



Civil Resolution Tribunal

Date Issued: October 10, 2023

File: SC-2022-010198

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cody v. ICBC*, 2023 BCCRT 856

BETWEEN:

MARK CODY

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. The applicant, Mark Cody, and a third party, MN, were involved in a motor vehicle accident on October 7, 2022, in Vancouver, British Columbia. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures Mr. Cody. MN is not a party to this small claims proceeding.

2. ICBC held Mr. Cody 75% responsible for the accident. Mr. Cody disagrees with ICBC's assessment and seeks \$5,000 for reimbursement of his insurance deductible and increased insurance premiums. ICBC says it properly determined responsibility for the accident, and asks me to dismiss this dispute.
3. Mr. Cody is self-represented. ICBC is represented by an authorized employee.
4. For the following reasons, I dismiss Mr. Cody's claims.

JURISDICTION AND PROCEDURE

5. 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.
6. Section 39 of the CRTA says 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.
7. Section 42 of the CRTA 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.
8. 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

9. The issues in this dispute are who is responsible for the October 7, 2022 accident and whether ICBC must pay Mr. Cody his claimed damages.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Mr. Cody must prove his claims on a balance of probabilities (meaning “more likely than not”). While I have read all the parties’ submitted evidence and arguments, I have only referred to those necessary to explain my decision.
11. On October 7, 2022, Mr. Cody was driving northbound on Main Street in Vancouver, BC. As Mr. Cody turned left onto E 6th Avenue, his vehicle was struck by MN’s vehicle, which was driving southbound on Main Street. MN was driving in the curb lane of Main Street, which was undisputedly restricted to bus and bicycle traffic only at the relevant time. More on this below.
12. MN’s front bumper struck Mr. Cody’s rear passenger panel, resulting in damage to both vehicles. Both Mr. Cody and MN reported the accident to ICBC. ICBC investigated and, as mentioned, determined Mr. Cody was 75% responsible for the accident. Mr. Cody disagrees with ICBC’s determination.
13. As of May 1, 2021, BC’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, including the subject accident.
14. 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. However, this ban does not preclude Mr. Cody from bringing an action against ICBC as his insurer.

15. Mr. Cody does not allege ICBC acted unreasonably or improperly in its investigation of the accident. Rather, Mr. Cody disagrees with ICBC's decision to hold him 75% responsible. I find Mr. Cody's claim is for first-party coverage under his insurance policy with ICBC. Under section 174 of Part 11 of the IVA, ICBC must indemnify an insured (here, Mr. Cody) for their vehicle's damage or loss, subject to a reduction for the insured's degree of responsibility for the accident. In other words, if Mr. Cody is not responsible for the accident, the IVA requires ICBC to pay for his vehicle repairs, including the deductible. If Mr. Cody is partially responsible for the accident, the IVA requires ICBC to pay for his vehicle repairs to the extent he is not responsible. Because the IVA requires ICBC to indemnify an insured based on the insured's degree of responsibility, I find the IVA and Mr. Cody's insurance contract with ICBC require ICBC to correctly determine responsibility. So, I find Mr. Cody is essentially claiming that ICBC breached the parties' contract by incorrectly determining responsibility for the accident.
16. Mr. Cody's position about the degree of responsibility he should be assigned is somewhat unclear. In a November 9, 2022 email to his ICBC adjuster in evidence, Mr. Cody says that MN should be held 75% responsible for the accident, or at least 50%, "to be fair". In a November 10, 2022 email to ICBC, Mr. Cody says both drivers should "get the same penalty". In his submissions in this dispute, Mr. Cody says that liability should be apportioned to MN, but does not say to what degree. In any event, because Mr. Cody argues ICBC's determination is incorrect, I will consider both drivers' relative degrees of responsibility in this decision.
17. As noted above, the accident occurred when Mr. Cody was attempting to turn left from Main Street onto E 6th Avenue, from the leftmost of 3 northbound lanes. MN was driving in the rightmost of 3 southbound lanes of traffic, intending to continue straight through the intersection with E 6th Avenue. The intersection is not controlled by a traffic light.
18. Section 174 of the *Motor Vehicle Act* (MVA) says that a driver intending to turn left at an intersection must yield the right of way to traffic approaching from the opposite

direction that is in the intersection or is so close as to constitute an immediate hazard. Having complied with this, the left turning driver may start their left turn, at which point traffic approaching from the opposite direction must yield the right of way to the left turner.

19. In this accident, MN was the dominant driver as they were continuing straight through the intersection, and Mr. Cody was the servient driver seeking to turn left. Generally, the burden is on the servient left-turning driver to prove that they started their left turn when it was safe to do so. In other words, the servient driver must show there was no immediate hazard at the time they started their left turn: see *Nerval v. Khehra*, 2012 BCCA 436. The dominant driver is generally entitled to continue through the intersection, absent proof from the servient driver that the dominant driver had a reasonable opportunity to avoid the accident and should have done so: see *Pacheco (Guardian ad litem of) v. Robinson* (1993), 1993 CanLII 383 (BCCA).
20. Mr. Cody makes 3 arguments about why MN is responsible for the accident. He argues that the accident would not have happened if MN had not been driving in the curb lane, which was undisputedly restricted to bus and bicycle traffic only at the time of the accident. He also says that MN either cut into the curb lane immediately before the accident, or was speeding, or both.
21. First, the restricted lane. ICBC acknowledges the southbound curb lane on Main Street was restricted to bus and bicycle traffic at the time of the accident. However, ICBC says, and Mr. Cody does not dispute, that the lane restriction ends immediately before the intersection with E 6th Avenue. ICBC provided a Google Street View screenshot in evidence which I agree shows the restriction ending at the intersection.
22. Somewhat inconsistently, ICBC says that MN was driving in the curb lane before the designation ended and that it took this into consideration in finding MN was 25% responsible for the accident, but also argues that MN's use of the designated lane does not appear to be a contributory factor in the accident. Mr. Cody's arguments are also inconsistent on this point, as he argues that MN breached the MVA by driving in the curb lane, but also says that MN cut into the curb lane immediately before the

collision, as discussed further below. In any event, I find that regardless of whether MN breached the MVA by driving in the restricted curb lane, the MVA required Mr. Cody to yield the right of way to any straight-through traffic (including buses, bicycles, and other vehicles) that was an immediate hazard.

23. Next, I will consider MN's vehicle's position. In an October 17, 2022 email from MN to ICBC, MN says that they entered the curb lane right after they passed E 5th Avenue, which they estimated was about 6 car lengths from the intersection with E 6th Avenue.
24. Mr. Cody disputes this, and says that the curb lane was clear when he proceeded with his left turn. Mr. Cody says that he was driving with "extreme caution" because his wife and infant son were in the vehicle with him. He says that because traffic was congested, he made eye contact with the driver in the first (innermost) lane before initiating his left turn, and then stopped and waited to get the driver's attention in the second (middle) lane before proceeding with his turn. He says from there, he had a clear vantage point to observe the curb lane and that it was clear before he completed the turn.
25. A witness, BD, gave a statement to ICBC by phone on February 23, 2023. The evidence shows that ICBC emailed BD a written statement shortly after the phone call, and BD responded by email the same day to confirm the statement was correct. I note this statement was taken after ICBC had already issued its responsibility determination to Mr. Cody. ICBC acknowledges this, and says it contacted the witness after being notified that the applicant disputed its assessment, but that BD's statement did not change the outcome.
26. I find BD's witness statement is consistent with MN's statement that they were already in the curb lane when the accident occurred. BD says they could see the accident was going to happen because "the lady" (who I infer is MN) was "coming down the HOV lane" (the curb lane). They say Mr. Cody turned in front of MN, and that they do not believe MN would have had an opportunity to avoid the accident.

27. Mr. Cody says BD's ability to observe the accident was limited due to his positioning at the time. This contradicts his later reliance on BD's statement in support of his argument that MN was speeding, discussed below. In any event, I find BD's statement about MN's vehicle position is consistent with video footage submitted by both parties, taken from multiple angles from Mr. Cody's vehicle's cameras.
28. There are 4 videos in evidence, taken from the front, driver's side, passenger side, and the trunk of Mr. Cody's vehicle. The front and driver's side videos do not show MN's vehicle, so I find they are unhelpful in proving MN's position before the accident. The trunk video only shows MN's vehicle at the moment of impact and so is of limited assistance as well. I note these videos support Mr. Cody's assertion that he stopped partway through his left turn to allow straight-through traffic to pass. However, they do not show whether he had a clear view of the curb lane. The passenger side video, which the parties refer to as the "right repeater" video, provides the best vantage point of MN's vehicle. While it only shows MN's vehicle for a brief moment before it collides with Mr. Cody's vehicle, I find it shows MN's vehicle was driving fully in the curb lane the moment before the accident.
29. Finally, MN's and BD's statements are also supported by the photographs in evidence of MN's damaged vehicle. The photographs show damage to the entire front of MN's vehicle, with the front bumper nearly fully detached. If MN had cut into the curb lane immediately before the accident, as Mr. Cody argues, I would expect the damage to be more significant on their driver's side, as it would have been closer to Mr. Cody's vehicle if MN had angled their vehicle to the right to move into the curb lane. Instead, the photos show MN's bumper completely detached on the passenger side but still partially attached on the driver's side. I note that accident scene photographs show MN's vehicle is angled in the curb lane. However, the video footage shows that MN's vehicle was pulled to the right after it struck Mr. Cody's vehicle, and that MN moved their vehicle slightly after the accident. I find the video footage is more reliable for determining MN's vehicle position. I find expert evidence is not necessary for me to assess the likely vehicle position, given the availability of the video footage showing MN's vehicle right before the accident.

30. Overall, based on MN's statement, BD's statement, the video footage and the vehicle damage photographs, I find MN's vehicle was established in the curb lane immediately before the accident and was an immediate hazard that was there for Mr. Cody to see. Under section 174 of the MVA, Mr. Cody had a duty to yield to MN's vehicle before turning left.
31. Mr. Cody also argues that MN was speeding. Mr. Cody says that he observed MN driving "significantly faster than 50 km/h". I give this statement little weight, as Mr. Cody also says that MN's vehicle was not visible when he initiated his left turn, so I do not see how he would have been able to gauge MN's speed before the accident.
32. MN said in their initial statement to ICBC that they were driving approximately 50 km/h, or "the regular speed limit." Mr. Cody says that I should give this statement little weight. As noted, Mr. Cody relies on BD's statement in support of his argument that MN was speeding. BD says that they cannot say for certain how fast MN was going, but that "it appeared she was going faster than 50 km/h." Mr. Cody says this suggests that MN was going significantly faster than 50 km/h, because a casual observer is unable to differentiate between 50 km/h and 55 km/h.
33. ICBC says that BD's statement is a perception or assumption only, and that expert evidence has not been provided to prove speed. I agree, and find the evidence before me is insufficient to prove that MN was speeding. ICBC notes that MN's airbags did not deploy, but I find this does not necessarily mean MN was not speeding. However, I also do not accept Mr. Cody's argument that the fact that MN's vehicle struck Mr. Cody's vehicle when he had almost finished his left turn proves that MN was speeding. On balance, I find Mr. Cody has not proven that MN was speeding or that if they were, their speed contributed to the accident.
34. Mr. Cody relies on *Williams v. Balogh*, 2020 BCCRT 551 and *Kelly v. Yuen*, 2010 BCSC 1794. In both cases, a driver making a left turn at an intersection was struck by a driver travelling straight through the intersection in the curb lane which was restricted to bus and bicycle traffic, as in this case. In both *Williams* and *Kelly*, the straight-through driver was held 100% at fault for the accident.

35. In *Williams*, the vice chair accepted that the dominant driver, Mr. Balogh, was not yet travelling in the curb lane and so did not constitute an immediate hazard at the time Mr. Williams started his left turn. Similarly, in *Kelly*, the evidence was that the dominant driver Mr. Yuen had moved from the center lane into the curb lane shortly before the intersection, after Ms. Kelly had already begun her left turn, and at an excessive rate of speed. In this case, I have found MN was established in the curb lane immediately before the accident, and I find it unproven that MN was speeding, so I find the circumstances are distinguishable from those in *Williams* and *Kelly*.
36. Instead, I find the circumstances of this accident are similar to those in *Young v. ICBC*, 2023 BCCRT 753. In *Young*, it was undisputed that the dominant driver (the straight-through driver) was established in the curb lane before the accident. I found in *Young* that the dominant driver was 25% responsible for the accident, because they failed to slow down and proceed cautiously into the intersection when traffic was stopped in the two lanes to their left. However, I found the applicant servient (left-turning) driver was 75% responsible because the dominant driver's vehicle was an immediate hazard before the applicant started his turn.
37. Prior CRT decisions are not binding, but I apply the same reasoning here. I find as the servient driver, Mr. Cody bears a greater degree of responsibility for the accident. The burden was on him to ensure he could complete the left turn safely, and I find he did not do so. I have found Mr. Cody's allegations about MN speeding or changing lanes unproven. However, I find MN was partially responsible because they acknowledged that traffic to their left was blocking their view of the intersection and so I find they should have proceeded with more caution (see *Clark v. Stricker*, 2001 BCSC 657). I find ICBC's responsibility apportionment of 75% to Mr. Cody and 25% to MN was appropriate in the circumstances.
38. In conclusion, I find that Mr. Cody is 75% responsible for the October 7, 2022 accident. As a result, I dismiss his claims for reimbursement of his deductible and increased insurance premiums. I note I would not have ordered the claimed damages

in any event, as Mr. Cody provided no evidence that he has paid increased insurance premiums because of the accident.

39. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Here, ICBC was the successful party but it paid no CRT fees and claimed no dispute-related expenses, so I make no order for them. Mr. Cody claimed \$935.17 in dispute-related expenses for the cost he incurred to rent a vehicle. I find this is not a proper dispute-related expense as it is not directly related to the conduct of the tribunal process, as required by the CRT's rules. Instead, this amount is a substantive claim which would have had to be included in Mr. Cody's claim for damages. As Mr. Cody was unsuccessful in this dispute, I would not have ordered dispute-related expenses in any event.

ORDER

40. I dismiss Mr. Cody's claims and this dispute.

Alison Wake, Tribunal Member