



Civil Resolution Tribunal

Date Issued: December 12, 2023

File: SC-2023-006103

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jaggs v. ICBC*, 2023 BCCRT 1092

BETWEEN:

GORDON JAGGS

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. The applicant, Gordon Jaggs, was involved in a motor vehicle accident on September 27, 2022. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures Mr. Jaggs.

2. ICBC held Mr. Jaggs 75% responsible for the accident. Mr. Jaggs says ICBC's liability determination was unfair, and that he should be found less responsible. Mr. Jaggs claims \$850 for a refund of his \$300 deductible and the \$550 increase to his insurance premium.
3. ICBC says it acted reasonably when investigating the accident, and that it correctly determined responsibility. ICBC says this dispute should be dismissed.
4. Mr. Jaggs 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.

ISSUES

9. The issues in this dispute are:
 - a. Did ICBC breach its statutory obligations or its contract of insurance?
 - b. Who is responsible for the September 27, 2022 accident?
 - c. What is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Mr. Jaggs 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 the evidence and argument that I find relevant to provide context for my decision.

Did ICBC breach its statutory obligations or its contract of insurance?

11. The accident occurred on September 27, 2022, as Mr. Jaggs was exiting the driveway of his condominium residence in Richmond, BC. A third party, EH, was operating an electric scooter on the sidewalk and collided with Mr. Jaggs’ vehicle.
12. Mr. Jaggs says that ICBC initially found him 100% responsible for the accident, but he appealed that decision to a manager. He says ICBC then amended its decision and held him 75% responsible. ICBC does not dispute this. Mr. Jaggs says that ICBC should have held EH at least 50% liable.
13. In this claim against ICBC, I find that Mr. Jaggs must establish that ICBC breached its statutory duties or its contract of insurance.
14. Insurance contracts generally include an implied duty of good faith on the part of the insurer. This requires ICBC to act fairly, both in how it investigates and assesses the claim, and in its decision about whether to pay the claim. See *Bhasin v. Hrynew*, 2014 SCC 71. As noted in the Continuing Legal Education Society of BC’s “*BC Motor Vehicle Accident Claims Practice Manual*”, an insurer is not expected to investigate

a claim with the skill and forensic proficiency of a detective. Rather, an insurer must bring “reasonable diligence, fairness, an appropriate level of skill, thoroughness, and objectivity to the investigation and the assessment of the collected information”. See *McDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283.

15. Essentially, Mr. Jaggs argues that ICBC acted unfairly by failing to fully appreciate the accident circumstances and incorrectly applying the *Motor Vehicle Act* (MVA). He says ICBC did not properly consider EH’s speed and that electric scooters are prohibited on sidewalks. Mr. Jaggs also says that ICBC unreasonably found he had breached section 176 of the MVA, which deals with a driver’s obligations when emerging from a driveway.
16. I turn to ICBC’s investigation and assessment of the claim.
17. Mr. Jaggs reported the accident to ICBC shortly after it occurred on September 27, 2022. He stated that he was coming out of his residential condominium driveway, intending to turn right to proceed west on Westminster Highway. He said he first checked to the left for vehicles and pedestrians, and then checked right for pedestrians and saw none. He stated he then slowly pulled onto the road when he heard a loud thud against the passenger side of his car, so he stopped and got out. He found someone on an electric scooter had been traveling east on the sidewalk (approaching from Mr. Jaggs’ right) at a high rate of speed and struck his vehicle.
18. EH reported the accident the following day. EH admitted being on a scooter going east on the sidewalk. EH stated Mr. Jaggs came out of a driveway and stopped on the sidewalk. EH said they went into the right side of Mr. Jaggs’ vehicle and fell to the ground.
19. Mr. Jaggs provided ICBC with the contact information for a witness, RM. ICBC’s file notes show that RM advised they did not see the accident, only heard it. So, ICBC decided RM could not assist in determining the parties’ pre-accident actions.
20. ICBC requested further detailed statements from both EH and Mr. Jaggs, which they each provided by email on October 3, 2022.

21. EH's email statement said they were riding their scooter to work, and they rode on the sidewalk for safety reasons because Westminster Highway did not have a bike lane. EH stated that a white SUV suddenly came out of an exit and stopped in the middle of the sidewalk. EH stated that when they "reacted", they were only about 3 meters away from the vehicle and tried to stop but did not have enough braking distance. EH stated they did not have a record of their scooter's speed, but that they were "surely" riding at a low speed since they were on the sidewalk.
22. Mr. Jaggs' email statement said he initially stopped his vehicle before the sidewalk and looked left for a break in traffic to make his right turn. He said he could not see anything to his right at that position due to a hedgerow of evergreen bushes about 5 feet high. He stated that when there was a break in traffic, he slowly moved his car across the sidewalk to look for pedestrians and cyclists to his right and saw none. He said he stopped again before entering the roadway to look left and confirm no oncoming traffic before proceeding forward onto the road. He then heard EH collide with his vehicle.
23. Mr. Jaggs provided ICBC with photos taken at the accident scene. However, they did not show the position of his vehicle at the time of impact, as he had moved his vehicle after the accident.
24. ICBC says it ultimately attributed 25% responsibility for the accident to EH because they were riding on the sidewalk. However, ICBC says it determined that Mr. Jaggs had a "greater responsibility" because he was entering the roadway from a driveway.
25. I agree with Mr. Jaggs that ICBC acted unfairly and unreasonably in assessing him 75% responsible for the accident. My reasons follow.
26. ICBC's December 4, 2022 CL722, which is a detailed letter about responsibility, referred to section 176 of the MVA. Section 176(1) says that a driver emerging from an alley, driveway, building or private road must stop the vehicle immediately before driving onto the sidewalk extending across an alleyway or private driveway, and must yield the right of way to a pedestrian on the sidewalk or sidewalk area. The CL722

stated that MVA section 176 applied to the accident. However, it did not say whether or how Mr. Jaggs had breached that section.

27. As noted, Mr. Jaggs reported to ICBC that he stopped before he drove onto the sidewalk. EH did not report otherwise, and ICBC did not suggest that Mr. Jaggs likely failed to stop. Further, section 176(1) requires drivers, once stopped before the sidewalk, to yield the right of way to pedestrians on the sidewalk. A pedestrian is defined in the MVA as “a person afoot”. I find that EH was not a pedestrian, as they were undisputedly riding an electric scooter.
28. Of course, that does not mean that once having stopped in compliance with section 176(1), a driver does not have to yield to someone on a scooter that they see approaching on the sidewalk. However, because electric scooters may be capable of travelling faster than a pedestrian, they might be further away and therefore more difficult for drivers to see approaching.
29. I also find that Mr. Jaggs’ view to the west from behind the sidewalk is relevant, and there is no evidence that ICBC considered this in finding he had breached section 176(1) of the MVA. As noted, Mr. Jaggs said his view was obstructed by hedges. I find the photos he provided to ICBC confirm that. Noting that he could not see down the sidewalk to his right, Mr. Jaggs reported that having first stopped before the sidewalk, he then slowly moved his vehicle ahead to check for pedestrians and stopped again on the sidewalk area. He reported that he did not see any pedestrians or cyclists and so checked to his left for traffic before he started his right turn and the collision occurred.
30. EH also reported that Mr. Jaggs emerged from the driveway and stopped across the sidewalk. EH did not say how far away from the driveway they were when they first saw Mr. Jaggs’ vehicle, only that they were 3 meters away when they attempted to brake their scooter. I find ICBC did not properly consider that Mr. Jaggs undisputedly had time to slowly emerge and come to a stop on the sidewalk before EH said they started braking.

31. Overall, I find there was no basis for ICBC to find Mr. Jaggs breached section 176(1) of the MVA or was negligent. Even if there was a “high onus” on Mr. Jaggs to ensure it was safe when emerging from the driveway, as ICBC submits, ICBC did not suggest there was something different Mr. Jaggs could have done in the circumstances to avoid the accident.
32. In finding Mr. Jaggs 75% responsible for the accident in the absence of any evidence that he failed to comply with the MVA or was otherwise negligent, I find that ICBC breached its duty to fairly, thoroughly, and competently assess responsibility for the accident.
33. Mr. Jaggs’ paid deductible and claimed insurance increase are undisputedly tied to his degree of responsibility for the accident. As I have found ICBC did not fairly and reasonably assess fault for the accident, I find it is necessary to make my own determination of who is responsible for the accident.

Who is responsible for the accident?

34. I begin with EH’s conduct. As noted, EH was riding their electric scooter on the sidewalk, traveling east, against the direction of traffic.
35. Section 16(4) of the *Electric Kick Scooter Pilot Project Regulation* (Regulation) prohibits people from operating a scooter on a sidewalk, unless a traffic control device permits the operation of cycles on the sidewalk, or it is otherwise permitted by a municipal bylaw. Section 29.7 of Richmond City bylaw 5870 says that a person may not operate a bicycle, motor assisted cycle, or e-scooter on a sidewalk unless otherwise directed by a sign.
36. It is undisputed that the subject sidewalk did not have any traffic control device or sign that permitted EH to ride an electric scooter on the sidewalk. So, I find that EH was operating their scooter in breach of the Regulation and municipal bylaws at the time of the accident. While a breach of those provisions does not automatically mean EH was negligent, it is some evidence of a failure to take appropriate care. See *Orr v. Graemond Holdings Ltd.*, 2022 BCCA 156 at paragraph 18.

37. The photographic and Google map evidence before me show several driveways along the block of Westminster Highway where the accident happened. I also find it would have been apparent to EH that the view to the west for drivers emerging from Mr. Jaggs' driveway would be obscured by hedges. So, I find that EH should have been on high alert for vehicles emerging from Mr. Jaggs' driveway.
38. I note there is little evidence about EH's speed. Mr. Jaggs submits that EH's scooter had a 500-watt electric motor with a top speed of 42 kilometers per hour. ICBC did not dispute this. While there is insufficient evidence to prove EH was operating the scooter at its top speed, I do not accept EH's report that they were riding at a "low speed". I say this because had EH been traveling at a low speed, I find they likely would have been able to stop and avoid the collision when they saw Mr. Jaggs' vehicle emerge from the driveway. This is not a case where Mr. Jaggs proceeded forward across the sidewalk and collided with EH as they crossed in front of him. Rather, Mr. Jaggs had already come to a stop on the sidewalk before EH started braking and collided with the passenger side door of Mr. Jaggs' vehicle.
39. I find that Mr. Jaggs was there to be seen as he emerged from the driveway, and that EH was either traveling too fast for the circumstances or was not paying sufficient attention. Overall, I find that EH failed to exercise the required extra care and attention required of a person riding an electric scooter on the sidewalk against traffic, and that EH's negligence caused the accident.
40. For the reasons set out above, I find Mr. Jaggs complied with section 176(1) of the MVA. I accept that he came to a stop before the sidewalk and, seeing no approaching pedestrians or traffic to his left, he moved forward across the sidewalk checking for pedestrians to his right. I also accept that Mr. Jaggs did not see EH, likely because EH was still some distance away. Therefore, I find Mr. Jaggs had the right of way as he drove across the sidewalk.
41. Generally, when a driver has the right of way, they are entitled to assume that other drivers and those on the sidewalk will obey the rules of the road. See *Johal v. Dhaliwal*, 2022 BCSC 444. I find that Mr. Jaggs was entitled to expect that EH would

not be riding a scooter on the sidewalk against traffic. Having come to a stop on the sidewalk when he was entitled to do so, I find there was nothing Mr. Jaggs could have done to avoid the accident.

42. I note that Mr. Jaggs submits a fair liability assessment would be a 50/50 split. However, I find I am not bound by that submission. For the reasons set out above, I find that EH was 100% responsible for the accident.

Remedy

43. Mr. Jaggs claims reimbursement of his entire \$300 deductible and a full refund of his alleged \$550 insurance premium increase.
44. ICBC admits that Mr. Jaggs initially paid a \$300 deductible but says that it refunded him \$75 when it reassessed liability and found him 75% responsible. Mr. Jaggs did not dispute this. I also note the December 4, 2022 CL722 letter stated that Mr. Jaggs would have to pay \$225 to repair his vehicle, which was 75% of his collision deductible.
45. Overall, I accept that Mr. Jaggs paid a \$225 deductible to have his vehicle repaired. I also find that ICBC required Mr. Jaggs to pay his deductible to the extent he was not responsible for the accident. I have found Mr. Jaggs 0% responsible, and so I find ICBC must reimburse him \$225 for his paid deductible.
46. Turning to Mr. Jaggs' alleged insurance premium increase, he provided a copy of his certificate of insurance showing a \$2,217 annual premium for insurance between May 2023 and May 2024. He says his 2022 premium was only \$1,667, which ICBC did not dispute. The difference is the claimed \$550.
47. Mr. Jaggs also provided a copy of his November 11, 2022 ICBC driver factor report, which shows ICBC included the claim for the subject accident when calculating his individual driver factor (IDF). The certificate of insurance shows that Mr. Jaggs' IDF was used to calculate his 2023 insurance premium.

48. Because Mr. Jaggs only asked for a 50/50 liability assessment, ICBC argued that Mr. Jaggs had not proven he was entitled to any refund of his insurance premiums. ICBC provided its Basic Insurance Tariff. It says that a person's IDF rating will be impacted by a chargeable claim payment, which is a payment made for an accident where the operator of the vehicle is more than 25% responsible. In other words, if a vehicle operator is 25% or less responsible for an accident, their IDF will not be impacted, and their insurance premiums will not increase.
49. On balance, I am satisfied that Mr. Jaggs' insurance premium increased by the claimed \$550 due to ICBC's finding that Mr. Jaggs was more than 25% responsible for the accident. As I have found he was less than 25% responsible, I find his insurance premium should not have increased. Therefore, I find Mr. Jaggs is entitled to the claimed \$550 refund for his increased 2023 premium.
50. The *Court Order Interest Act* applies to the CRT. Mr. Jaggs' November 11, 2022 driver factor report says the claim payment date was November 2, 2022. I find that is likely the date that Mr. Jaggs paid his deductible. So, I find he is entitled to pre-judgment interest on the \$225 deductible refund from November 2, 2022, to the date of this decision, which equals \$10.63.
51. The date Mr. Jaggs paid his insurance premium is not before me. I find he is reasonably entitled to pre-judgment interest on the \$550 premium increase from May 15, 2023, his insurance renewal date, to the date of this decision. This equals \$14.41. So, in total, Mr. Jaggs is entitled to \$25.04 in pre-judgment interest.
52. 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. Jaggs was successful in this dispute, I find he is entitled to reimbursement of \$125 in CRT fees. Neither party claimed dispute-related expenses.

ORDERS

53. Within 30 days of the date of this decision, I order ICBC to pay Mr. Jaggs a total of \$925.04, broken down as follows:
- a. \$775 in damages as reimbursement of his insurance deductible and increased insurance premium,
 - b. \$25.04 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
54. Mr. Jaggs is entitled to post-judgment interest, as applicable.
55. 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.

Kristin Gardner, Tribunal Member