



Civil Resolution Tribunal

Date Issued: February 2, 2018

File: SC-2017-002925

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chen v. Insurance Corporation of British Columbia*, 2018 BCCRT 25

B E T W E E N :

Jing Chen

APPLICANT

A N D :

Insurance Corporation of British Columbia

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The respondent insurer, Insurance Corporation of British Columbia (ICBC), found the applicant Jing Chen was 100% liable for damage to another vehicle owned by a third party Mr. B, arising from a July 2015 incident. Ms. Chen says she suspected fraud and denies any liability, and submits ICBC failed adequately investigate the matter.

2. Ms. Chen wants her ICBC insurance claim history cleared of this incident. She also asks for \$400 to clear any ICBC penalties along with \$2,599 in damages for mental stress and psychological pain. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. Neither party requested an oral hearing.
5. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
6. Under tribunal rule 121, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. The issues in this dispute are:
 - a. Was Ms. Chen likely involved in the July 2015 incident giving rise to Mr. B's 2015 ICBC claim?

- b. Did ICBC adequately investigate Mr. B's claim?
- c. Did ICBC properly assess 100% liability against Ms. Chen for Mr. B's claim?
- d. To what extent, if any, is Ms. Chen entitled to her requested remedies?

EVIDENCE AND ANALYSIS

- 8. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
- 9. Ms. Chen says that on July 20, 2015 she received ICBC's letter notifying her of Mr. B's claim that Ms. Chen had caused damage to his vehicle on July 8, 2015. At the material time, Mr. B drove a blue 2008 Pontiac Wave. Ms. Chen drove a white Honda CR-V. Mr. B's claim report was that the driver of Ms. Chen's vehicle had opened her driver's side door in a way that struck and damaged his front passenger side door, while parked in the lot of Save-On-Foods in Surrey. Mr. B reported that the driver drove off without leaving her details, but that he recorded her license plate. Mr. B gave evidence to ICBC that he had been standing in the parking lot with another person, Mr. E (who worked at the store), and they both witnessed the incident. ICBC interviewed Mr. E by telephone, and ICBC's telephone notes indicate he confirmed Mr. B's account and also described Ms. Chen as the driver of the vehicle that hit Mr. B's car.
- 10. Ms. Chen says she told ICBC that she recalled that there was a small light green car parked close to her car on that day, and that her driver's door had only touched this green car when she got into her car. She says she did not believe there was any damage done. Given this and that Mr. B's car is blue not green, Ms. Chen says she suspected fraud, and asked ICBC to contact a witness about the car's colour. Ms. Chen says the ICBC claims adjuster, Ms. R, acknowledged she never contacted the witness. Yet, I have ICBC's telephone notes of the interviews with Mr. E and Mr. B. There is no other witness information before me.

11. Ms. Chen says that neither the photos of the blue car nor the witness' statement support ICBC's final decision that Ms. Chen was 100% liable for the claim. I do not agree.
12. As referenced above, Ms. Chen signed a July 22, 2015 statement in which she acknowledged that she may have hit a "little green car" car next to hers in the Save-On-Foods parking lot. Ms. Chen also questioned if the other car had pre-existing damage.
13. ICBC inspected Ms. Chen's Honda and found that the height of the Pontiac's damage likely matched a point in the body of the Honda's door. In its August 11, 2015 letter, ICBC assessed 100% liability against Ms. Chen. Before coming to this decision, ICBC's estimating manager concluded that the Pontiac repairs were reasonable and likely related to the damage caused. I find that ICBC's investigation of the incident was reasonable, given the evidence before me that included an estimator's examination, a review by a claims analyst, and telephone interviews with Ms. Chen, Mr. B and Mr. E.
14. ICBC submits that in accordance with sections 74 and 74.1 of the *Insurance (Vehicle) Regulation*, ICBC fulfilled its responsibility to investigate Mr. B's claim and properly admitted liability on Ms. Chen's behalf. I agree.
15. I find that the weight of the evidence before me supports ICBC's position and its assessment of 100% liability against Ms. Chen. Overall, I find the likely explanation is that Ms. Chen's car door hit Mr. B's car, and Ms. Chen simply had an inaccurate later recollection of the vehicle. I say this given the evidence of Mr. B's and Mr. E's statements to ICBC and Ms. Chen's own statement to ICBC recalling that she may have touched the car adjacent to hers in the Save-On-Foods parking lot. In particular, Ms. Chen acknowledged that the car parked next to hers, which I find was Mr. B's car, was parked very close to her, as she herself had parked almost on the yellow dividing line (as shown on Ms. Chen's diagram). Ms. Chen stated that she yelled for that car's driver to come move their vehicle, but no one came. I find that Ms. Chen had little space to open her door because she parked almost

right on the yellow line for the parking space and that she did in fact impact the car adjacent to hers.

16. The central issue in this dispute is Ms. Chen's assertion that her car door did not open into Mr. B's car because 12 days after the incident she said she believed that the other car was blue not light green, and, because she says the damage could not have resulted from her car's position.
17. I find Ms. Chen's later assertion about a different colour is not sufficient to establish that it was not her car that hit Mr. B's vehicle or that Mr. B's car was not hit at all. The totality of all the other evidence supports the conclusion that Ms. Chen hit Mr. B's car when she opened her car door in the parking lot. I also do not accept Ms. Chen's arguments about how her car door could not have caused the damage to Mr. B's vehicle, and instead I prefer ICBC's evidence from persons trained to provide that assessment. That ICBC's personnel could not be 100% definitive does not cause me to reject their on-balance assessment that Ms. Chen's vehicle hit Mr. B's vehicle.
18. Given my conclusions above, I find Ms. Chen has not established that Mr. B's claim was fraudulent, as Ms. Chen has alleged. I find Ms. Chen has not established that ICBC failed to conduct a reasonable investigation as required by the insurance contract and the relevant legislation.
19. In summary, I find ICBC has not breached its obligations under its insurance contract with Ms. Chen. I confirm ICBC's finding that Ms. Chen was 100% liable for the ICBC claim. As such, I do not need to address Ms. Chen's claims for damages.
20. I dismiss Ms. Chen's dispute, including her claim for reimbursement of tribunal fees.

ORDER

21. I order that the applicant's dispute is dismissed.

Shelley Lopez, Vice Chair