



Civil Resolution Tribunal

Date Issued: September 5, 2024

File: SC-2023-004226

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gill v. ICBC*, 2024 BCCRT 866

B E T W E E N :

KULDEEP GILL

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Amanda Binnie

INTRODUCTION

1. This dispute is about a motor vehicle accident that occurred on October 19, 2021. The applicant, Kuldeep Gill, says the respondent, Insurance Corporation of British Columbia (ICBC), incorrectly found him at fault for the accident. Mr. Gill asks for a review of ICBC's liability finding and a refund of \$3,190.93 in premiums says he says he paid.
2. ICBC says its decision was based on an independent witness' statement. ICBC says in any event, this accident did not increase Mr. Gill's premiums.

3. Mr. Gill is 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. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
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. I find Mr. Gill's version of the accident is well set out in his statements to ICBC and his submissions. 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. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
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.

ISSUE

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

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Mr. Gill 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. Mr. Gill did not provide any reply submissions, despite being given an opportunity to do so.
10. On October 19, 2021, Mr. Gill was driving his truck and empty trailer westbound on Lougheed Highway. He says traffic was heavy due to construction and while he was stopped, another vehicle hit the side of his vehicle. He argues the other driver's side mirror being flipped supports they must have hit him. There was no damage to Mr. Gill's truck or trailer.
11. ICBC says based on the statements of the other driver and an independent witness, Mr. Gill instead merged into the other vehicle's lane, striking the other vehicle. ICBC says the damage is consistent with Mr. Gill turning into the other vehicle, if the other driver was driving faster than Mr. Gill. ICBC denies Mr. Gill paid \$3,190.03 in increased premiums. It says it paid the \$3,190.03 to repair the other vehicle.
12. ICBC owes Mr. Gill 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 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).
13. To succeed in his claim against ICBC, Mr. Gill 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 assigning fault to Mr. Gill (see: *Singh v. McHatten*, 2012 BCCA 286, referring to *Innes v. Bui*, 2010 BCCA 322).

14. In response to an email from Mr. Gill, an ICBC manager, KB, says in assessing fault, ICBC took statements from both drivers and an independent witness, KW. KB confirmed ICBC found Mr. Gill at fault under *Motor Vehicle Act* (MVA) section 151. MVA section 151 says a driver must not change lanes unless it can be done safely. KB confirmed the \$3,190.03 was paid to repair the other vehicle.
15. In their statement, KW says they were driving behind Mr. Gill in the right lane, when Mr. Gill tried to merge into the left lane and hit the other car. KW says traffic was very backed up, and they believed Mr. Gill was trying to get to a turning lane to get off Lougheed Highway. KW said there was nothing the other vehicle could have done to avoid being hit. While I do not make any findings on Mr. Gill's motivation based on KW's statement, I accept the evidence before ICBC was that it was Mr. Gill that turned into the other driver.
16. The statement of the other driver, MS, says they were in the left lane, when Mr. Gill suddenly turned into their vehicle. MS says that due to construction, Mr. Gill's lane eventually needed to merge into theirs, but not at the accident location. I find the statements of MS and KW give a similar description of the accident.
17. Mr. Gill argues that the other driver had no evidence showing Mr. Gill was at fault, and, in emails to KB, that the other driver had no witnesses either. However, Mr. Gill does not say anything about KW's evidence.
18. In his claims assessment review application dated November 2021, Mr. Gill mentions a "flagger" that saw the accident and allegedly told Mr. Gill his trailer was stopped when he was hit. However, nowhere does Mr. Gill say he gave this contact information to ICBC, and at no other time is the flagger mentioned in his later communications with ICBC. I find ICBC did not act unreasonably in not contacting a witness Mr. Gill did not provide contact information for.

19. Based on the above, I find ICBC reasonably took statements from both drivers and the witness it had contact information for. While Mr. Gill says there was miscommunication and language issues in getting his side of the story, I find that KB's emails show ICBC did consider Mr. Gill's statement, but preferred KW's statement. So, I find Mr. Gill has not proven 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. Gill's claim.
20. As I have dismissed Mr. Gill's claim, I do not need to consider his claim for reimbursement for insurance premiums. However, I note the amount Mr. Gill is claiming in his Dispute Notice, \$3,190.03, is the amount ICBC paid to repair MS's vehicle. There is no evidence Mr. Gill himself paid this amount. In his claim for dispute-related expenses, Mr. Gill says he paid an extra \$2,542.38 in insurance premiums over 2 years, but provided no supporting documentation. So, I would have dismissed his claim for reimbursement in any event.
21. 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. I see no reason in this case not to follow that general rule. As Mr. Gill was the unsuccessful party, I find he is not entitled to reimbursement of his paid CRT fees. While ICBC was successful, it did not pay any fees. Neither party claimed any dispute-related expenses, other than the insurance premiums addressed above.

ORDER

22. I dismiss Mr. Gill's claims and this dispute.

Amanda Binnie, Tribunal Member