



Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

SEAN DANIEL MURPHY

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

A N D :

SEAN DANIEL MURPHY

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. This is a small claims dispute about liability for damages arising from a collision between a cyclist and a motor vehicle.
2. On October 26, 2022, Sean Daniel Murphy was riding his bicycle from a sidewalk across a private parking lot laneway when he collided with a third party motor vehicle insured by the Insurance Corporation of British Columbia (ICBC). The collision resulted in damage to both Mr. Murphy's bicycle and the vehicle.
3. After investigating the collision, ICBC determined Mr. Murphy was fully responsible for the collision. It paid for the cost of repair to the vehicle and sought reimbursement from Mr. Murphy.
4. Mr. Murphy disagrees with ICBC's assessment of his liability. He says the third party driver was traveling at an unsafe speed and driving without due care and attention. He says he was not solely at fault and claims \$1,574.99 for the cost of a replacement bicycle. He also says ICBC paid too much for the vehicle repairs and that he should not be responsible to pay for them.
5. ICBC says Mr. Murphy does not have an ICBC insurance policy and so it is not responsible for replacing the bicycle. ICBC counterclaims for an order that Mr. Murphy pay \$2,802.33 for third party vehicle repairs.
6. Mr. Murphy represents himself. An employee represents ICBC.
7. For the reasons that follow, I dismiss Mr. Murphy's claim and almost entirely allow ICBC's counterclaim.

JURISDICTION AND PROCEDURE

8. These are the Civil Resolution Tribunal (CRT)'s formal written reasons. The CRT has jurisdiction over small claims brought under *Civil Resolution Tribunal Act* (CRTA) section 118. CRTA section 2 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.

9. CRTA section 39 says the CRT has discretion to decide the hearing's format, 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. The parties provided nearly identical diagrams of the collision which I have relied on in resolving the dispute. 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.
10. CRTA section 42 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.
11. Where permitted by CRTA section 118, 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

12. The issues in this dispute are:
 - a. Does Mr. Murphy have any claim against ICBC for repairs to his bicycle?
 - b. Who is responsible for the October 26, 2022 accident?
 - c. Is Mr. Murphy responsible for the full cost of vehicle repairs?

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, each party, as the applicant in their respective claims, must prove their claim on a balance of probabilities. 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. Despite having the opportunity to do so, ICBC did not provide final reply submissions in its counterclaim.

14. On October 26, 2022, Mr. Murphy was riding his bicycle north along a sidewalk that separated a furniture store on his left from a parking lot on his right. He cycled towards a perpendicular laneway running east-west between the furniture store's northern wall and another store's southern wall. The laneway continues until it reaches Spall Road, which runs parallel to the storefront sidewalk on which Mr. Murphy was cycling. For clarity, I note Spall Road has its own sidewalk that is not at issue in this dispute.
15. Concrete barriers block the furniture store's parking lot at the north end. They prevent vehicles from exiting the furniture store's parking lot and entering the laneway. However, the barrier ends at the sidewalk, creating a gap between the store and the barrier that allowed pedestrians to access, and cross, the laneway.
16. The sidewalk does not continue north of the laneway. There is another parking lot on the laneway's other side.
17. Mr. Murphy cycled through the gap between the barrier and the furniture store. As he did so, the vehicle's driver drove west along the laneway towards Spall Road. Mr. Murphy says the vehicle did not see him, so he applied his brakes. He swerved hard, flew off his bike, and struck the vehicle's passenger-side rear panel.
18. Photos show the impact left a large dent in the panel above the rear passenger wheel, a black scrape along the panel behind it, and the rear bumper partially separated from the vehicle. Mr. Murphy says the collision irreparably damaged his bicycle.

Bicycle Damage

19. Mr. Murphy says ICBC should pay the cost of replacing his bicycle. While he does not specifically explain the basis for his claim, he argues that ICBC should not have found him 100% liable for the collision and that the vehicle driver was driving too quickly. So, I infer he is arguing the driver was partially or fully negligent.

20. However, Mr. Murphy has incorrectly brought his claim against ICBC instead of the vehicle driver. He does not have a claim in negligence against ICBC. I note further that ICBC says Mr. Murphy did not have any contract of insurance under which it must pay him, so he also has no claim for breach of contract or statutory duty.
21. Under *Insurance (Vehicle) Act* (IVA) sections 171 and 172(1), parties cannot bring claims for vehicle damage for an accident that occurs on a highway and involves at least two included vehicles. This, along with IVA section 115, which prohibits bodily injury actions arising from an action, is generally known as the “tort ban.” However, a bicycle is not an “included vehicle” under this provision and the damage to his bicycle is not damage to a “vehicle.” So, I find the tort ban does not apply to this collision.
22. Since Mr. Murphy did not direct me to any statutory duty ICBC had to him as a non-insured party, and he did not have an insurance contract with ICBC, I find Mr. Murphy grounds his claim in the common law tort of negligence. While my jurisdiction includes the ability to assess whether the third party driver was negligent, I cannot do so without when the driver is not a party.
23. The BC Provincial Court explained why in *Kristen v. ICBC*, 2018 BCPC 106.

The court cannot assess liability unless the other driver is given an opportunity to present his or her case on that issue. If the other driver is not served and given an opportunity to be heard the court would only have the version of events provided by the claimant to consider. The other driver has a right to notice that the court is being asked to consider the issue of liability and an opportunity to participate in the proceedings to present his or her version of the events.

The proper way for the claimant to do that is to sue the other driver. The proper defendant in an action to determine liability in a motor vehicle accident is the other driver, not ICBC...

24. While that decision is not binding on me, I find it persuasive and apply the same reasoning here.¹
25. So, I dismiss Mr. Murphy's claim against ICBC. I note that nothing in this decision prevents Mr. Murphy from filing a dispute against the third party driver, subject to the applicable limitation period.

Vehicle Damage

26. Under IVA section 84(1), ICBC has a right to bring an action to recover money it spent paying benefits or insurance money to an insured party. Here, ICBC says Mr. Murphy was solely responsible for the collision and so is solely responsible for the money it paid to repair the vehicle.
27. As above, Mr. Murphy says the third party driver was either solely or partially responsible. Further, Mr. Murphy says ICBC paid too much for the repairs and alleges that repairs were for damage beyond that caused in the collision.

Responsibility for the Collision

28. In a January 4, 2023 email, an ICBC adjustor explained their rationale for finding Mr. Murphy responsible for the collision. They said Mr. Murphy failed to yield the right of way to the vehicle while he was exiting a parking lot. In support, they cited *Motor Vehicle Act* (MVA) sections 144(1), 176(1) and (2), and 183(1), though they did not clearly explain how those sections applied.
29. MVA section 183(1) says a person operating a cycle on a highway has the same rights and duties as a driver. Under MVA section 1, a highway includes every lane or right of way intended for or used by the general public for the passage of vehicles as well as every private place or passageway to which the public, for the purpose of parking vehicles, has access or is invited.

¹ See, also: *Singh v. Insurance Corporation of British Columbia*, 2019 BCCRT 701.

30. Here, the collision occurred on a laneway that services parking lots in a commercial area. So, I find it meets the MVA section 1 definition of a highway, and any reference to a driver below includes a reference to a cyclist, like Mr. Murphy.
31. Section 176(1) sets out a driver's responsibilities when approaching and crossing a sidewalk. Since neither party was immediately about to drive across a sidewalk, I find it does not apply.
32. Section 176(2) says a driver about to enter or cross a highway from an alley, lane, driveway, building or private road must yield the right of way to traffic approaching on the highway so closely it constitutes an immediate hazard.
33. Arguably, section 176(2) does not apply, since Mr. Murphy approached a highway (the lane) from a sidewalk that ran alongside the furniture store and not from anything listed in section 176(2). I note this sidewalk does not meet the MVA section 1 definition of a sidewalk, which must be between the curb lines of a roadway and the adjacent property lines improved for use of pedestrians.
34. Finally, section 144(1) says a person must not drive a motor vehicle on a highway without due care and attention. Again, I find this section does not apply, since a bicycle is not a motor vehicle.
35. However, under MVA section 183(14), a person must not operate a cycle on a highway without due care and attention or without reasonable consideration for other persons using the highway.
36. Here, I find Mr. Murphy violated section 183(14) by operating a cycle without due care and attention. When he approached the east-west laneway, he was hidden from oncoming traffic by the furniture store. The concrete barriers placed to prevent vehicle traffic from entering the laneway made it unlikely that a vehicle would suddenly appear travelling north between parking lots. Mr. Murphy hit the vehicle's rear panel, which suggests that the car had already begun to cross in front of him when he struck it.

37. On the other hand, the vehicle was travelling along a marked two-way lane towards Spall Road. Given the concrete barriers along the edge of the furniture store parking lot, the driver had a reasonable expectation that nothing, including a bicycle, would suddenly and quickly enter the lane from the south, and certainly not before determining it was safe to do so. Specifically, I find the driver could not have expected Mr. Murphy to bicycle through the gap between the barrier and the store at a speed that prevented him from stopping safely.
38. So, I find Mr. Murphy's negligence was the collision's sole cause.
39. Briefly, I note that Mr. Murphy complained that ICBC took 3 months to assess responsibility, and once it had done so, he could no longer get security footage from nearby buildings. However, Mr. Murphy knew he was involved in the collision, and nothing prevented him from requesting security footage at any time prior to receiving ICBC's assessment.

Cost of Repairs

40. A December 20, 2022 letter from ICBC asks Mr. Murphy to pay \$3,802.33 for the cost of repairs.
41. ICBC provided an estimate from the repair shop for \$3,796.03 and says the final cost of repairs to the vehicle was \$3,802.33. It does not explain the \$6.30 difference between the estimate and the final bill. While ICBC provided a record showing it paid \$2,802.33, it does not explain the difference from the estimate. It acknowledges the insured driver paid a \$1,000 deductible. So, I find ICBC's claim is for a maximum of \$2,796.03.
42. The repair shop provided a detailed estimate. It details the labour required to make repairs to the vehicle, sets out part numbers and costs, and is confined to the car's rear portion, including the bumper and rear quarter panel. While there are labour charges that list other parts of the car – such the “roof” and “rear door,” for example - I find these are likely incidental to the rear panel's repair.

43. Mr. Murphy alleges the only damage to the vehicle was a small panel dent and a rubber mark that he could wipe off with his hand. He says there was no paint damage. He does not address the bumper.
44. I am unable to conclusively determine the damage's total extent from the photographs. Mr. Murphy's photograph shows a large dent and a clear black and grey streak along the rear quarter panel. It is not clear from the photograph that it is only easily removable rubber.
45. A photo provided by the driver, on the other hand, also shows the bumper has separated from the autobody. The photos show the car parked in the same location. The pavement texture under the car has two distinct patterns and is the same in both photos. I find this proves the collision also caused the bumper damage.
46. The vehicle repair shop had the advantage of examining the car when making an estimate. While Mr. Murphy provided a third party opinion that he could repair the dent for between \$400 and \$475 plus GST, that was on the basis of two photos only. It did not include any paint damage or bumper damage. The estimate did not set out the assessor's qualifications or experience. I give it little weight.
47. While Mr. Murphy alleges the driver had pre-existing damage repaired at the same time, he does not specify what that damage was. I find the listed repairs in the estimate are consistent with the photographs of damage from the accident site.
48. On the whole, I find the weight of the evidence before me supports ICBC's position. So, I find the repairs were for damage caused by Mr. Murphy's negligent operation of his bicycle and I order that he reimburse ICBC \$2,796.03.
49. The *Court Order Interest Act* applies to the CRT. ICBC is entitled to pre-judgment interest on the award from December 20, 2022, the date it first sought payment from Mr. Murphy to the date of this decision. This equals \$178.84.
50. Under CRTA section 49 and the 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. Since Mr. Murphy was unsuccessful, I dismiss his claim for CRT fees. I find ICBC is entitled to reimbursement of \$75 in paid CRT fees. ICBC did not claim any dispute-related expenses.

ORDERS

51. Within 21 days of the date of this order, I order Mr. Murphy to pay ICBC a total of \$3,049.87, broken down as follows:
 - a. \$2,796.03 in debt,
 - b. \$178.84 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$75 in CRT fees.
52. ICBC is entitled to post-judgment interest, as applicable.
53. Mr. Murphy's claims are dismissed.
54. This is a validated decision and order. Under CRTA section 58.1, 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.

Christopher C. Rivers, Tribunal Member