



Civil Resolution Tribunal

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File: SC-2023-001738

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Young v. ICBC*, 2024 BCCRT 153

B E T W E E N :

VICTOR YOUNG

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. This small claims dispute is about who is liable for a car accident. On October 4, 2022, Victor Young was in an accident with a third party on Marine Drive in Vancouver. The drivers collided as they both changed lanes into the middle lane of a three-lane road. Mr. Young and the third party were both insured by the Insurance Corporation of British Columbia (ICBC).

2. ICBC internally determined that Mr. Young was 50% responsible for the accident. Mr. Young says the accident was entirely the third party's fault because the third party side swiped them when they were established in the middle lane. Mr. Young claims \$2,395.75 in repair costs. ICBC stands by its initial liability assessment.
3. Mr. Young is self-represented. ICBC is represented by an 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 says 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.
5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute turns on the credibility of Mr. Young's and the third party's evidence. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I am properly able to assess and weigh the evidence and submissions before me and make the necessary credibility findings. There is no other compelling reason for an oral hearing, especially considering the CRT's mandate to provide proportional and speedy dispute resolution. I therefore decided to hear this dispute through written submissions.
6. CRTA section 42 says the CRT may accept as evidence any information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.
7. I note that ICBC argues that it acted "properly and reasonably" in assigning fault. This language reflects the legal test for accident responsibility claims under CRTA section 133(1)(d). However, this is a small claims dispute based on a breach of contract

because ICBC has a contractual obligation to indemnify Mr. Young based on a correct liability determination.¹ So, this dispute comes in a different legal context than accident responsibility claims, and a different test applies. So, I have assessed who is liable for the accident without placing any weight on ICBC's initial decision.

ISSUES

8. The issues in this dispute are:

- a. Who is liable for the accident?
- b. What, if anything, are Mr. Young's damages?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, Mr. Young as the applicant must prove their claims on a balance of probabilities. This means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. As noted, the accident occurred on Southeast Marine Drive in Vancouver, which has three lanes in each direction. Mr. Young and the third party were both driving west. Before the accident, Mr. Young was in the right lane and the third party was in the left lane. They both changed lanes into the middle lane and collided. The front passenger side bumper of the third party's vehicle scraped along the driver side of Mr. Young's car. The dispute is mostly about the timing of their respective lane changes. Mr. Young says they were fully established in the middle lane when the third party abruptly swerved. ICBC says the drivers were both changing lanes and should have noticed each other, conceding that the third party was partially at fault.
11. The third party had a rear camera. Because I find the footage particularly important, I will describe it in some detail.

12. Nothing relevant happens for the first 35 seconds of the video, which just shows moderately heavy traffic. At the 35-second mark, the third party stops in the left lane. Around the same time, Mr. Young stops in the right lane behind another stopped vehicle. Traffic in the middle lane is flowing slowly but smoothly. At 42 seconds, Mr. Young begins to slowly change lanes from the right lane to the middle lane. It is impossible to tell precisely, but Mr. Young appears to be at least two car lengths behind the third party. Then, Mr. Young pauses their lane change to allow a car to pass in the middle lane. As that vehicle passes in front of Mr. Young and beside the third party, Mr. Young accelerates into their lane change. At the same time, the third party begins to inch forward. At 43 seconds, the third party is barely moving. Mr. Young is about halfway into the middle lane, still more than a car length behind the third party. At 44 seconds, Mr. Young is just behind the third party as the third party accelerates and begins to turn more sharply from the left lane into the middle lane. At 45 seconds, Mr. Young leaves the frame as they pull alongside the third party. The third party continues her lane change for just under a second before there is an impact.
13. As noted, ICBC admits that the third party was negligent. I agree. It is clear from the dashcam video that the third party started changing lanes when Mr. Young was already partially established in the middle lane and there to be seen. The question is whether Mr. Young was also negligent.
14. The only evidence from the third party is ICBC's record of her initial report of the accident. These notes are hearsay, but the CRT routinely accepts adjusters' notes of phone calls because they are sufficiently reliable. I accept that the ICBC report accurately reflects what the third party told ICBC after the accident.
15. In that report, the third party said that she put on her right signal, shoulder checked to make sure the middle lane was clear, "paused for a brief second", and then started the lane change. She said in that brief pause, Mr. Young switched into the middle lane. Implicitly, the third party did not see Mr. Young do this.

16. Notably, Mr. Young has never alleged that the third party failed to signal her intention to change into the middle lane. Given the lack of denial, I accept that the third party had her right signal on. Based on her description of her actions and the timing in the video, I find that the third party likely had her right signal on when Mr. Young started their lane change.
17. I turn next to the applicable law. Section 151(a) of the *Motor Vehicle Act* (MVA) says that a driver must not change lanes unless it can be done safely and without affecting another vehicle. When a driver is uncertain whether it is safe, they must wait.ⁱⁱ The MVA is not a complete code of the rules of the road. The law expects drivers to take reasonable care for other road users. What is reasonable will depend on the circumstances. Sometimes, drivers must exercise extra caution when facing a dangerous, chaotic, or uncertain situation.
18. I find that the circumstances Mr. Young faced as they changed lanes demanded extra caution. Changing into a middle lane is an inherently risky maneuver because traffic can join the middle lane from both the right and left lanes. This requires a driver changing into a middle lane to pay attention to multiple lanes at the same time and be alive to a fluid traffic situation. This is especially true when some but not all lanes are stopped because in this situation it is common for drivers to jockey between lanes, as Mr. Young and the third party did.
19. Here, Mr. Young knew that traffic in the middle lane was moving and traffic in the right and left lanes had stopped. Mr. Young should have anticipated the possibility that vehicles in the left lane would also try to move to the middle lane to avoid stopped traffic. Mr. Young also saw, or should have seen, that the third party had signaled her intention to change lanes. With that context in mind, I find that Mr. Young should have changed lanes more slowly and cautiously. If Mr. Young had done so, I find they would have had time and space to stop when the third party started changing lanes. In short, I find that Mr. Young's driving fell below a reasonable standard, which was a cause of the accident.

20. The final question is apportioning fault. When two drivers are both negligent, liability is split based on their relative fault or blameworthiness. This requires an assessment of how much each driver's conduct fell below a reasonable standard.ⁱⁱⁱ
21. Here, I find the drivers' conduct was similarly blameworthy. They both had momentary lapses in judgment in busy traffic. They both should have been more careful when changing into the middle lane. While it is true that Mr. Young was more established in the middle lane than the third party, it is also true that Mr. Young was the following driver and therefore had a better opportunity to see the risk and avoid the accident. This is especially true given the fact that the third party had her signal on.
22. I therefore find that Mr. Young and the third party were equally at fault for the accident. It follows that I dismiss Mr. Young's damages claim.
23. 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. Mr. Young was unsuccessful, so I dismiss their claim for CRT fees and dispute-related expenses. ICBC did not claim any dispute-related expenses or pay any CRT fees.

ORDER

24. I dismiss Mr. Young's claim, and this dispute.

Eric Regehr, Vice Chair

ⁱ *Carriere v. ICBC*, 2023 BCCRT 963 at paragraphs 12 to 14.

ⁱⁱ *Uy v. Dhillon*, 2019 BCSC 1136, at paragraph 33.

ⁱⁱⁱ *Chambers v. Goertz*, 2009 BCCA 358.