



Civil Resolution Tribunal

Date Issued: October 19, 2023

File: SC-2023-005497

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gill v. ICBC*, 2023 BCCRT 892

BETWEEN:

TANVEEN KAUR GILL

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Peter Mennie

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that took place on November 22, 2022, between the applicant, Tanveen Kaur Gill, and a third party, RS. RS is not a party to this dispute.

2. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures Ms. Gill's and RS's vehicles.
3. Ms. Gill says that ICBC improperly held her 100% responsible for the accident. She claims a \$300 reimbursement for a deductible she paid following the accident.
4. ICBC says it reasonably assigned responsibility for the accident to Ms. Gill.
5. Ms. Gill is self-represented. 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 the dispute's parties that will likely continue after the CRT process has ended.
7. 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.
8. 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. 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.

ISSUES

10. The issue in this dispute is who is responsible for the November 22, 2022 accident, and, if not Ms. Gill, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Ms. Gill must prove her claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

Background

12. On November 22, 2022, at around 7:30 pm, Ms. Gill approached an intersection intending to make a left turn. RS approached the intersection from the opposite direction intending to pass straight through. Their vehicles collided and the passenger side of Ms. Gill's bumper hit the driver's side of RS's bumper.
13. Ms. Gill says that she had the right-of-way when she made her turn. She says the light turned yellow and she saw RS slowing down as they approached the intersection. She says that she proceeded to turn left when the light was red, however RS suddenly sped up and hit her vehicle.
14. Ms. Gill says that before she could exit the vehicle, RS reversed and drove away from the accident scene. Ms. Gill borrowed a car from a third party, followed RS to a nearby underground parking lot, and took a photo of RS's license plate. She did not engage in conversation with RS because of safety concerns. She reported the accident to the police as a hit and run.

15. In a statement provided to ICBC, RS said that they had the right-of-way when entering the intersection. They said they had a green light and intended to pass through the intersection. They said they slowed down when they saw Ms. Gill preparing to turn, but when Ms. Gill did not proceed with her turn they continued through the intersection. They said Ms. Gill suddenly turned which caused the collision.
16. In their initial statement to ICBC, RS said that they had pulled over and Ms. Gill had left the accident scene. In a later emailed statement on April 21, 2023, RS said that they drove away from the accident scene and parked nearby. In both statements, RS stated that two other cars were involved in the accident though there is no evidence of this. RS also stated that they were hit by a blue Toyota, however Ms. Gill drives a silver Chrysler.
17. On December 14, 2022, ICBC issued a CL722 (a detailed responsibility letter) finding Ms. Gill 100% responsible for the accident. ICBC said that Ms. Gill, as the left turning driver, “has onus [sic] to prove the straight through vehicle contributed to the accident.” ICBC charged Ms. Gill a \$300 deductible for repairs to her vehicle.
18. Ms. Gill and RS signed consent forms and the parties received the police report on February 19, 2023, after ICBC had determined liability. The police report confirms that Ms. Gill reported the accident as a hit and run, that the police later contacted RS, and that both Ms. Gill and RS were advised to contact ICBC.

Accident responsibility

19. 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 this accident.
20. Section 172 of Part 11 of the IVA imposes a general ban on drivers bringing actions for vehicle damage, including vehicle depreciation, against other vehicle owners and drivers involved in an accident. However, this ban does not preclude Ms. Gill from bringing an action against ICBC, as her insurer.

21. I find Ms. Gill's claim is for first-party coverage under their insurance policy with ICBC. Under section 174 of Part 11 of the IVA, ICBC must indemnify Ms. Gill for her vehicle's damage or loss, subject to a reduction for Ms. Gill's degree of responsibility. In other words, if Ms. Gill is not responsible for the accident, the IVA requires ICBC to pay for Ms. Gill's vehicle repairs, including the deductible. Because the IVA requires ICBC to indemnify an insured based on the insured's degree of fault, I find the IVA and Ms. Gill's insurance contract with the respondent require ICBC to correctly determine fault. So, Ms. Gill is essentially claiming that ICBC breached the parties' contract by incorrectly determining fault for the accident.
22. I find that ICBC incorrectly determined liability for the accident. ICBC assumed that Ms. Gill, as the driver of the vehicle making the left turn, had a duty to yield to oncoming traffic. However, the first step in the analysis is to determine what colour the traffic light was when Ms. Gill commenced her turn (see: *Miller v. Dent*, 2014 BCCA 234 at para. 16). If the light was red as Ms. Gill claims, then Ms. Gill was the dominant driver and RS had a duty to stop at the red light.
23. On the evidence before me, ICBC did not give any consideration to the light's colour or who was the dominant driver. That is, ICBC assumed that Ms. Gill was the servient driver and applied a strict onus on Ms. Gill to prove her turn was safe. ICBC's failure to consider this fundamental issue makes their assessment of liability unreasonable.
24. That does not end the analysis. Ms. Gill must still show that she should not be held 100% responsible for the accident.
25. I find there are multiple inconsistencies in RS's statements. RS initially reported to ICBC that Ms. Gill had left the accident scene, but later admitted that they had driven away. This was a breach of section 68 of the *Motor Vehicle Act* (MVA) which requires a driver to remain at the accident scene and provide their particulars. RS maintains that they were struck by a blue Toyota which is incorrect. RS says that two other vehicles were involved in the accident, however there is no evidence that this was the case.

26. I find that the evidence overall and the inconsistencies in RS's statements make Ms. Gill's version of events more likely to be true. I find that the light was likely red when Ms. Gill began her turn and that she was the dominant driver. RS, as the servient driver, failed to yield to Ms. Gill contrary to section 174 of the MVA and failed to stop at a red light contrary to section 129 of the MVA. I find that RS is 100% responsible for the accident.

Damages

27. Ms. Gill asks for a refund of her \$300 deductible. As I have found RS solely responsible for the accident, section 174 of the IVA says ICBC must indemnify Ms. Gill for the entirety of her vehicle damage, including the deductible. I order ICBC to reimburse Ms. Gill \$300 for her deductible.

CRT fees and expenses

28. The *Court Order Interest Act* applies to the CRT. Because there is no evidence about when Ms. Gill paid the \$300 deductible, I find that December 28, 2022, the day Ms. Gill submitted her application for dispute resolution to the CRT, is an appropriate date for pre-judgment interest to start. This equals \$11.19.

29. 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 Ms. Gill was successful, I find she is entitled to reimbursement of \$125 in paid tribunal fees. No dispute-related expenses were claimed by either party.

ORDERS

30. Within 30 days of the date of this decision, I order ICBC to pay Ms. Gill a total of \$436.19, broken down as follows:

- a. \$300 as damages,
- b. \$11.19 in prejudgment interest, and

c. \$125 in CRT fees.

31. Ms. Gill is entitled to post-judgment interest, as applicable.

32. 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.

Peter Mennie, Tribunal Member