insurance Corporation of British Columbia (ICBC), incorrectly found him 100% at fault because he was the rear-following driver. Mr. Crisp says that contrary to ICBC's conclusion, he did not rear-end the other driver BT and instead BT had backed his truck into him. Mr. Crisp claims reimbursement of his \$500 deductible.

2. ICBC says the onus is on the applicant, as the rear-following driver, to prove he did not cause the accident. ICBC says because Mr. Crisp has not done so he should be held responsible for the accident.
3. Mr. Crisp is a lawyer and is 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). 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 who is responsible for the August 18, 2021 accident, and if not Mr. Crisp, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mr. Crisp must prove his claims on a balance of probabilities (meaning “more likely than not”). I have read all the submitted evidence and arguments but refer only to what I find relevant to provide context for 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 Mr. Crisp from bringing an action against ICBC, as his insurer.
11. Mr. Crisp expressly says that he does not allege ICBC breached its statutory duty to investigate. Rather, he disagrees with ICBC’s decision and wants an order that his \$500 deductible be refunded. I find Mr. Crisp’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. Crisp) is not responsible for the accident. In other words, if Mr. Crisp 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. Crisp’s insurance contract with ICBC require ICBC to correctly determine fault.

12. So, who is responsible for the August 18, 2021 accident? I turn next to the relevant accident details.
13. In a jointly submitted Statement of Facts, the parties agree:
 - a. On August 18, 2021, Mr. Crisp was involved in the accident in the alley west of 14XX West 15th Avenue in Vancouver (I have anonymized the specific address for this decision).
 - b. Prior to the accident, both drivers were driving east on West 15th Avenue from Granville Street and both made a left turn into the alley.
 - c. Mr. Crisp's grey 2009 Toyota Camry was behind the other driver BT's Ford F150 truck in the alley.
 - d. Mr. Crisp intended to drop his passenger at the alley entrance of the building at 14XX West 15th Avenue.
 - e. The area of impact between the vehicles was the truck's rear bumper and Mr. Crisp's car's front bumper.
 - f. Mr. Crisp paid a \$500 deductible to ICBC for the vehicle damage, which has since been repaired.
14. This dispute turns on whether driver BT backed up into Mr. Crisp's vehicle as Mr. Crisp alleges, or, whether Mr. Crisp rear-ended BT, as ICBC alleges. There is no dash cam footage and no independent witnesses. The only witnesses were Mr. Crisp's family members: Mr. Crisp's mother JH was watching out the window and observed the accident and Mr. Crisp's nephew KH was Mr. Crisp's passenger. More on their witness statements below.
15. Next, the relevant law. Section 162(1) of the *Motor Vehicle Act* (MVA) states that a driver must not cause or permit their vehicle to follow another vehicle more closely than is reasonable in the circumstances. The second relevant provision is section 193, which says a driver must only reverse a vehicle when it is safe to do so. Because

Mr. Crisp was the rear-following driver, he was the servient driver and BT was the dominant driver. As the dominant driver, BT had the right of way. The burden is on Mr. Crisp to prove that BT backed into him.

16. With that, I find that this dispute turns on the witnesses' and drivers' credibility (which is about whether the person is telling the truth) and reliability (which is about the person's ability to remember what happened).
17. I turn then to the accident and the parties' respective positions. Mr. Crisp says BT's statements are not reliable or credible and says his own evidence, supported by witness statements from JH and KH, should be preferred.
18. ICBC's internal policy is to not consider witness statements from family members because they are not "independent". I agree that family members are generally not as neutral as truly independent witnesses who have no relationship with the party, and so that lack of neutrality is one factor for me to consider when weighing their evidence. However, I do not agree with ICBC that evidence from related witnesses must be entirely ignored. I am not aware of any case law that supports that position and in any event the formal rules of evidence do not necessarily apply to the CRT and its flexible mandate. Rather, I find I must weigh all of the evidence before me and determine what is the most likely version of events.
19. In her August 18, 2021 handwritten statement (misdated as 2020), JH said she was watching out the window for Mr. Crisp to arrive with his nephew. She wrote she saw the "big white truck" in the alley and then saw Mr. Crisp start to turn in. JH wrote the truck was blocking the way and, "then I saw the truck backing up I heard Mark honk his horn then heard the bang" (all quotes reproduced as written).
20. In an August 18, 2021 handwritten statement written down by JH, KH said that he and Mr. Crisp were turning into the alley. There was a big white truck blocking the way and "next thing I knew was it backed right into us". KH did not mention Mr. Crisp honking his horn.

21. Mr. Crisp submits that he was not involved in drafting JH's or KH's statements, other than he asked JH to ask KH for his statement. I accept this evidence, which is undisputed.
22. In a September 21, 2021 statement, Mr. Crisp wrote that he wanted to dispute ICBC's liability finding. He noted his prior August 20, 2021 statement and September 14, 2021 telephone conversation with an ICBC employee. In this September 21 statement, Mr. Crisp said he wrote it using notes he took on his phone within minutes of the accident. Mr. Crisp did not submit a screenshot or other copy of those notes taken within minutes of the accident. In ICBC's phone notes, dated November 1, 2021, Mr. Crisp wrote that BT did not stop reversing despite Mr. Crisp's "prolonged honk" and then BT backed into Mr. Crisp.
23. In his September 21, 2021 statement, Mr. Crisp said he was about 1/3 into making his left turn into the alley when he noticed driver BT's white truck and that it flashed its brake lights. Mr. Crisp said he braked but then the white truck started to back up. Mr. Crisp wrote he was unable to reverse because he had noticed a car heading westbound on West 15th, so he honked his horn. Mr. Crisp said the truck continued to reverse despite his horn honking. Mr. Crisp added that after the accident he and driver BT pulled over and Mr. Crisp suggested exchanging information and taking photos, which they did.
24. In evidence is a February 9, 2022 statement from BT. ICBC did not submit any statement from BT closer in time to the accident. However, in its February 3, 2022 letter to BT, ICBC wrote that the statement was drafted based on BT's September 14, 2021 conversation with ICBC's claims adjuster RS. In the typed portion of the statement, BT described his left turn into the alley, and that he was headed to a parking area. He described how he was barely into the alley when he had to come to a stop due to a worker crossing the alley in front of him. While stopped, BT said he was rear-ended by the car behind him. BT also wrote he did not hear Mr. Crisp's vehicle honk before he was rear-ended. BT also made some handwritten corrections to the draft prepared by ICBC, namely to say the passenger child (KH) was upset and

his caretaker (JH) arrived on foot and said something to the effect, “oh, you were in an accident?”.

25. I do not agree with Mr. Crisp that BT’s statement lacks sufficient detail. I find BT’s ultimate destination not entirely relevant to this particular accident, and in any event BT did say he was headed to a parking area as he was going to visit a client. I also do not agree that BT’s statement is less reliable because it was drafted by an ICBC employee. I say this because BT clearly reviewed it for accuracy and made some minor changes, as noted above. Contrary to Mr. Crisp’s assertion, I find nothing turns on which ICBC claims adjuster wrote down BT’s statement and which later sent him the statement for review.
26. Here, I find both drivers gave sufficiently clear descriptions of what they were doing at the time of the accident. Both agree BT was ahead of Mr. Crisp in the alley and it is undisputed that BT had stopped. The dispute turns on whether BT then reversed or whether Mr. Crisp rear-ended BT.
27. As noted above, Mr. Crisp relies on his family members’ statements as support for his position that BT backed into him. As also noted, I find they lack neutrality but I have considered their statements. KH’s statement, as written down by JH, does not mention Mr. Crisp honking at all, yet JH does. Mr. Crisp at one point described his horn sounding as a “prolonged honk”, which I would have expected KH to mention as a passenger in the vehicle.
28. Witness memories can be unreliable, and this applies to all witnesses including parties. Whether Mr. Crisp honked his horn or not does not determine responsibility for the accident. However, I find it likely that BT would have heard a “prolonged honk”. I also find it likely BT would not have continued to reverse to the point of hitting Mr. Crisp’s car if there had been a “prolonged honk”. I also note Mr. Crisp’s comments that ICBC is improperly “oath-helping” BT, in that there is no indication that BT acknowledged in an affirmation that he believed the statement to be true. I find such a formality is unnecessary here, given the CRT’s flexible mandate. I find the evidence

shows, as noted above, that BT had read the statement and made handwritten corrections where he felt it necessary.

29. On balance, I find the weight of the evidence does not establish on a balance of probabilities that BT likely reversed his truck into Mr. Crisp. I find Mr. Crisp breached MVA section 162 by following too closely behind BT. While I acknowledge that BT's telephone statement to ICBC was a month after the accident, I find that does not lead me to prefer Mr. Crisp's and his family members' evidence in the circumstances described above. In addition to Mr. Crisp having the burden of proof as the applicant in this dispute, there is a general presumption of negligence on rear-following drivers. Based on my weighing the evidence before me, Mr. Crisp has not rebutted that presumption. I dismiss Mr. Crisp's claim.
30. 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. Crisp was unsuccessful, I find he is not entitled to reimbursement of paid CRT fees. ICBC did not pay fees and no dispute-related expenses were claimed.

ORDER

31. I dismiss Mr. Crisp's claim and this dispute.

Shelley Lopez, Acting Chair and Vice Chair