



Civil Resolution Tribunal

Date Issued: March 15, 2024

File: SC-2022-010260

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ishii v. ICBC*, 2024 BCCRT 275

BETWEEN:

BRANDON KIYOSHI ISHII

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident on March 19, 2022. Brandon Kiyoshi Ishii was driving his vehicle when it collided with a third-party vehicle travelling in the adjacent lane.

2. Mr. Ishii's insurer, Insurance Corporation of British Columbia (ICBC), held Mr. Ishii 50% responsible for the accident. Mr. Ishii says ICBC collected evidence from the third-party driver and vehicle but did not collect any evidence from Mr. Ishii or his vehicle. Mr. Ishii asks the CRT to "rule on accident fault" and claims \$574 as compensation for alleged increased insurance premiums.
3. ICBC says it correctly held Mr. Ishii partially responsible for the accident. ICBC denies owing Mr. Ishii any money.
4. Mr. Ishii 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.
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 court.
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.

ISSUE

9. The issue in this dispute is whether Mr. Ishii is entitled to compensation for increased insurance premiums.

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Mr. Ishii must prove his claims on a balance of probabilities (meaning more likely than not). I have reviewed all the parties' submissions and evidence but refer only to what I find necessary to explain my decision.
11. As noted, on March 19, 2022, Mr. Ishii was driving his vehicle when it collided with a third-party vehicle travelling in the adjacent lane. ICBC found Mr. Ishii 50% responsible for the accident. Mr. Ishii denies any responsibility for the accident. He says the third-party vehicle changed lanes into his vehicle and is entirely responsible for the accident. The third-party driver says it was Mr. Ishii who changed lanes.
12. As noted, Mr. Ishii asks the CRT to "rule on accident fault" and claims \$574 for alleged increased premiums.
13. First, to the extent Mr. Ishii is seeking an order declaring he is not responsible for the March 19, 2022 accident, this is known as "declaratory relief". Also, ordering someone to do something, or to stop doing something, is known as "injunctive relief". This would include an order for ICBC to reverse its liability decision, or to revise Mr. Ishii's insurance rates. Both injunctive and declaratory relief are outside the CRT's small claims jurisdiction, except where permitted by section 118 of the CRTA. There are no relevant CRTA provisions that would permit me to grant the injunctive and declaratory relief Mr. Ishii seeks.
14. However, if Mr. Ishii can prove he suffered damages (such as overpaid insurance premiums) due to ICBC improperly or unreasonably assessing his claim and assigning fault, an award for those damages is within the CRT's small claims jurisdiction, up to the \$5,000 monetary limit.

15. I infer that Mr. Ishii argues ICBC improperly or unreasonably held him 50% at fault for the accident.
16. ICBC owes Mr. Ishii a duty of good faith, which 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. Hryniew*, 2014 SCC 71 at paragraphs 22, 55, and 93. As noted in the Continuing Legal Education 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. 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 *MacDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283.
17. To succeed in his claim against ICBC, Mr. Ishii must prove on a balance of probabilities that ICBC breached its statutory obligations or its contract of insurance, or both. So, the question is whether ICBC acted "properly or reasonably" in investigating the accident and determining responsibility for the accident. See *Singh v. McHatten*, 2012 BCCA 286, referring to *Innes v. Bui*, 2010 BCCA 322.
18. Here, I find there is no indication ICBC breached its statutory obligations or its contract of insurance. Mr. Ishii alleges that ICBC did not advise him of the accident claim reported by the third-party driver until two months after the accident, which prevented him from getting video footage from a nearby restaurant. ICBC says Mr. Ishii had a duty to report the accident within a reasonable amount of time and did not do so. ICBC says Mr. Ishii cannot be prejudiced by his own delay in reporting the accident. I agree. The evidence does not show Mr. Ishii reported the accident until ICBC contacted him. Mr. Ishii was undisputedly involved in the accident himself and knew about it when it occurred. So, I find it was open to him to obtain any video footage from nearby businesses after the accident occurred. The timing of ICBC contacting Mr. Ishii after the claim was reported by the third-party driver did not prevent him from doing so.

19. Mr. Ishii also says ICBC failed to call him back and “quietly ruled on [his] fault in the accident”. Mr. Ishii says ICBC did not provide any emails, letters, or other correspondence from ICBC. ICBC’s file notes show it called Mr. Ishii on several occasions, including to advise him of its responsibility determination. ICBC also sent Mr. Ishii letters about the accident, including a letter advising him someone made an accident claim involving his vehicle and asking him to contact ICBC, and a CL722 detailed accident responsibility letter. So, I find this allegation unproven.
20. Mr. Ishii also alleges that ICBC collected evidence from the third-party driver but not from Ms. Ishii himself even when offered. ICBC acknowledges there were some delays in following up with Mr. Ishii’s inquiries, but says it did not determine responsibility until after collecting reports from both drivers and providing both the opportunity to provide any evidence they wanted to be considered. The evidence shows ICBC considered both Mr. Ishii’s and the third-party driver’s reports when determining responsibility for the accident. There were no witnesses to the accident. The evidence also shows ICBC obtained Mr. Ishii’s dashcam footage, as ICBC itself submitted stills of Mr. Ishii’s dashcam footage as evidence in this dispute. More on this below. So, I find Mr. Ishii has not shown ICBC failed to collect and consider evidence from Mr. Ishii about the accident.
21. I note Mr. Ishii provided several dashcam footage still images from immediately after the accident in evidence in this dispute, but did not provide any footage from the accident itself. ICBC says the CRT should draw an adverse inference against Mr. Ishii for his failure to do so. The CRT may draw an adverse inference when a party fails to provide relevant evidence without a good explanation. An adverse inference is when the CRT assumes that the party did not provide the evidence because it would not help their case.
22. Mr. Ishii says the dashcam footage of the accident itself was overwritten by his dashcam software because so much time has passed since the accident. He says the “parked footage” from after the accident is stored in a different file. However, he did not provide any details or evidence to support this, and the dashcam footage Mr.

Ishii provided to ICBC also includes driving footage from immediately after the accident. Given this, I do not find Mr. Ishii's explanation that the accident footage itself was overwritten due to the passage of time credible. Therefore, I find it appropriate to draw an adverse inference against Mr. Ishii here. Based on this adverse inference, I find the dashcam footage would show Mr. Ishii is at least 50% responsible for the accident.

23. Based on the evidence before me, on balance, I find Mr. Ishii has not proved ICBC breached its statutory obligations or its contract of insurance, or that it acted unreasonably or improperly in investigating the accident and assigning fault. As a result, I dismiss Mr. Ishii's claims.
24. However, I would have dismissed Mr. Ishii's claim for failing to prove damages in any event. Despite claiming \$574 for increased premiums, Mr. Ishii has not proved he paid any increased premiums. Mr. Ishii says he determined this amount by comparing the premium payments in his bank records. However, he did not provide his bank records or any other evidence to show any increase in insurance premiums. So, as noted, I would have dismissed Mr. Ishii's claim for damages as unproven, regardless of whether ICBC breached its statutory obligations or its contract of insurance.

CRT fees and expenses

25. Under CRTA section 49 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. Ishii was unsuccessful, I dismiss his claim for reimbursement of paid CRT fees. ICBC did not pay any CRT fees and neither party claimed any dispute-related expenses.

ORDER

26. I dismiss Mr. Ishii's claims and this dispute.

Leah Volkers, Tribunal Member