



Civil Resolution Tribunal

Date Issued: March 22, 2024

File: SC-2023-002342

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pressney v. ICBC*, 2024 BCCRT 304

B E T W E E N :

ANDREW PAUL PRESSNEY and KRISTYN HUBBERT

APPLICANTS

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This small claims dispute is about vehicle damage. Kristyn Hubbert says her vehicle was damaged when an underground fuel tank cover at a gas station dislodged as Andrew Paul Pressney drove her vehicle over it. The applicants say the respondent insurer, Insurance Corporation of British Columbia (ICBC), improperly held them at fault for the single-vehicle accident. The applicants say the gas station was negligent

and is responsible for the fuel cover dislodging. The gas station is not a party to this dispute. The applicants disagree with ICBC's assessment, and collectively claim reimbursement of \$1,175 for the deductible and additional vehicle repairs.

2. ICBC says it properly classified the accident as a "collision" under Miss Hubbert's insurance policy. It denies the applicants are entitled to any deductible reimbursement. ICBC also says it has already paid for some vehicle repairs, and says the further requested repairs are still under review.
3. The applicants are self-represented. ICBC is represented by an authorized employee.

JURISDICTION AND PROCEDURE

4. 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.
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. 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.
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. 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

8. The issues in this dispute are:
 - a. Whether the applicants are entitled to reimbursement of the paid deductible, and
 - b. Whether the CRT has jurisdiction over the applicants' vehicle repair claims.

EVIDENCE AND ANALYSIS

9. In this civil proceeding, the applicants must prove their 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.
10. On July 25, 2022, Mr. Pressney was driving Miss Hubbert's vehicle out of a gas station. As Mr. Pressney was leaving the gas station, he drove over an underground fuel tank cover (cover), and the cover flipped up from the ground and damaged Miss Hubbert's vehicle's undercarriage. None of this is disputed.
11. At the outset, I note that although Mr. Pressney was driving the vehicle at the time of the accident, Miss Hubbert is the vehicle's sole registered owner. Mr. Pressney reported the collision to ICBC, and ICBC accepted the claim as a single vehicle "collision" claim under Miss Hubbert's insurance policy. As noted, the applicants disagree with ICBC's fault assessment and claim reimbursement of the paid deductible and the cost of further repairs. However, I find Mr. Pressney himself has no right of action against ICBC for any of the above claims under Miss Hubbert's insurance policy. So, I dismiss Mr. Pressney's claims against ICBC. I will proceed to consider Miss Hubbert's claims against ICBC.

Deductible refund

12. It is undisputed that Miss Hubbert's vehicle underwent some repairs, and was subject to a \$500 deductible which Miss Hubbert paid. Miss Hubbert says she should not be

responsible for paying the \$500 deductible given the gas station's alleged negligence. As noted, the gas station is not a party to this dispute.

13. Miss Hubbert argues ICBC failed to fully investigate the claim and improperly assigned Miss Hubbert 100% responsibility for the accident.
14. ICBC says it properly accepted Miss Hubbert's claim under her insurance policy's "collision coverage", which provides coverage for loss or damage caused when, among other things, an insured's vehicle collides with another object, including, but not limited to, the surface of the ground, the roadway being travelled on or an object on, in, under, over or adjacent to the roadway. Notably, none of the parties included a copy of Miss Hubbert's policy. However, Miss Hubbert does not dispute that ICBC accepted her claim and paid for some vehicle repairs under her insurance policy's collision coverage.
15. After ICBC accepted the claim, Mr. Pressney informed ICBC that the gas station must have neglected to maintain the cover. Mr. Pressney provided ICBC with photographs of the cover and ground area. Mr. Pressney said the steel ring and locking mechanism for the cover was degraded such that it would not hold the cover in place, resulting in the cover dislodging when he drove over it.
16. To succeed in her claim against ICBC, Miss Hubbert must prove on a balance of probabilities that ICBC breached its statutory obligations or its contract of insurance, or both. The issue is whether ICBC acted "properly or reasonably" in administratively assigning responsibility solely against Miss Hubbert. See *Singh v. McHatten*, 2012 BCCA 286. As a single-vehicle accident, I find Part 11 of the *Insurance (Vehicle) Act*, "Basic Vehicle Damage Coverage" does not apply.
17. ICBC owes Miss Hubbert 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. Hrynew*, 2014 SCC 71 at paragraph 33, 55 and 93. 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. 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.

18. As noted, Miss Hubbert argues ICBC failed to properly investigate the cause of the cover coming off and damaging her vehicle. Miss Hubbert says the gas station clearly failed to maintain the cover, and it was a hazard to any vehicle at the gas station. Miss Hubbert provided videos and photos of the cover that damaged her vehicle, and of other ground fuel tank covers at the gas station as evidence in this dispute. Miss Hubbert says while the other covers all lie flat and flush to the ground, the cover that caused damage to her car was not flush to the ground, and was itself damaged and not locked into place like the other covers. Miss Hubbert also provided photographs that show the concrete surrounding the cover has since been repaired.
19. Despite the above, notably, Miss Hubbert does not dispute that the accident was a single vehicle accident that occurred where her vehicle collided with an object on the roadway (the cover). On the evidence before it, ICBC determined the accident was a single vehicle accident that fell under Miss Hubbert’s collision coverage. So, it found Miss Hubbert was responsible for the deductible under her insurance policy’s collision coverage.
20. Based on the evidence before me, I find ICBC reasonably investigated Miss Hubbert’s claim and reasonably relied on the documentation Miss Hubbert and Mr. Pressney provided. I find ICBC reasonably relied on the information it had during its investigation.
21. On balance, I find Miss Hubbert has not proven ICBC acted improperly or unreasonably in investigating the claim and administratively assigning responsibility for the vehicle damage to Miss Hubbert under her collision coverage. I find the claim was properly classified under Miss Hubbert’s “collision coverage” and she is subject to the \$500 deductible. As a result, I find she has not proved she is entitled to

reimbursement of the paid deductible from ICBC and I dismiss this aspect of her claims against ICBC.

22. Nothing in this decision prevents the applicants from making a claim against the gas station, subject to any limitation period. For clarity, I make no findings about whether the gas station was negligent.

Further repairs

23. As noted, ICBC has already paid for some vehicle repairs. However, Miss Hubbert says her vehicle requires further repairs as a result of the accident, and asks that ICBC complete further repairs and reimburse her for some further repair costs she has already incurred. For its part, ICBC says the further repairs are still under review and it is waiting on confirmation that the further repairs are accident-related. Miss Hubbert did not dispute this, but in reply submissions says she has not heard from ICBC since April 2023.
24. The evidence does not show that ICBC has declined to compensate Miss Hubbert for any further vehicle repairs. So, I find this claim is likely premature. However, even if ICBC had declined to compensate Miss Hubbert for further repairs, I find the CRT does not have jurisdiction over this aspect of Miss Hubbert's claims. My further reasons follow.
25. Section 176 of the *Insurance Vehicle Regulation (IVR)* defines a "coverage dispute" as a dispute between the vehicle's owner and ICBC about the nature and extent of required repairs or replacement, or the value of the direct loss of or damage to the vehicle. I find the applicant's claim for further repairs is a coverage dispute under section 176. IVR Section 176(2) says that subject to section 176(3), unless the parties to the coverage dispute voluntarily resolve it, the dispute **must** be resolved by arbitration under IVR section 177 (my emphasis added). Section 176(3) says a coverage dispute must not be submitted more than 2 years after the loss, and here the loss occurred less than 2 years ago, on July 25, 2022.

26. None of the parties addressed this section in their submissions. However, I find it is unnecessary to obtain the parties' submission on this issue because the IVR section 177 arbitration provision is a mandatory provision. Given the above, I find Miss Hubbert's claim for further vehicle repairs under the IVR must be resolved through arbitration and the CRT does not have jurisdiction over this aspect of Miss Hubbert's claims. Therefore, I refuse to resolve Miss Hubbert's claim for further vehicle repairs under CRTA sections 11(1)(a)(i) and (1)(e).

CRT fees and expenses

27. 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 the applicants were unsuccessful, I dismiss their claim for reimbursement of CRT fees. ICBC did not pay any CRT fees and none of the parties claimed dispute-related expenses.

ORDERS

28. I dismiss Mr. Pressney's claims.

29. I dismiss Miss Hubbert's claim for reimbursement of her paid deductible.

30. I refuse to resolve Miss Hubbert's claim for further vehicle repairs under CRTA section 11.

Leah Volkens, Tribunal Member