



Civil Resolution Tribunal

Date Issued: April 22, 2024

File: SC-2023-002320

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Verhaeghe v. ICBC*, 2024 BCCRT 383

B E T W E E N :

KEITH VERHAEGHE

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This small claims dispute is about insurance coverage for vehicle damage. Keith Verhaeghe says he was driving on a dark highway at night on July 19, 2022 when his vehicle struck an animal. He says his insurer, Insurance Corporation of British Columbia (ICBC), improperly assessed the claim under his “collision” coverage instead of as an animal impact claim under his “comprehensive” coverage. He seeks

an order that the damage was caused by impact with an animal and for ICBC to reverse its decision and process the claim under his comprehensive policy. Mr. Verhaeghe also seeks reimbursement for his paid deductible for the collision claim, and for any increase to his insurance premiums that may result due to ICBC's assessment. In total, Mr. Verhaeghe claims \$2,500, with no breakdown provided. Mr. Verhaeghe is self-represented.

2. ICBC says it properly classified the incident as a collision under Mr. Verhaeghe's insurance policy. It denies Mr. Verhaeghe is entitled to any deductible reimbursement or alleged increase in premiums. An authorized employee represents ICBC.

JURISDICTION AND PROCEDURE

3. 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). 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.
4. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me and an oral hearing is not necessary.
5. 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.

Preliminary Issue

6. As noted above, Mr. Verhaeghe seeks an order that the vehicle damage occurred due to an animal impact. This is known as "declaratory relief". He also asks, in essence, that ICBC reverse its decision and process the claim under his comprehensive policy. Ordering someone to do something, or to stop doing

something, is known as “injunctive relief”. Both injunctive and declaratory relief are outside the CRT’s small claims jurisdiction, except where permitted by CRTA section 118. There are no relevant CRTA provisions that would permit me to grant the injunctive and declaratory relief Mr. Verhaeghe seeks. So, I decline to address these requested remedies. My decision about Mr. Verhaeghe’s damages claim, which is within the CRT’s small claims jurisdiction, follows.

ISSUE

7. The issue in this dispute is whether Mr. Verhaeghe is entitled to be reimbursed \$2,500, or some other amount, for his paid collision claim deductible and increased premiums.

EVIDENCE AND ANALYSIS

8. As the applicant in this civil proceeding, Mr. Verhaeghe must prove his claims on a balance of probabilities. I have considered all the parties’ submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
9. Mr. Verhaeghe says on July 19, 2022 he was driving back from work on the highway near Golden, BC at night when another vehicle struck an animal. Mr. Verhaeghe says at this point he had slowed down to 20 kilometers an hour. He says the animal landed on the yellow line in front of his vehicle, started limping into his lane, and he was unable to avoid it. Mr. Verhaeghe says the animal hit his driver’s side door, he drove over it, and watched the animal “eject” out of the back of his vehicle. Photographs in evidence show damage to the vehicle’s front, driver’s side doors, underside, and back bumper.
10. Mr. Verhaeghe reported the incident to ICBC the same night. It is undisputed Mr. Verhaeghe had his vehicle repaired at his autobody shop of choice, Les Schultz Autobody & Glass (Les Schultz). ICBC ultimately found no evidence of animal impact and assessed the claim under Mr. Verhaeghe’s collision coverage. It says the

collision claim was subject to a \$1,000 deductible. Mr. Verhaeghe says he should not be responsible for paying the \$1,000 deductible because ICBC should have processed the claim as an animal impact claim under his comprehensive coverage.

11. Although not addressed by the parties, I infer from the evidence that Mr. Verhaeghe's coverage for comprehensive claims is subject to a \$300 deductible. So, to the extent Mr. Verhaeghe claims a deductible reimbursement, I find his claim is limited to \$700, the difference between the 2 deductibles. Further, ICBC says that there has been no rate change to Mr. Verhaeghe's premiums to date. Mr. Verhaeghe also has not provided any evidence to show that his premiums have increased. So, I find it unproven that ICBC assessing the claim as a collision claim increased Mr. Verhaeghe's premiums. As a result, if Mr. Verhaeghe is successful in this dispute, I find his damages are limited to the \$700 difference in the insurance deductible. However, for the reasons that follow, I find Mr. Verhaeghe is not entitled to any reimbursement.
12. As noted above, Mr. Verhaeghe argues ICBC improperly assessed the incident as a collision claim when it should actually be a claim under his comprehensive coverage. Neither party provided a copy of Mr. Verhaeghe's insurance policy. However, it is undisputed that if Mr. Verhaeghe's vehicle struck an object, such as a tire as ICBC suggests, the claim would fall under his collision coverage, whereas if he struck an animal, the claim would fall under his comprehensive coverage.
13. Mr. Verhaeghe says that he called ICBC to report the incident right after it happened and told ICBC that he had hit an animal, which ICBC does not dispute. He says this is proof that he hit an animal and not a tire or another object. Mr. Verhaeghe also says that various photographs in evidence show that there was animal impact. These include photographs taken the night of the incident, the following day that were taken by Les Schultz, and photographs Mr. Verhaeghe took on October 17, 2022, after returning to Les Schultz because he was unsatisfied with the repairs.
14. Some of the photographs from July 20 show a black substance that transferred onto the driver's side doors. Mr. Verhaeghe says that he watched the mechanic at Les

Schultz wipe the substance off the door in one swipe with their finger. He says this suggests that the substance was a liquid and may have been animal feces. ICBC argues the substance was rubber from Mr. Verhaeghe's vehicle striking a tire on the road. Mr. Verhaeghe says that he previously worked at Kal Tire for 5 years and is very familiar with the properties of rubber. He says based on his experience and what he saw on the vehicle, the substance could not have been rubber as ICBC suggests. Mr. Verhaeghe also says that he feels the damage to his vehicle would have been worse if he had struck a solid object like a tire. Finally, Mr. Verhaeghe says that when he took the vehicle back to Les Schultz on October 17 after being unhappy with the repair work, he found animal hair on the front left wheel rim. He says that he barely drove the vehicle between then and July 19, so the animal hair must have been from the incident, proving that he had hit an animal and not an object.

15. ICBC disagrees. It says that after reviewing all the photographs Mr. Verhaeghe provided and speaking with the mechanic at Les Schultz, it properly concluded that Mr. Verhaeghe had struck an object and not an animal. ICBC relies on a July 12, 2023 vehicle damage assessment report from Jonathan Gough, Professional Engineer with CEP Forensic, as expert evidence in this dispute in support of its position.
16. I pause here to note that CRT rule 8.3(2) requires an expert to give a statement of their qualifications in evidence, which ICBC did not provide for Jonathan Gough. However, under CRT rule 1.2(2), I have discretion to waive that requirement to promote the fair and efficient resolution of a dispute. Prior CRT decisions have applied rule 1.2(2) to permit expert evidence without a statement of qualifications where the other party has not objected to the expert's qualifications. Here, while Mr. Verhaeghe questions the report's validity for other reasons, he does not specifically dispute Jonathan Gough's expertise or qualifications. So, as there is no dispute about Jonathan Gough's qualifications, I find they are an expert with respect to assessing motor vehicle damage, and I accept their report as expert evidence under the CRT's rules.

17. In assessing the vehicle's damage to determine whether there was evidence of animal impact, Jonathan Gough reviewed Les Schultz's repair estimate, 98 photographs that showed the vehicle damage, and 3 photographs that Mr. Verhaeghe took on October 17, after Les Schultz did the repair work. Jonathan Gough noted the transfer marks on the vehicle's left side as well as underneath it. They concluded that the transfer marks were black and similar to those that might occur as a result of contact to a vehicle tire lying on the road. They also found that the 3 photographs from October 17 showed what appeared to be animal hairs adhering to one of the wheel rims. Jonathan Gough compared photographs taken before the repairs of the front left wheel and concluded that the tire with the animal hairs was not the same tire. Jonathan Gough ultimately concluded that the damage was not consistent with an animal impact.
18. Mr. Verhaeghe disagrees with Jonathan Gough's conclusion. He says that Jonathan Gough's suggestion that a solid object such as a tire hit the vehicle is not possible. Mr. Verhaeghe also notes that Jonathan Gough did not examine the vehicle themselves, nor did they take samples of the substance that smeared on the vehicle. He further questions whether Jonathan Gough had all of the photographs and information necessary to make their findings. Mr. Verhaeghe says he questions the validity of the entire report as a result. However, Mr. Verhaeghe did not provide an expert report of his own to dispute Jonathan Gough's conclusions, nor did he take steps to have the substance tested. Further, CRT rule 8.3(7) says that a party generally cannot act as their own expert because the party is not neutral about the dispute's outcome. So, to the extent that Mr. Verhaeghe relies on his own expertise given his previous employment with Kal Tire, I give no weight to his opinion.
19. Notably, the photographs and notes taken by Les Schultz also say that the markings underneath the vehicle do not suggest there was an animal collision. Further, I am not persuaded that the October 17 photographs prove that Mr. Verhaeghe hit an animal and not an object on July 19, especially given the length of time that passed between the incident and Mr. Verhaeghe discovering the animal hairs.

20. Without expert evidence to the contrary, I give significant weight to Jonathan Gough's expert opinion that the damage to Mr. Verhaeghe's vehicle is not consistent with an animal impact. I also find the remaining evidence before me does not show on a balance of probabilities that Mr. Verhaeghe's vehicle struck an animal on July 19. Given all of the above, I find it more likely than not that the damage was caused by Mr. Verhaeghe's vehicle striking an object, and ICBC properly assessed the claim under Mr. Verhaeghe's collision coverage.
21. Next, in his Dispute Notice and submissions, Mr. Verhaeghe to some extent argues ICBC acted improperly or unreasonably in investigating his claim by failing to consider all of the evidence he provided. ICBC owes Mr. Verhaeghe 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 33, 55 and 93).
22. Mr. Verhaeghe says ICBC did not consider the October 17 photographs of the apparent animal hairs on the wheel rim. However, I find the evidence shows otherwise.
23. In a January 18, 2023 email, KR, an ICBC fair practices advisor set out in some detail the chronology of Mr. Verhaeghe's communications with ICBC and ICBC's responses. This chronology noted that on December 16, 2022, an ICBC estimator originally told Mr. Verhaeghe that the animal hair photos would not be admissible because the vehicle had already been thoroughly inspected for animal impact. On December 29, Mr. Verhaeghe spoke with DT, an ICBC customer service manager, and DT said they would review the matter further. Then, on January 5, 2023, DT and a separate material damage manager reviewed the photographs, and both separately concluded that there was no evidence of animal impact and that hair found 3 months after the incident could not be taken as evidence of an animal impact. Based on this chronology, I find it likely that ICBC did review and consider the disputed photographs, but it did not find the appearance of animal hair on a wheel 3 months

after the incident was sufficient to conclude the damage was caused by animal impact. So, I find it unproven that ICBC failed to consider this evidence.

24. In conclusion, I find ICBC properly assessed the vehicle damage as a collision claim and Mr. Verhaeghe is subject to the applicable deductible. I dismiss Mr. Verhaeghe's claims accordingly.

25. 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. Since Mr. Verhaeghe was unsuccessful, I dismiss his claim for reimbursement of his paid CRT fees. ICBC did not pay any fees and neither party claims any dispute-related expenses, so I award none.

ORDER

26. I dismiss Mr. Verhaeghe's claims and this dispute.

Nav Shukla, Tribunal Member