



Civil Resolution Tribunal

Date Issued: November 14, 2023

File: SC-2022-008685

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *MK (Litigation Guardian of) v. ICBC*, 2023 BCCRT 980

BETWEEN:

DK as Litigation Guardian of MK, minor

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and EP

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a small claims dispute about a bike accident. While riding his bike on June 28, 2022, the minor applicant, MK, collided with a vehicle driven by the respondent, EP. The other respondent, Insurance Corporation of British Columbia (ICBC), insures EP. ICBC internally determined that the accident was entirely MK's fault.

2. MK disagrees with ICBC's liability determination. He says EP caused the accident by running him over while he was riding his bike on the sidewalk. MK says his bike was damaged in the accident and he claims \$300 to repair or replace it.
3. The respondents say that since ICBC found MK entirely at fault for the accident, MK is responsible for paying to repair or replace his bike. ICBC says it is not a proper respondent to this dispute because MK's Dispute Notice does not include a claim for which it could be responsible.
4. MK is represented by his father and litigation guardian, DK. Both respondents are represented by an ICBC employee.
5. As MK is a minor, I have anonymized the individual parties' names in the published version of this decision to protect MK's identity.

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.
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.

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.
10. As noted above, ICBC says it is not a proper respondent to this dispute because MK has not made any claims against it. The CRT has consistently found that an insured may claim against ICBC if they believe that ICBC did not meet its statutory or contractual obligation to reasonably investigate an accident, based on the Court of Appeal decision in *Innes v. Bui*, 2010 BCCA 322. I agree with this approach. However, there is no evidence that MK is insured by ICBC. Even if he was, he does not allege that ICBC acted unreasonably or improperly in its investigation and assessment of fault. Rather, MK disagrees with ICBC's decision. I find MK's only substantive claim is against EP for allegedly damaging his bike. So, I find that ICBC is not a proper respondent to this claim because it is only involved as EP's third party liability insurer. For these reasons, I dismiss MK's claims against ICBC.
11. MK did not provide submissions, evidence, or reply submissions. After requesting an extension to provide submissions and evidence on July 12, 2022, DK emailed CRT staff on July 20, 2022, saying he could not access his CRT account to provide submissions. On the same date CRT staff emailed DK instructions to access his CRT account and extended the submissions deadline to July 21, 2022. On July 21, 2022, DK emailed CRT staff that he still could not access his CRT account. CRT staff responded on the same date instructing DK to send the submissions by email and extending the deadline to July 25, 2022.
12. DK did not provide submissions by July 25, 2022, either by email or through his CRT account. On July 26, 2022, CRT staff asked DK to provide the submissions by July 27, 2022, which he did not do. On July 28, 2022, CRT staff emailed DK a final warning to provide submissions. On August 1, 2022, DK emailed CRT staff saying he had provided the submissions to the CRT, but CRT staff notified him on the same date that the CRT had not received the submissions, and it extended the deadline to August 2, 2022. When DK did not provide submissions by August 2, 2022, CRT staff

emailed him on August 3, 2022 asking for his submissions. DK's August 1, 2022 email was the last communication CRT staff received from him. Despite DK's stated difficulties with accessing his CRT account, I am satisfied that he was given sufficient opportunity to provide submissions and evidence but declined to do so.

ISSUE

13. The issue in this dispute is whether MK is entitled to \$300 to repair or replace his bike.

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, as the applicant MK must prove his claims on a balance of probabilities, which means more likely than not. As noted above, MK did not make submissions or provide any evidence, despite having the opportunity to do so. I have read MK's Dispute Notice and the respondents' evidence and submissions but refer only to what I find relevant to explain my decision. For the following reasons, I dismiss MK's claims.
15. In his Dispute Notice MK says that on June 28, 2022, he was riding his bike on the sidewalk when a vehicle "drove out of a parking lot and ran him over". MK says he was pinned under the vehicle's front bumper with his bike on top of him. As noted, MK provided no submissions or documentary evidence to support his version of events.
16. For her part, EP says she was driving towards the parking lot exit at approximately 5 kilometers per hour while checking for pedestrian traffic as she approached the sidewalk. She says that approximately 4 feet from the sidewalk MK made a fast right turn from the sidewalk into the parking lot, and hit her vehicle, which was stopped at the time of impact. EP provided her own statement with a diagram of the accident area as well as a witness statement which I find is generally consistent with her account of the accident.

17. ICBC found MK entirely responsible for the accident under section 183 of the *Motor Vehicle Act*. While I am not bound by ICBC's fault determination, on the evidence before me, and the notable lack of evidence or submissions from MK, I am satisfied that MK was entirely responsible for the accident.
18. Even if MK could establish that he was not entirely responsible for the accident, which I find he has not, I find he has failed to prove his damages. He provided no information or evidence about the type of bike he was riding, the extent of the alleged damage, or the cost of repairing or replacing the bike. MK bears the burden of proving his claim. I find he has not done so, and I dismiss it.
19. 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. However, neither of the respondents paid any CRT fees, and neither of the parties claimed any dispute-related expenses.

ORDER

20. I dismiss MK's claims and this dispute.

Sarah Orr, Tribunal Member