



Civil Resolution Tribunal

Date Issued: April 21, 2023

File: SC-2022-005541

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sato v. ICBC*, 2023 BCCRT 324

BETWEEN:

TACHE SATO and DIANE SATO

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 took place on December 9, 2021 in North Vancouver, British Columbia, between the applicant, Tache Sato, and a third party, MK. The applicant, Diane Sato, is Mr. Sato's mother and the vehicle's registered owner. MK is not a party to this dispute.

2. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures Ms. Sato's and MK's vehicles.
3. Mr. Sato says that ICBC improperly held him 50% responsible for the accident and claims \$5,000 in damages, including reimbursement of \$1,200 for vehicle damage, \$3,500 for an "unlisted driver fee", and for increased insurance premiums. Mr. Sato also asks that ICBC "remove any insurance increase" from the accident and to adjust his driver factor.
4. ICBC says it reasonably assigned responsibility for the accident equally.
5. Mr. Sato represents the applicants. ICBC is represented by an authorized employee.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
8. 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.

9. 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

10. The issue in this dispute is who is responsible for the December 9, 2021 accident, and if not Mr. Sato, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. 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.
12. The background facts are not in dispute. On December 9, 2021, Mr. Sato was driving his mother Ms. Sato’s vehicle to run errands for her. He was traveling northbound on Fromme Road in North Vancouver when he approached a 4-way stop intersection with 29th Avenue. Mr. Sato intended to turn left from Fromme Road onto eastbound 29th Avenue.
13. Mr. Sato says he approached the intersection and fully stopped at the stop sign and line. Mr. Sato says he could see headlights to his right, approaching the intersection, but not yet at it. So, seeing no other cars at the stop signs or in the intersection, Mr. Sato says he proceeded with his left turn.
14. The other driver, MK, was traveling eastbound on 29th Avenue, intending to continue straight through the intersection. The two vehicles collided in the intersection, with MK’s front left quarter panel striking Mr. Sato’s rear passenger door and rear wheel well.
15. 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 the applicants from bringing an action against ICBC, as their insurer.

16. The applicants allege ICBC acted unreasonably and improperly in investigating the accident and assessing fault, and disagree with ICBC's decision.
17. First, I will consider whether ICBC breached its statutory obligations or its contract of insurance, or both. As noted, the issue is whether ICBC acted "properly or reasonably" in administratively assigning 50% responsibility to Mr. Sato (see: *Singh v. McHatten*, 2012 BCCA 286 referring to *Innes v. Bui*, 2010 BCCA 322).
18. ICBC owes the applicants a duty of good faith, which requires ICBC to act fairly, both in how it investigates and assesses the claim and whether to pay the claim (see: *Bhasin v. Hrynew*, 2014 SCC 71). As noted in the Continuing Legal Education Society 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. Rather, 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: *McDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283).
19. Here, Mr. Sato argues ICBC unfairly refused to consider statements from two passengers in his vehicle. In response, ICBC says given its internal procedures it typically does not consider statements from witnesses who have or have had a relationship with either party, as they are not considered neutral or independent. While I agree that witnesses with a relationship to a party may not be as neutral as truly independent witnesses with no relationship to a party, that lack of neutrality is only one factor for me to consider when weighing the witnesses' evidence. I agree with Mr. Sato that it is improper to completely ignore evidence that may be relevant to the accident investigation and fault assessment. I am not aware of any case law that supports ICBC's position. I find ICBC acted unreasonably or improperly when it failed to consider evidence offered by Mr. Sato.

20. However, that does not mean the applicants are successful in their claim. They must still show that Mr. Sato should not be held 50% responsible for the accident. Additionally, I find this dispute includes claims for first-party coverage under the applicants' insurance policy. Under section 174 of the IVA, which applies to accidents after May 1, 2021, ICBC must cover the cost of vehicle repairs to the extent that the insured is not responsible for the accident. In other words, if Mr. Sato is not responsible for the accident, the IVA requires ICBC to pay for Ms. Sato's vehicle repairs, including the deductible. Further, because the IVA requires ICBC to indemnify an insured for vehicle damages based on the insured's degree of fault, I find the IVA and the applicants' insurance policy with ICBC require ICBC to correctly determine fault.
21. So, who is responsible for the December 9, 2021 accident?
22. As noted above, Mr. Sato says that when he approached the intersection, there were no other vehicles in the intersection, or at the stop signs. He noticed MK's headlights approaching, but their vehicle had not yet reached the intersection. Mr. Sato says when he had mostly completed his left turn, MK's vehicle struck his right rear passenger door and wheel well. He argues he was well established in the intersection when the accident happened. Mr. Sato provided multiple detailed, consistent statements to ICBC about the accident.
23. AS was Mr. Sato's front seat passenger. In a signed statement AS said when Mr. Sato approached the intersection it was clear and there were no other vehicles. AS said the collision occurred when Mr. Sato was about halfway through his left turn, and in the middle of the intersection.
24. EH was also a passenger in Mr. Sato's vehicle, seated behind AS. In a signed statement EH said Mr. Sato came to a stop at the intersection, which was clear of vehicles inside and at the other stop signs. EH said they believe MK failed to stop at the stop sign before colliding with Mr. Sato's vehicle.

25. Meanwhile, MK's initial report to ICBC is much less detailed. They reported to ICBC that they had an accident and they "don't know how or what happened". They reported not seeing anyone when they were at the stop sign, and there were no other cars at the other stop signs. They said they looked both directions and went through the stop sign, and once past it, the accident happened.
26. Although AS and EH have a relationship with Mr. Sato, I accept their evidence. I find it is consistent with ICBC's own diagram of the accident, as well as the vehicle damage.
27. I find the overall evidence is more consistent with Mr. Sato's version of events. Based on the parties' evidence, the witnesses' statements, and the vehicle impact locations, I find it more likely than not that Mr. Sato was established in the intersection making his left turn when MK entered the intersection.
28. Section 175(1) of the *Motor Vehicle Act* (MVA) says that the driver of a vehicle entering a through highway from a stop sign must yield the right of way to traffic on the through highway that has either already entered the intersection or is so close to the intersection that it constitutes an immediate hazard.
29. As I have found Mr. Sato was already established in the intersection when MK approached the stop sign, I find MK should have yielded the right of way to Mr. Sato, and failed to do so, in contravention of section 175 of the MVA. I find MK was solely responsible for the December 9, 2021 accident.

Damages

30. So, what are the applicants' damages?
31. First, ordering someone to do something, or to stop doing something, is known as "injunctive relief". This includes an order for ICBC to "remove any insurance increase" or to revise Mr. Sato's driver factor. 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 Mr. Sato seeks. So, I decline to grant these requested remedies.

32. Next, the \$1,200 claim for vehicle damage. As I have found MK solely responsible for the accident, section 174 says ICBC must indemnify the applicants for the entirety of their vehicle damage, including the deductible. The evidence shows that ICBC charged the applicants a \$1,250 deductible for the vehicle repairs, representing their 50% fault assessment. As the applicants only claim \$1,200, I order ICBC to pay them this amount.
33. Finally, the applicants say they were charged a \$3,500 “unlisted driver fee”. ICBC says the fee is applied when a driver who is not listed on an insurance policy is found to be 25% or more responsible for an accident. As I have found Mr. Sato less than 25% responsible for the accident, it follows no fee should apply. Although the applicants did not provide a receipt for paying this fee, ICBC does not dispute that they did.
34. I also note ICBC has not provided any evidence about this fee, such as on what basis it is entitled to charge such a fee, how the fee is calculated, or even a copy of the insurance policy that shows Mr. Sato was an unlisted driver. ICBC is a sophisticated litigant and should understand the requirement to provide all relevant evidence in a dispute. So, I would have ordered ICBC to reimburse this fee in any event.
35. In summary, I find ICBC must reimburse the applicants \$1,200 for their paid deductible and \$3,500 for the unlisted driver fee. This totals \$4,700.
36. The *Court Order Interest Act* applies to the CRT. However, the applicants expressly waived their right to pre-judgment interest in the Dispute Notice, and the *Court Order Interest Act* says it does not apply where a party waives it. So, I make no order for pre-judgment interest.
37. 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. As the

applicants were successful, I find they are entitled to reimbursement of \$175 in paid tribunal fees. No dispute-related expenses were claimed.

ORDERS

38. Within 21 days of the date of this decision, I order ICBC to pay the applicants a total of \$4,875, broken down as follows:

- a. \$4,700 in damages, and
- b. \$175 in tribunal fees.

39. The applicants are also entitled to post-judgment interest, as applicable.

40. 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