



Civil Resolution Tribunal

Date Issued: October 19, 2023

File: SC-2022-009964

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Karimi v. ICBC*, 2023 BCCRT 895

BETWEEN:

SHAHRIAR KARIMI

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. The applicant, Shahriar Karimi, and a third party were involved in a motor vehicle accident on August 15, 2022, in Surrey, British Columbia. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures Mr. Karimi. The third party is not a party to this small claims proceeding.

2. ICBC held Mr. Karimi 50% responsible for the accident. Mr. Karimi disagrees with ICBC's assessment and claims \$2,500 in damages for his increased insurance premiums. ICBC says it properly determined responsibility for the accident, and asks me to dismiss this dispute.
3. Mr. Karimi 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.
5. 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.
6. 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.
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.
8. ICBC submitted a piece of evidence that was labelled "Applicant Statement" but that I find was a duplicate copy of another piece of its evidence. Through staff, I invited ICBC to confirm whether this was intentional and, if not, to provide the evidence it intended to submit. ICBC provided a new document in response. Mr. Karimi had an

opportunity to respond to the new evidence, and did so. I admit this evidence as I find it is relevant to the dispute, and there is no breach of procedural fairness since Mr. Karimi was able to respond to it.

9. In submissions, Mr. Karimi says he paid a \$250 deductible to repair his vehicle. This is supported by an invoice and receipt from the shop that performed the repairs. The deductible was not included in Mr. Karimi's claimed remedies in his Dispute Notice. However, I find there is no prejudice to ICBC in considering the claim for Mr. Karimi's deductible. ICBC does not dispute that Mr. Karimi paid the deductible, and I find it had sufficient notice of this argument and had an opportunity to respond to it in submissions. I find it is consistent with the CRT's flexible mandate to consider the deductible as part of Mr. Karimi's claim for damages and I do so below.

ISSUES

10. The issue in this dispute is who is responsible for the August 15, 2022 accident and whether ICBC must pay Mr. Karimi his claimed damages.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Mr. Karimi 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.
12. On August 15, 2022, Mr. Karimi was reversing out of a parking stall in a parking lot in Surrey, BC. The third party's vehicle was also reversing out of a parking stall across the driving aisle and slightly offset from Mr. Karimi's stall. The two vehicles collided. Photos of Mr. Karimi's vehicle in evidence show that his vehicle sustained damage on the driver's side, behind the rear wheel. There are no photos of the third party's vehicle damage in evidence.

13. There were no witnesses to the accident. ICBC took statements from both drivers and reviewed video footage taken from Mr. Karimi's vehicle's trunk and driver's side. Following its investigation, ICBC found each driver 50% responsible for the accident. Mr. Karimi disagrees with ICBC's determination, and says he should be assigned "ideally less than 50% or even 0%" responsibility. ICBC disagrees, and says that it properly assigned Mr. Karimi 50% responsibility.
14. 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.
15. 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. Karimi from bringing an action against ICBC, as his insurer.
16. Mr. Karimi does not allege ICBC acted unreasonably or improperly in its investigation of the accident. Rather, Mr. Karimi disagrees with ICBC's decision to hold him 50% responsible. I find Mr. Karimi'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. Karimi) for their vehicle's damage or loss, including their deductible, subject to a reduction for the insured's degree of responsibility for the accident. In other words, if Mr. Karimi is not responsible for the accident, the IVA requires ICBC to pay for his vehicle repairs. If Mr. Karimi 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. Karimi's insurance contract with ICBC require ICBC to correctly determine responsibility. So, I find Mr. Karimi is essentially claiming that ICBC breached the parties' contract by incorrectly determining responsibility for the accident.

17. As noted above, the accident occurred when both Mr. Karimi and the third party were reversing their respective vehicles out of parking stalls. Video footage from Mr. Karimi's trunk camera shows that Mr. Karimi's vehicle started reversing first. About 2 seconds after Mr. Karimi's vehicle began moving, the third party's reverse lights came on. The third party's vehicle started moving backwards, stopped for a very moment, and then continued to reverse. Both parties reversed for approximately another 2-3 seconds, and then Mr. Karimi's vehicle stopped. The third party vehicle continued to reverse for another 2 seconds, until it collided with Mr. Karimi's vehicle.
18. Both drivers gave statements to ICBC. In Mr. Karimi's statement, he said that he looked in his rear camera to make sure it was "clear to go" before putting his car in reverse. He started to back up, and then noticed reverse lights on the car behind him. He says that as soon as he saw the third party's vehicle backing up, he stopped, and was about halfway out of his stall. He said he thought the third party saw him, but that they kept reversing back and hit him. In submissions, Mr. Karimi says that he honked when he saw the third party reversing, but that he did not mention this in his statement because he thought it would be shown in the video footage. However, the video footage undisputedly does not contain audio and so no honking is audible.
19. In the third party's statement, they said that they "checked around" and did a "360 scan" before reversing, and that there was no vehicle reversing at the time. They said they started reversing and felt the impact about 3 seconds later. The third party said they were looking at their backup camera, and did not see Mr. Karimi's vehicle reversing before the impact. They said they were also only partially out of their stall at the time of impact, and did not hear any honking.
20. ICBC says that sections 169 and 193 of the *Motor Vehicle Act* (MVA) apply to this accident. I agree. Section 169 says that a person must not move a vehicle that is stopped, standing or parked unless the movement can be made with reasonable safety. Section 193 says that a driver must not cause their vehicle to move backwards unless the movement can be made safely.

21. ICBC acknowledges that the third party violated section 169 of the MVA by failing to notice Mr. Karimi's vehicle in motion behind them before reversing, but says that both drivers breached section 193 of the MVA by continuing to reverse when it was not safe to do so. ICBC says based on this, it determined liability was shared equally between the drivers.
22. ICBC relies on *Kwan v. ICBC*, 2020 BCCRT 869, in which the tribunal member upheld ICBC's decision that two reversing drivers were equally liable for an accident. I find the circumstances in *Kwan* are similar to the circumstances in this accident. However, I find there are two key differences between the accident in *Kwan* and the accident in this dispute. First, in *Kwan*, the applicant driver did not see the other driver's vehicle before they collided, whereas here Mr. Karimi says he saw the other vehicle and stopped moving. Second, in *Kwan*, the tribunal member found that the applicant driver continued reversing for 5 seconds after the other driver started moving backward. Here, Mr. Karimi stopped his vehicle within 2 seconds of the third party starting to reverse. More on this below.
23. Section 193 of the MVA imposes a high standard of care on a reversing driver because reversing is riskier than driving forward. The expectations of a reasonable driver depend on the circumstances. Backing up in a parking lot, where there are often pedestrians and other vehicles, requires considerable diligence: see *Araujo v. Vincent*, 2012 BCSC 1836, at paragraphs 34 to 36. This high standard applies the entire time the driver is reversing, not just when they start: see *Carson v. Henyecz*, 2012 BCSC 314, at paragraph 99. Given that both Mr. Karimi and the third party were reversing, they were both subject to this high standard of care.
24. I find both Mr. Karimi and the third party breached section 193 of the MVA by failing to ensure they could continue to reverse safely. Both drivers admitted to using their backup cameras to look behind them. While prior CRT decisions are not binding on me, I adopt the reasoning in *Kwan* that relying solely on a backup camera is insufficient to comply with the high onus required by section 193 of the MVA. As the third party said they did not see Mr. Karimi's vehicle until after the impact, I find they

did not keep an adequate lookout for the entire time they were reversing, as required by section 193. I find that the third party's actions were clearly unreasonable.

25. Mr. Karimi argues he saw the third party's reverse lights come on, but "assumed" that they would allow him to complete his maneuver first, and that it was only once they continued to approach "dangerously close" that he honked his horn and stopped his vehicle. Mr. Karimi explains that there was a "momentary delay" as it took him a second to realize the third party was not aware of his presence, but that this delay was reasonable in the circumstances. I find it is unproven that Mr. Karimi honked his horn. While I accept that Mr. Karimi must be afforded a reasonable reaction time, based on the video footage and Mr. Karimi's admission that he saw the third party's reverse lights come on but assumed they would stop, I find that he had an opportunity to stop his vehicle sooner than he did. I find that his decision to keep reversing fell below the standard of a reasonable driver in the circumstances.
26. On balance, I find both drivers' conduct contributed to the accident to some degree. In other words, I find that but for each driver's negligence, the accident likely would not have occurred. However, I find the third party bears a greater degree of responsibility, because they began reversing after Mr. Karimi's vehicle was already in motion and so they also breached section 169 of the MVA by moving a parked vehicle when it was unsafe to do so. I am not persuaded by the third party's statement that they did a "360 scan" before reversing and saw that no vehicles were reversing at the time. The video evidence clearly shows that Mr. Karimi's vehicle was reversing for at least 2 seconds before the third party started moving, and I find it was there to be seen. Considering all of the circumstances and both drivers' obligations under the MVA, I find the third party was 75% responsible and Mr. Karimi was 25% responsible for the accident.
27. Because I find Mr. Karimi is less responsible for the accident than the 50% ICBC assigned to him, I must determine whether ICBC must pay damages to Mr. Karimi. In his Dispute Notice, Mr. Karimi claimed \$2,500 for increased insurance premiums. In submissions, Mr. Karimi says that this amount was based on an initial phone

conversation with an ICBC agent, but that he later consulted his insurance broker who estimated that the cumulative increase in his premiums over a 10-year period would amount to \$9,950. In support of this, Mr. Karimi provided a June 14, 2023 email from his insurance broker which includes a quote for insurance renewal and the broker's estimated calculations of the increased premiums. In contrast, ICBC provided an email from its Customer Service team confirming that the claim for the accident is not impacting Mr. Karimi's insurance premiums.

28. Mr. Karimi undisputedly has not yet paid the allegedly increased premiums. Instead, I infer he is asking me to order prospective reimbursement for the increased amount that he says he will have to pay in the coming years. In its Dispute Response, ICBC says that it would adjust Mr. Karimi's premiums accordingly if the CRT finds the applicant is 25% or less responsible for the accident. Mr. Karimi does not dispute this, and I find he has not proven that he will incur a future loss of increased insurance premiums due to this accident. So, I decline to order this remedy. Mr. Karimi did not request that I order ICBC to adjust his insurance premiums, but I note I would not do so in any event, as the CRT does not have jurisdiction under section 118 of the CRTA to make an injunctive order in these circumstances.
29. As discussed above, the IVA requires ICBC to indemnify Mr. Karimi for his vehicle damage, including his deductible, to the extent he was not responsible for the accident. The evidence shows that Mr. Karimi paid a \$250 deductible based on ICBC's assessment that he was 50% responsible for the accident, so I infer his total deductible was \$500. Because I have found Mr. Karimi was 25% responsible instead, I find ICBC must reimburse him an additional 25% of his total deductible, or \$125.
30. Lastly, Mr. Karimi claims \$605.62 in fuel costs he incurred while using a rental vehicle when his vehicle was being repaired. This remedy was not included in the Dispute Notice. In any event, ICBC says it is not responsible to reimburse fuel costs as part of Mr. Karimi's insurance policy. I find Mr. Karimi has provided no evidence that ICBC is responsible for his fuel costs. So, I decline to award reimbursement for fuel costs.

FEES, EXPENSES AND INTEREST

31. The *Court Order Interest Act* applies to the CRT. Mr. Karimi is entitled to pre-judgment interest on the \$125 deductible reimbursement from February 14, 2023, the date he paid the deductible, to the date of this decision. This equals \$3.97.
32. 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. I see no reason in this case not to follow that general rule. Mr. Karimi paid \$125 in CRT fees. As Mr. Karimi was partially successful, I find he is entitled to reimbursement of half of his fees, or \$62.50. Neither party claimed dispute related expenses and so I make no order for them.

ORDERS

33. Within 21 days of this decision, I order ICBC to pay Mr. Karimi a total of \$191.47, broken down as follows:
 - a. \$125 in damages as reimbursement for his insurance deductible,
 - b. \$3.97 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in CRT fees.
34. Mr. Karimi is entitled to post-judgment interest, as applicable.
35. 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.

Alison Wake, Tribunal Member