



Civil Resolution Tribunal

Date Issued: January 9, 2023

File: SC-2022-002840

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pivnick v. ICBC*, 2023 BCCRT 17

BETWEEN:

SARAH PIVNICK

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This small claims dispute is about insurance coverage. The applicant, Sarah Pivnick, says the respondent insurer, Insurance Corporation of British Columbia (ICBC), unreasonably delayed approving coverage for an insurance claim. She seeks reimbursement for “loss of use” expenses while her vehicle was being repaired. She claims a total of \$468.16.

2. ICBC says it acted reasonably in the circumstances and denies Ms. Pivnick is entitled to any further reimbursement.
3. Ms. Pivnick, herself a lawyer, is represented by a lawyer, Derek Young. ICBC is represented by an authorized 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. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.
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.

ISSUES

8. The issues in this dispute are:
 - a. Did ICBC breach its contractual obligations in handling Ms. Pivnick's insurance claim by failing to approve repairs in a timely way?
 - b. To what extent, if any, is Ms. Pivnick entitled to the claimed \$468.16 for loss of use expenses?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Ms. Pivnick must prove her 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. The background facts are undisputed. On September 2, 2021, Ms. Pivnick's catalytic converter was stolen from her vehicle. She had the vehicle towed to her mechanic and reported the theft to ICBC on September 3, 2021.
11. Ms. Pivnick's vehicle was ultimately repaired by October 6, 2021. She claims a total of \$468.16 for loss of use expenses while her vehicle was being repaired. However, I find Ms. Pivnick's claim actually totals \$468.14, which includes \$256.17 in rental car costs and \$211.97 in taxi fares. ICBC undisputedly reimbursed Ms. Pivnick \$750 toward her loss of use expenses, and the \$468.14 relates to expenses above that \$750 limit.
12. Ms. Pivnick argues ICBC unreasonably delayed approving her vehicle's repairs, which led to unnecessarily higher loss of use costs. So, she says she should not be limited by her policy's \$750 reimbursement maximum for loss of use expenses. In contrast, ICBC says it took a reasonable amount of time to review the claim and met its duties to Ms. Pivnick.

Did ICBC breach its contractual obligations in handling the claim by failing to approve repairs in a timely way?

13. To succeed against ICBC, Ms. Pivnick must prove on a balance of probabilities that ICBC breached its contract of insurance, its statutory obligations, or both. The issue is whether ICBC acted “properly or reasonably” in handling Ms. Pivnick’s claim (see: *Singh v. McHatten*, 2012 BCCA 286, referring to *Innes v. Bui*, 2010 BCCA 322).
14. ICBC owes Ms. Pivnick 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. Hrynew*, 2014 SCC 71 at paragraphs 22, 55 and 93). This includes an obligation to act promptly and fairly when assessing a claim. If ICBC breached its contractual obligations to handle the claim in a timely way, then Ms. Pivnick is entitled to compensation for proven losses caused by that breach, even if they exceed her \$750 loss of use policy limit (see: *Surespan Structures Ltd. v. Lloyds Underwriters*, 2020 BCSC 27 citing *Ferme Gerald Laplante & Fils Ltee. v. Grenville Patron Mutual Fire Insurance Co.*, 2002 CanLII 45070 (ONCA), at paragraphs 164 and 165).
15. Here, there is no allegation ICBC acted in bad faith. Rather, as noted, Ms. Pivnick argues ICBC unreasonably delayed inspecting her vehicle, therefore unnecessarily increasing her alternative transportation costs while she could not use her vehicle.
16. As noted above, Ms. Pivnick brought her car to her mechanic on September 2, 2021 and reported the theft to ICBC on September 3. At that time ICBC informed Ms. Pivnick that her chosen mechanic was not on its list of pre-approved vendors, so an ICBC employee would have to inspect the vehicle before any repairs were completed and Ms. Pivnick would have to pay up front and be reimbursed by ICBC later. Ms. Pivnick agreed. Ms. Pivnick rented a car from September 4 to 15, 2021, and again from September 27 to October 6, 2021, when she was able to pick up her repaired vehicle. None of this is disputed.
17. Ms. Pivnick says her “frustrated mechanic” repeatedly tried to call ICBC over a few weeks to have the vehicle inspected but that ICBC did not show up as scheduled.

ICBC says Ms. Pivnick's mechanic called on September 9 and 16, 2021, and ICBC informed them it was in the queue for review. Notably, Ms. Pivnick did not provide any evidence from her mechanic outlining the attempts they allegedly made to get in touch with ICBC, nor stating that any ICBC employee failed to attend after scheduling an appointment. Parties are told during the CRT's process to submit all relevant evidence, and I find as a lawyer herself Ms. Pivnick ought to have known such a statement is clearly relevant. So, I accept ICBC's evidence that the mechanic called twice and was informed both times that the claim was in the queue, which is consistent with the totality of the evidence.

18. Ms. Pivnick argues ICBC's internal notes show ICBC unreasonably delayed and "are tantamount to an admission of liability". First, I find an ICBC customer service representative's apology to Ms. Pivnick for the wait was a courtesy statement, not an admission of any wrongdoing. Further, the *Apology Act* says that an apology does not constitute any admission of fault or liability, and cannot be considered when determining the same.
19. However, another internal ICBC note made October 13, 2021 states that "errors were made" on Ms. Pivnick's file, "which extended the amount of time to complete the repair". Notably, ICBC did not explain this note, or what errors it was referring to. Based on this evidence, and without a reasonable explanation about the alleged errors, I find ICBC contributed to the delay in repairing Ms. Pivnick's vehicle.
20. Ms. Pivnick argues if ICBC had acted more promptly, she would not have had to incur the second rental charges, which brought her over her \$750 loss of use limit. ICBC says it assessed and dealt with Ms. Pivnick's claim reasonably, and in the order in which it came. It says Ms. Pivnick chose to use a non-approved vendor when a list of approved vendors was provided to her. I find Ms. Pivnick accepted a risk of delay when she elected to proceed with a non-approved vendor mechanic. I find Ms. Pivnick's choice of mechanic also contributed to the repair delay.

21. Based on all the above, I find both Ms. Pivnick and ICBC contributed to the delay in vehicle repairs. On a judgment basis, I find they should share any resulting expenses equally.

Is Ms. Pivnick entitled to the claimed \$468.16?

22. Ms. Pivnick says she should be reimbursed for the following expenses:

- a. September 4 to 15, 2021 rental car for \$477.21
- b. September 15, 2021 taxi fare for \$102.35
- c. September 23, 2021 tax fare for \$109.62
- d. September 27 to October 6, 2021 rental car for \$528.96.

23. ICBC undisputedly reimbursed Ms. Pivnick \$750. As noted, this leaves \$468.14 remaining.

Rental car expenses

24. I find Ms. Pivnick's rental car expenses (totaling \$1,006.17) were reasonably incurred as a result of her vehicle damage and the delay in repair. However, \$87.90 of the first rental car receipt is a refueling charge. There is nothing to suggest anyone but Ms. Pivnick would be responsible for fuel charges while using the rental vehicle. I find she is not entitled to reimbursement of this amount. After deducting the fuel charges and the \$750 ICBC already reimbursed, this leaves an outstanding balance of \$168.27.

25. As I have found both Ms. Pivnick and ICBC are equally responsible for the delay, I find ICBC must reimburse Ms. Pivnick half this amount for a total of \$84.14.

Taxi fares

26. Ms. Pivnick also claims a total of \$211.97 for taxi fares. It is undisputed Ms. Pivnick did not submit these expenses to ICBC for reimbursement until this dispute. Apart

from submitting a copy of her credit card bill, Ms. Pivnick did not provide any receipt from the taxi companies or provide any information about what the taxi fares were for.

27. Based on Ms. Pivnick's submissions, I infer the fares were for transportation to and from the airport when Ms. Pivnick went on a pre-arranged trip from September 15 to 23, 2021. Ms. Pivnick has not explained why these taxi fares should be reimbursable.
28. First, to the extent her argument is that she had to use taxis because she could not drive her own vehicle, I find she would still have had to pay for parking at the airport for the duration of her trip had she driven. That amount would need to be deducted from any award for the taxi expenses. Additionally, people often use taxis to get to or from the airport, regardless of whether they have a functioning car at home. I find Ms. Pivnick has not shown the taxi fares were reasonably incurred as a result of her vehicle damage or the repair delay. I decline to award any reimbursement.
29. In summary, I find Ms. Pivnick is entitled to reimbursement of \$84.14 based on ICBC's contribution to the repair delay, as noted above.
30. The *Court Order Interest Act* applies to the CRT. Ms. Pivnick is entitled to pre-judgment interest on the \$84.14 from October 6, 2021 to the date of this decision. This equals \$1.09.
31. 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. The CRT sometimes awards partial CRT fees where an applicant is partially successful. Here, I find Ms. Pivnick was largely unsuccessful, receiving only \$84.14 of the \$468.16 she claimed. On a judgment basis, I decline to order reimbursement of her tribunal fees. Neither party claimed dispute-related expenses.

ORDERS

32. Within 30 days of the date of this decision, I order ICBC to pay Ms. Pivnick a total of \$85.23, broken down as follows:
- a. \$84.14 in damages, and
 - b. \$1.09 in pre-judgment interest under the *Court Order Interest Act*.
33. Ms. Pivnick is also entitled to post-judgment interest, as applicable.
34. 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. 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