



# Civil Resolution Tribunal

Date Issued: May 31, 2023

File: SC-2022-005118

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Li v. ICBC*, 2023 BCCRT 462

BETWEEN:

JIUWEN LI

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. The applicant, Jiuwen Li, and a third party, GD, were involved in a motor vehicle accident on August 11, 2021 in Delta, British Columbia. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures Mr. Li. GD is not a party to this small claims proceeding.
2. ICBC held Mr. Li 100% responsible for the accident. Mr. Li disagrees with ICBC's assessment and seeks reimbursement of the \$1,000 deductible he paid, plus any

“future insurance increase”, for a total of \$5,000. ICBC says it properly determined responsibility for the accident and asks that this dispute be dismissed.

3. Mr. Li is self-represented. 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.

### ***Style of cause***

8. The Dispute Notice incorrectly shows the respondent ICBC's full name as "Insurance Corporation of British Columbia". I find this was likely a typographical error in Mr. Li's application for dispute resolution, and find that the correct name is "Insurance Corporation of British Columbia". I have amended the style of cause accordingly.

### **ISSUE**

9. The issue in this dispute is who is responsible for the August 11, 2021 accident and, if not Mr. Li, what is the appropriate remedy.

### **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant Mr. Li must prove his 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. I note Mr. Li did not provide final reply submissions, despite the opportunity to do so.
11. As of May 1, 2021, ICBC's vehicle insurance scheme changed. Part of the changes included creating the "Basic Vehicle Damage Coverage" section (Part 11) of the *Insurance (Vehicle) Act (IVA)*. This applies to accidents on and after May 1, 2021.
12. Section 172 of Part 11 of the IVA imposes a general ban on drivers bringing actions for vehicle damage against other vehicle owners and drivers involved in an accident. Although Mr. Li initially named GD as a respondent in this dispute, he later amended the Dispute Notice to remove GD as a party. The ban does not preclude Mr. Li from bringing an action against ICBC, as his insurer.
13. Mr. Li does not allege ICBC acted unreasonably or improperly in its investigation and assessment of fault. Rather, he disagrees with ICBC's decision. I find Mr. Li's claim is for first-party coverage under his ICBC insurance policy. Under section 174 of Part 11 of the IVA, ICBC must cover the costs of vehicle repairs to the extent the insured

(here, Mr. Li) is not responsible for the accident. In other words, if Mr. Li is not responsible for the accident, the IVA requires ICBC to pay for his vehicle repairs, including the deductible. 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. Li's insurance contract with ICBC require ICBC to correctly determine fault. So, I find Mr. Li's claim is essentially that ICBC breached the parties' contract by incorrectly determining fault for the accident.

14. As noted, Mr. Li paid a \$1,000 deductible for his vehicle repairs, which is undisputed.
15. I turn to who is responsible for the August 11, 2021 accident.
16. Mr. Li says he was in a commercial parking lot in Delta, British Columbia, intending to travel to the other end of the parking lot. Mr. Li says there was a tractor-trailer facing the same direction as him but in the oncoming lane beside him in the parking lot. As Mr. Li was driving forward, he says the tractor-trailer turned right, forcing Mr. Li to also turn right towards the parking lot's exit. The truck's trailer and the rear driver's side of Mr. Li's SUV collided.
17. ICBC provided a signed statement from GD, the other driver involved in the accident. In their statement GD says they were driving a 72-foot long tractor-trailer and they were stopped in the parking lot signaling to make a right turn out of the parking lot and onto Cliveden Avenue. GD says they were waiting there for 5 to 6 minutes for traffic on Cliveden Avenue to clear before there would be room for their large vehicle. GD said they checked their mirrors and it was clear so they started their right turn out of the parking lot and when they were partially through their turn, they saw Mr. Li's vehicle driving up the right side of the tractor-trailer. GD said they were unable to avoid the collision.
18. Mr. Li does not deny GD had their right turn signal activated. Rather, he says he could not see the turn signal until the truck turned. He argues GD should have waited for his SUV to pass before making its right turn.

19. The relevant provisions of the *Motor Vehicle Act* (MVA) are as follows:
- a. Section 144(1) says a person must not drive without due care and attention.
  - b. Section 158(1) says a driver must not pass another vehicle on the right except when the vehicle being overtaken is making a left turn or its driver has signaled their intention to make a left turn, when on a laned roadway where there is one or more unobstructed travel lanes, or on a one way street. Section 158(2) says, despite subsection (1), the driver must not pass on the right if the movement cannot be made safely, or by driving the vehicle off the roadway.
  - c. Section 167 says a driver must not turn a vehicle to the right from a highway, other than at an intersection, unless the driver positions the vehicle as closely as practicable to the right hand curb or edge of the roadway before turning.
20. Mr. Li notes the tractor-trailer was at least partially, if not fully, in the oncoming lane in the parking lot. Although GD said they had been stopped for at least 5 to 6 mins in the same position, notably Mr. Li does not explain when he first saw the tractor-trailer. Nor does Mr. Li deny the tractor-trailer was there waiting before Mr. Li arrived. Based on the evidence before me, I find the tractor-trailer was already positioned to turn right, with its signal on, when Mr. Li entered the parking lot.
21. Here, I find Mr. Li failed to exercise due care in all of the circumstances. First, I find the tractor-trailer and its signal were there to be seen. The evidence is that the signal was illuminated, but that Mr. Li failed to see it before attempting to pass the truck on the right. I find that given the tractor-trailer's position in the parking lot and its right turn signal, a reasonable driver in Mr. Li's position would have been put on notice that they should proceed with caution (see: *Stewart v. Dueck*, 2012 BCSC 1729 at paragraph 55). In *Swartz Bros. Limited v. Wills*, 1935 CanLII 20 (SCC), the Supreme Court of Canada held that "[w]here there is nothing to obstruct the vision and there is a duty to look, it is negligence not to see what is clearly visible" (cited in *Stewart*, paragraph 56). Here, there is no explanation why Mr. Li did not see GD's turn signal which was undisputedly illuminated and, as noted above, I find likely illuminated when Mr. Li entered the parking lot. I find Mr. Li breached section 144 of the MVA by failing

to drive with due care and attention for failing to take notice of the tractor-trailer's signal light and continuing with caution.

22. I also find that Mr. Li attempted to pass GD on the right when it was unsafe to do so. I say this because I accept that the positioning of GD's tractor-trailer in the parking lot made it unclear to Mr. Li what GD may have been doing. Mr. Li says he did not see GD's turn signal, and I find attempting to pass the tractor-trailer on the right while it was unclear to Mr. Li what the tractor-trailer was doing, was negligent and unsafe in the circumstances, contrary to section 158 of the MVA.
23. To the extent Mr. Li argues GD should also be responsible for the accident, I disagree. In *Stewart*, the court found the defendant truck driver appropriately manoeuvred a nearly 80-foot long tractor-trailer into the left-lane, turned on its hazard lights and right turn signal, before starting a right hand turn. The court found that truck driver was entitled to assume that other drivers would be paying attention to the signal lights and would proceed with the necessary degree of caution (see: *Stewart* at paragraph 54). The undisputed evidence is that GD had the tractor-trailer to the left side of the parking lot with its right turn signal illuminated. I find GD complied with their obligations under section 167 of the MVA. I find Mr. Li has not proven any negligence by GD.
24. As a result, I find Mr. Li solely responsible for the August 11, 2021. It follows that his claim for damages is dismissed.
25. However, I note that Mr. Li did not provide any evidence or submissions in support of his \$4,000 claim for increased insurance premiums, such as whether or how much his insurance premiums would be impacted, or when. So, even if I found Mr. Li was not responsible for the accident, I would have dismissed that aspect of his claim as unproven in any event.
26. I dismiss Mr. Li's claims in their entirety.
27. 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. Mr. Li was

not successful, so I dismiss his claim for reimbursement of tribunal fees. ICBC was successful but did not pay tribunal fees or claim any dispute-related expenses.

## **ORDER**

28. Mr. Li's claims, and this dispute, are dismissed.

---

Andrea Ritchie, Vice Chair