



# Civil Resolution Tribunal

Date Issued: November 2, 2023

File: SC-2023-004848

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Parmar v. ICBC*, 2023 BCCRT 945

BETWEEN:

HARPREET PARMAR

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This small claims dispute is about fault assessment for a motor vehicle accident.
2. The applicant, Harpreet Parmar, is the registered owner of a vehicle that was involved in an accident on August 18, 2022 in Kelowna, BC. Mr. Parmar's son, TP, was driving Mr. Parmar's vehicle at the time of the accident. The respondent insurer, Insurance

Corporation of British Columbia (ICBC), held TP 100% responsible for the accident, but Mr. Parmar says the other involved driver should be found solely responsible. Mr. Parmar claims \$300 for reimbursement of the deductible he says he paid to repair his vehicle.

3. ICBC says it acted reasonably in its investigation and that it properly determined liability for the accident. ICBC says this dispute should be dismissed.
4. Mr. Parmar is self-represented. ICBC is represented by an authorized employee.

## **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. In resolving disputes, the CRT must apply principles of law and fairness.
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.

9. ICBC argued that the CRT does not have jurisdiction to decide this dispute under its small claims jurisdiction because Mr. Parmar's request for reimbursement of his deductible is a request for injunctive relief. However, as discussed below, I find that Mr. Parmar is claiming ICBC breached the parties' contract of insurance. So, I find the request for reimbursement of his deductible is a claim for damages from the alleged breach of contract. Therefore, I find this claim properly falls under the CRT's small claims jurisdiction over debt and damages.

## **ISSUE**

10. The issue in this dispute is who is responsible for the August 18, 2022 accident and, if not TP, whether Mr. Parmar is entitled to reimbursement of his \$300 deductible.

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, the applicant Mr. Parmar must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submissions and evidence but refer only to what I find necessary to provide context for my decision.
12. On August 18, 2022, TP was travelling north on Highway 97 and turned right to proceed east on Leathead Road. The third party was driving directly behind TP on Highway 97, and they also turned right onto Leathead Road. Immediately after turning onto Leathead Road, TP moved into a left turn lane to turn left into a restaurant parking lot. The third party stayed in the right straight-through lane, immediately beside the left turn lane, on Leathead Road. None of this is disputed.
13. In TP's statement to ICBC, he said that after moving into the left turn lane, he was unable to make his intended left turn into the parking lot due to fast oncoming traffic. TP stated that he had angled his vehicle to the left for the turn, and that he then straightened it, so that it was not sticking out into the oncoming lane. TP said he was still completely in the left turn lane while straightening his vehicle when the third party side-swiped his vehicle's right side as they passed him on the right.

14. In contrast, the third party advised ICBC that after entering the left turn lane, TP then tried to come back into the right lane, and their vehicles collided.
15. There were no witnesses to the accident. There are also no photos of the damage to either vehicle in evidence. However, Mr. Parmar later took photos of the accident location. They show ongoing sidewalk construction, with several orange cones in the right lane on Leathead Road. Mr. Parmar says the cones were also present at the time of the accident, which is undisputed.
16. The evidence shows that ICBC considered Mr. Parmar's photos and the statements from both drivers. Following its investigation, ICBC found TP 100% responsible for the accident. Mr. Parmar disagrees with that assessment and says the third party should be held 100% responsible.
17. 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 that occurred on or after May 1, 2021, including this accident.
18. 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. Parmar from bringing an action against ICBC as his insurer.
19. I find Mr. Parmar'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 Mr. Parmar for his vehicle's damage, subject to a reduction based on TP's degree of responsibility for the accident. In other words, if TP, as the operator of Mr. Parmar's vehicle, is not responsible for the accident, then the IVA requires ICBC to pay for Mr. Parmar's vehicle repairs, including the deductible. Because the IVA requires ICBC to indemnify an insured based on the degree of fault, I find the IVA and Mr. Parmar's insurance contract with ICBC require ICBC to correctly determine fault. So, I find Mr. Parmar is

essentially claiming that ICBC breached the parties' contract by incorrectly determining fault for the accident.

20. I turn to my assessment of who is responsible for the August 18, 2022 accident.
21. Essentially, each driver said they were fully in their own lane and that the other driver crossed over into their lane to cause the accident. So, I find that liability comes down to determining which driver entered the other driver's lane.
22. I find that both drivers' versions of the accident are plausible. In support of Mr. Parmar's position that the third party must have been driving partially in the left turn lane, he provided a photo showing a vehicle straddling the right lane and the left turn lane as it passed the construction cones encroaching the right lane. I find it is possible the third party saw TP starting to turn left and similarly moved partly into the left turn lane to give the cones more space as they passed them, not expecting TP to stay in the left turn lane and straighten his vehicle out.
23. However, ICBC points out that another photo shows a pickup truck that appears to be still fully in the right lane as it passed the cones. I agree that the photos indicate there was enough room to pass the cones while staying fully in the right lane. I also agree that just because one vehicle straddled the left turn lane as they passed the cones, does not mean that is what happened in this case. I find it is possible that when TP steered to the right to straighten out his vehicle, he could have accidentally encroached into the right lane. While not specifically argued, I also find it is possible TP changed his mind about turning left and did not realize the third party was already beside him when he tried to move back into the right lane.
24. Overall, I find the third party's version of the accident is the more likely version. I say this because the third party was behind TP as they turned onto Leathead Road. Section 158(1)(b) of the *Motor Vehicle Act* (MVA) allows vehicles to pass on the right when there is one or more than one unobstructed lane on the side of the roadway on which the driver is permitted to drive. As noted, I find the straight-through lane on Leathead Road was unobstructed, and so the third party was permitted to pass TP

on the right when he was in the left turn lane. I find it unlikely that the third party would have proceeded partially in the left turn lane while passing TP when there was sufficient room to do so while staying fully in the right lane.

25. Further, while there are no photos of the vehicle damage in evidence, ICBC's file notes stated the front passenger side of TP's vehicle collided with the driver's side front door on the third party's vehicle. This is consistent with both parties' statements, and so I find it is likely true. Therefore, I find the vehicles were essentially right beside each other when the collision occurred.
26. Yet, it is apparent that TP did not realize that the third party was beside him until the impact. Section 144(1) of the MVA says a person must not drive a motor vehicle on a highway without due care and attention. I find that TP was unaware of the traffic around him and how his maneuver to straighten his vehicle might affect the vehicles around him, in breach of section 144(1) of the MVA.
27. For the above reasons, I find that TP likely steered his vehicle into the right lane, not realizing that the third party was directly beside him in the right lane, causing the collision. I find in so doing, TP's driving fell below the standard of a reasonably careful driver, and that he was negligent. I find Mr. Parmar has not established that the third party was also negligent or partly responsible for the accident. Therefore, I find TP was 100% at fault for the accident.
28. Given this conclusion, I find there is no basis to order any reimbursement of Mr. Parmar's deductible. So, I dismiss Mr. Parmar's claim.
29. I note that Mr. Parmar did not provide any evidence that he paid his deductible or that he repaired his vehicle. So, I would have dismissed his claim for reimbursement of his deductible in any event.
30. 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. As Mr. Parmar was unsuccessful, I dismiss his claim for

reimbursement of his CRT fees. ICBC did not pay any fees, and neither party claimed any dispute-related expenses.

## **ORDER**

31. I dismiss Mr. Parmar's claims, and this dispute.

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Kristin Gardner, Tribunal Member