



Civil Resolution Tribunal

Date Issued: February 10, 2023

File: SC-2022-002776

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McDermid v. ICBC*, 2023 BCCRT 127

BETWEEN:

GAIL LILLIAN MCDERMID

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about two motor vehicle accidents that took place on January 11, 2021 in Kelowna, British Columbia. The applicant, Gail Lillian McDermid, says the respondent, Insurance Corporation of British Columbia (ICBC), incorrectly determined she was 100% at fault for the accidents. She claims \$360 for past

increased insurance premiums and an order that ICBC not increase her premiums in the future.

2. ICBC says it properly held Mrs. McDermid solely responsible for the collisions. It also says it is incorrectly named as a party and that this is actually a claim for liability and damages against the other individuals involved in the accidents, KV and RR, neither of whom are parties to this dispute.
3. Mrs. McDermid represents herself. 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. 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 in the interests of justice.
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.

ICBC as a party

8. ICBC argues it is not a proper party to this dispute, and the claim should be against KV and RR instead. As discussed below, Mrs. McDermid argues ICBC incorrectly determined she was at fault for the accident, which I find is a claim against ICBC as her insurer. I find ICBC is a properly named party.

ISSUE

9. The issue in this dispute is whether Mrs. McDermid is entitled to a refund for allegedly overpaid insurance premiums.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant Mrs. McDermid 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.
11. On January 11, 2021, Mrs. McDermid was traveling southwest on Byland Road, intending to travel straight across the intersection with Daimler Drive. Traffic on Byland Road faces a stop sign, while Daimler Drive traffic does not have any traffic device.
12. Mrs. McDermid says she was waiting behind another vehicle at the stop sign, and when it was her turn, she stopped, and then inched forward to view traffic on Daimler Drive. She says when it was safe to cross, she started to accelerate when a red pickup truck (driven by KV) appeared suddenly before her. KV was undisputedly turning left from Daimler Drive’s left turn lane onto southeast Byland Road. Mrs.

McDermid's front end struck KV's vehicle near the driver's side rear wheel well. None of this is disputed.

13. After the first impact, a second vehicle, a tractor-trailer driven by RR, was in the lane right of KV's, traveling straight through on Daimler Road. In statements to ICBC, RR, KV, and an independent witness, T, each said that Mrs. McDermid continued driving after the first impact and drove into RR's tire. In contrast, Mrs. McDermid says her vehicle was stopped in the intersection and it was RR's tire that "hooked onto the front" of her vehicle.
14. Mrs. McDermid says, as a result of the accidents, her insurance premiums increased. She disagrees with ICBC's assessment and says she was not 100% responsible. As noted, she seeks \$360 in already paid insurance premiums and an order ICBC not increase her premiums going forward.
15. Ordering someone to do something, or to stop doing something, is known as "injunctive relief". This includes an order for ICBC to revise its insurance premiums, or to stop it from increasing its insurance premiums. Injunctive relief is outside the CRT's small claims jurisdiction, except where permitted by section 118 of the CRTA. There are no relevant CRTA provisions that would permit me to grant the injunctive relief Mrs. McDermid seeks. However, if Mrs. McDermid can prove she suffered damages (overpaid insurance premiums) due to ICBC improperly or unreasonably assessing her claim and assigning fault, an award for those damages is within the CRT's small claims jurisdiction.
16. So, did ICBC breach its statutory or contractual obligations in investigating the accident and assessing fault?
17. ICBC owes Mrs. McDermid a duty of 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). As noted in the Continuing Legal Education of BC's "*BC Motor Vehicle Accident Claims Practice Manual*", an insurer is not expected to investigate a claim with the

skill and forensic proficiency of a detective. An insurer must bring “reasonable diligence, fairness, an appropriate level of skill, thoroughness, and objectivity to the investigation and the assessment of the collected information” (see: *MacDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283).

18. To succeed in her claim against ICBC, Mrs. McDermid must prove on a balance of probabilities that ICBC breached its statutory obligations or its contract of insurance, or both. So, the question is whether ICBC acted “properly or reasonably” in administratively assigning Mrs. McDermid sole responsibility for the accidents (see: *Singh v. McHatten*, 2012 BCCA 286 referring to *Innes v. Bui*, 2010 BCCA 322).
19. Here, I find there is no indication ICBC breached its statutory obligations or its contract of insurance. The evidence shows ICBC took statements from all drivers involved, as well as an independent witness. Mrs. McDermid does not argue ICBC failed to consider any evidence or conduct a proper investigation.
20. Rather, Mrs. McDermid argues ICBC applied “right-of-way law” too strictly. I find there is no evidence its application of the relevant law was incorrect, or unreasonable. I acknowledge that Mrs. McDermid does not agree with ICBC’s assessment. However, I find she has not shown ICBC’s investigation or fault assessment was unreasonable.
21. Given this, I dismiss Mrs. McDermid’s claims. However, I note that even if I had found ICBC breached its statutory obligations or its contract of insurance, Mrs. McDermid did not submit any evidence supporting that her insurance premiums increased, or by how much, such as copies of her insurance policies before and after the accident. So, I would have dismissed Mrs. McDermid’s damages claim as unproven in any event.
22. 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. However, neither party paid tribunal fees or claimed dispute-related expenses.

ORDER

23. Mrs. McDermid's claims, and this dispute, are dismissed.

Andrea Ritchie, Vice Chair