Civil Resolution Tribunal

Indexed as: *Ziola v. ICBC*, 2024 BCCRT 13

B E T W E E N :

JODY ZIOLA

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Micah Carmody

INTRODUCTION

1. The applicant, Jody Ziola, owned a Kawasaki Ninja motorcycle insured by the respondent insurer, Insurance Corporation of British Columbia (ICBC). Ms. Ziola says her motorcycle was damaged while parked in her strata building parkade. ICBC

advised Ms. Ziola that it would not cover the cost of repairing her motorcycle because she did not have "hit and run" coverage.

2. Ms. Ziola says a third party, YM, damaged her motorcycle by backing their car into it. Ms. Ziola says ICBC must therefore pay to repair the motorcycle damage. She claims $5,000 to repair the motorcycle, based on an estimate that ICBC accepts. Ms. Ziola represents herself.

3. ICBC says YM denies hitting Ms. Ziola's motorcycle and Ms. Ziola has not provided any concrete evidence to show that YM damaged the motorcycle. ICBC says I should dismiss the claim because Ms. Ziola does not have collision or hit and run coverage. An employee represents ICBC.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has authority 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. In some respects, the parties in this dispute call into question each other's credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I decided to hear this dispute through written submissions.

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 court.

7. I was unable to view a piece of evidence that appeared to be a copy of the insurance policy. Given that the parties agreed about what Ms. Ziola's insurance contract covered and did not cover, I did not ask ICBC to resubmit the evidence.

ISSUE

8. The issue in this dispute is whether ICBC breached its duty of good faith by determining that this was a "hit and run" and denying coverage?

EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, Ms. Ziola must prove her claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

10. Initially, Ms. Ziola brought a claim against YM. However, 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) and the accompanying *Basic Vehicle Damage Coverage Regulation.* These apply to accidents on and after May 1, 2021. Part 11 imposes a general ban on insured people making claims for vehicle damage against other vehicle owners and drivers involved in an accident. Instead, Basic Vehicle Damage Coverage generally covers the cost of repairing the insured's vehicle damage to the extent that they are not responsible for the crash. So, Ms. Ziola brought her claim against ICBC as her insurer.

11. IVA sections 174(4)(d) and 175(4)(d) say that ICBC's reimbursement for vehicle damage must be reduced by the extent to which the accident was caused by "another person whose name is not ascertainable." These provisions form part of ICBC's compulsory insurance contract under section 1.1 of the *Insurance (Vehicle)*

Regulation. This means the IVA no longer provides automatic coverage for vehicle damage from a "hit and run" where the owner or operator of the other vehicle is unknown. Rather, people must purchase it as optional coverage. Ms. Ziola undisputedly did not purchase that optional coverage. So, I find Ms. Ziola claims that ICBC breached the parties' contract by incorrectly concluding that her motorcycle was damaged by an unidentified person, rather than by YM.

12. I pause to acknowledge Ms. Ziola's argument that ICBC or her insurance broker did not advise her that hit and run damage was not covered when she registered and insured the motorcycle in June 2022. ICBC says this information was available to the public on its website, which I accept. Ms. Ziola does not say that the policy wording was difficult to understand. To the extent that Ms. Ziola argues her insurance broker was negligent for not explaining that she did not have hit and run damage coverage, the insurance broker is not a party to this dispute. Additionally, Ms. Ziola provided no evidence about the contractual relationship between ICBC and the unknown insurance broker. So, I make no findings about the insurance broker's alleged negligence.

13. As an insurer, ICBC must act fairly in how it investigates and assesses claims (see e.g., *Bhasin v. Hrynew*, 2014 SCC 71). It is well established that 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).

14. The dates on ICBC's interview notes indicate that YM first reported the potential claim. ICBC interviewed YM on July 9, 2022. According to the interviewer's notes, YM admitted they drove their vehicle on July 7, the day Ms. Ziola discovered the motorcycle damage. YM said they were not aware of any impact, but when Ms. Ziola approached them, they told her to report it to ICBC, to which she expressed

reluctance. ICBC advised YM to take photos and if Ms. Ziola contacted them again, to give her the ICBC claim number and advise her to contact ICBC.

15. ICBC spoke with Ms. Ziola on July 12, 2022. According to the interviewer's notes, Ms. Ziola discovered her motorcycle knocked over in her building's resident-only parkade at 11 pm (presumably on July 7, although the notes do not include a date). Ms. Ziola said a neighbour told her that she returned home between 5 and 5:30 pm and saw the bike standing up, but left at 6 and noticed the bike was on the ground. With this information, Ms. Ziola spoke with the strata president and strata manager about video footage of the parkade's entrance at that time. Ms. Ziola said only 5 vehicles entered the parking lot at that time, one of which was YM's vehicle. Ms. Ziola said YM's parking stall is near where she had parked the motorcycle. She said YM consistently reversed out of their stall until this reported damage, after which they began reversing into their stall. Ms. Ziola said YM's rear bumper had a lot of existing damage. Ms. Ziola said she met with the strata president and YM, but YM denied that damage on her bumper was consistent with impacting the motorcycle and kept saying they did not know if they made contact. ICBC asked Ms. Ziola to submit her photos of the motorcycle and where she had parked it.

16. Ms. Ziola had parked the motorcycle in a corner of the parkade, near a wall along its right side. There is no paint to indicate motorcycle parking, or to separate the motorcycle from vehicle traffic. A photo shows the motorcycle resting on the ground on its left side, with piece of the license plate frame resting nearby. Ms. Ziola says she found the motorcycle like this. The motorcycle damage undisputedly includes a broken mirror, broken signal light, bent licence plate and bracket, and broken licence plate frame.

17. For the reasons that follow, I agree with ICBC's determination that an unidentified person damaged Ms. Ziola's motorcycle. First, there were no witnesses to the impact and YM denies being aware of making contact. Second, there is nothing linking the motorcycle damage to YM's car damage, which includes multiple scrapes, scratches and scuffs in different locations. Photos show the motorcycle standing upright on its

kickstand, with a tape measure to show the height of the damaged license plate bracket. None of these photos show the whole length of the tape measure and they show the same damage at different heights (29 inches and 35 inches). Photos of YM's car's bumper cover with a tape measure show the bumper cover's highest point is 24 inches off the ground. So, even accepting that the license plate bracket's height was 29 inches, the car's bumper is too low to have caused contact damage. There is also no evidence of green paint transfer to YM's car. Although Ms. Ziola says there is silver paint transfer on her motorcycle from YM's silver car, the photos do not provide sufficient detail to show paint transfer. Further, Ms. Ziola has not provided any expert evidence linking her motorcycle damage and YM's car damage.

18. Ms. Ziola says the strata president, TJ, helped her measure and confirm that the motorcycle damage was consistent with damage on YM's car and said they would help facilitate YM's payment for the damage. However, TJ denied both assertions in their response to questions posed in a Summons Notice.

19. ICBC provided a report from Jonathan P. Gough, a professional engineer, which I accept as expert evidence under the CRT's rules. The report was inconclusive. The author only reviewed photos and did not inspect the vehicles. The author said YM's car bumper damage is lower than the motorcycle damage, as described above. They noted that when a motorcycle is on its kickstand, it does not require significant force to tip over, so a vehicle could have contacted the motorcycle and tipped it over without leaving evidence on the vehicle. Ultimately, the author said they could not conclude that YM's car struck or did not strike the motorcycle.

20. I am unable to reach a more definitive conclusion on the evidence before me. Ms. Ziola's claim largely hinges on the timing of YM's return to the parkade, but this does not mean they hit the motorcycle. Moreover, Ms. Ziola has not provided a statement from the neighbour she says saw the bike standing up at 5 pm and tipped over an hour later, or explained why she could not obtain that statement. I find it unproven when the motorcycle damage occurred.

21. In summary, I find ICBC acted reasonably in speaking to Ms. Ziola and YM and reviewing their photographs. Ms. Ziola does not say what else ICBC should have done, other than reach a different conclusion. I find there is insufficient evidence to support a different conclusion. That is, I am unable to find on a balance of probabilities that YM's vehicle struck Ms. Ziola's motorcycle and caused the damage. Therefore, I dismiss Ms. Ziola's claim.

22. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. ICBC was successful but did not pay CRT fees. I dismiss Ms. Ziola's claim for CRT fees and dispute related expenses. I would not have ordered ICBC to reimburse Ms. Ziola's claimed $1,750 for her time spent on this dispute in any event, consistent with CRT rule 9.5(5) which says the CRT will not order one party to pay another party compensation for time spent except in extraordinary circumstances, which are not present here.

ORDER

23. I dismiss Ms. Ziola's claims and this dispute.

Micah Carmody, Tribunal Member