



# Civil Resolution Tribunal

Date Issued: August 30, 2024

File: SC-2023-006329

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mai v. ICBC*, 2024 BCCRT 852

B E T W E E N :

SHENG-TA MAI

**APPLICANT**

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about a motor vehicle accident. On March 31, 2023, the applicant, Sheng-Ta Mai, collided with another vehicle while making a right turn. The other vehicle's driver, R, is not a party to this dispute. Mr. Mai's insurer, the respondent, Insurance Corporation of British Columbia (ICBC), found Mr. Mai 75% responsible for the accident. Mr. Mai seeks orders for ICBC to lower his responsibility to 25% or 0%

for the accident and to reimburse him up to \$375, which was his share of the collision deductible.

2. ICBC disagrees. It says it properly and reasonably completed its liability investigation and fault assessment.
3. Mr. Mai represents himself. An employee represents ICBC.
4. For the reasons that follow, I dismiss Mr. Mai's claim.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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. 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.
7. 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.
8. 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.

9. I note 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. ICBC is contractually bound to indemnify Mr. Mai after correctly deciding liability. See *Carriere v. ICBC*, 2023 BCCRT 963 at paragraphs 12 and 14. So, this dispute comes in a different legal context than accident responsibility claims, and a different test applies. I have not placed any weight on ICBC’s initial decision.

## **ISSUES**

10. The issues in this dispute are as follows:

- a. Who is responsible for the accident?
- b. Are any remedies appropriate?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, Mr. Mai as the applicant must prove his claims 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.
12. The accident is shown on Mr. Mai’s dash camera footage. It is also described in Mr. Mai’s April 4, 2023 statement to ICBC, R’s April 3, 2023 statement to ICBC, and the parties’ submissions. Where the evidence and submissions conflict, I rely on the dash cam footage as it is relatively clear given the conditions, shows both vehicles involved in the collision, and even the lights they were facing for much of the footage.
13. On March 31, 2023, at around 10:00 p.m., Mr. Mai was driving his Mazda 3 northbound on the rightmost drivable lane of Bute Street in Vancouver. He had a passenger at the time, though nothing turns on this. It was dark and raining. Mr. Mai approached the intersection of Bute and West Georgia and prepared to turn right. For

the purposes of this dispute, Bute Street runs north to south and West Georgia runs east to west. West Georgia has 3 lanes on each side.

14. Mr. Mai began rolling forward and turning right at the intersection while facing a red light. He began the turn as the light turned green. Mr. Mai says he only started turning right after the light turned green, but the dash cam footage contradicts this. Mr. Mai tried to turn into West Georgia's far-left lane. He says he did not turn into the nearest lane, or far right lane, because there was a bus there. He also says there was a "small obstacle" in the centre lane, so he could not use that lane either. The bus is visible in the video, but the small obstacle is not. So, I find it unproven the obstacle exists.
15. At the time, R was driving their black Audi eastbound on West Georgia behind another unidentified gray vehicle. The unidentified vehicle made a left turn onto Bute Street while the light turned from yellow to red. While facing a yellow light, R had partially entered the marked crosswalk on the near side of the intersection. R continued straight through and cleared the intersection on a red light.
16. I note that R's statement says that their light changed from green to yellow after R entered the intersection. The dash cam footage starts too late to show if R entered the intersection while the light was green, behind the gray vehicle.
17. While Mr. Mai was partway through his right turn and facing a green light, R crossed the intersection. R applied the brakes but not in time to prevent a collision. R also swerved slightly left but the footage shows they had limited room to maneuver as there was traffic in the opposing direction. R's passenger right wheel area collided with Mr. Mai's driver side bumper and fender areas. R and Mr. Mai drove to the side of the road and exchanged information. No independent witnesses provided statements.
18. On April 4, 2023, ICBC concluded that Mr. Mai was 25% liable for the accident. Mr. Mai appealed the same day through ICBC's internal dispute process. ICBC subsequently determined that Mr. Mai was 75% liable for the accident. ICBC's

decisions are not in evidence so its stated rationale at the time is not directly before me. However, I am not bound by its previous decisions in any event.

19. ICBC admits that Mr. Mai paid 75% of his insurance deductible, which equals \$375 in this case. It is undisputed that the payable deductible amount is directly attributable to the percentage Mr. Mai is deemed liable for the accident under section 174 of the *Insurance (Vehicle) Act* (IVA).

***Who is responsible for the accident?***

20. Because the IVA requires ICBC to indemnify an insured based on the insured's degree of fault, I find the IVA requires ICBC to correctly determine responsibility. IVA section 174 also forms part of ICBC's compulsory insurance contract under section 1.1 of the *Insurance (Vehicle) Regulation*. So, I find that Mr. Mai is claiming that ICBC breached the parties' contract by incorrectly determining responsibility for the accident.
21. Mr. Mai says that R was either totally or at least 75% at fault. He says this is because R should have stopped when their light turned red but instead accelerated and entered the intersection.
22. ICBC says Mr. Mai failed to show that his maneuver of turning into the far-left lane rather than the far-right lane was not the proximate cause of the accident. ICBC also says that the dash-cam footage shows that the bus in the far-right lane was far enough ahead that Mr. Mai could have turned into the far-right lane as required and when safe to do so, changed lanes into the middle lane and then far-left lane. Finally, it says the footage fails to show any obstruction or debris in the middle lane as alleged by Mr. Mai.
23. I turn to the law. Section 165(1) of the *Motor Vehicle Act* (MVA) says that a driver intending to turn right at an intersection must make the turn as close as possible to the right-hand curb or edge of the roadway.

24. MVA section 127 says that a motorist approaching a green light may proceed through the intersection or turn left. The driver must yield to vehicles lawfully in the intersection at the time. MVA section 128 says that when approaching a yellow light following a green light, the driver must stop before entering the marking crosswalk on the near side of the intersection, unless the stop cannot be made safely. MVA section 129(1) says that a motorist approaching a red light must stop before entering the marked crosswalk on the near side of the intersection.
25. In addition to that, users of a highway have a common law duty to exercise due care in all the circumstances. The MVA is not an exclusive code and instead supplements the common law duty to exercise due care. See *Hmaied v. Wilkinson*, 2010 BCSC 1074 at paragraph 21. This includes keeping a proper lookout and taking reasonable precautions in response to apparent potential hazards. See *Stewart v. Dueck*, 2012 BCSC 1729 at paragraph 38.
26. I find that Mr. Mai breached MVA section 165(1) as he turned into the far-left lane. I acknowledge the dash-cam footage shows a bus in the far-right lane. However, it was some distance away and I find he could have safely turned into the far-right lane then merged into the middle lane when it was safe to do so, under MVA section 151(a). Alternatively, I also find he could have turned into the middle lane. As noted earlier, there is no evidence to corroborate Mr. Mai's submission that any object obstructed the middle lane.
27. As for R, I also considered whether they breached MVA section 128. However, the footage does not show if R entered the marked crosswalk on a green or yellow light. As stated earlier, it starts too late to show this. Likewise, I find it unproven that R breached MVA section 129(1) as I find they had already entered the marked crosswalk on the near side of the intersection before the light turned red.
28. That said, I find that R did not keep a proper lookout or take reasonable precautions. They clearly accelerated after the light turned red without taking care to look for Mr. Mai as a potential hazard. I find that R would have had a clear view of Mr. Mai's car

as there is nothing in the footage to indicate otherwise. So, I find R breached their common law duty to exercise due care.

29. I find both Mr. Mai and R were negligent as described above. In such circumstances I must apportion liability under section 1 of the *Negligence Act*. The parties did not cite any case law on like-based circumstances.
30. The apportionment of fault under the *Negligence Act* is not an assessment of the degree to which each person's fault caused the damage. It is an assessment of the amount by which each causative agent fell short of the standard of care that was required of that person in all of the circumstances. See *Chambers v. Goertz*, 2009 BCCA 358 at paragraphs 55 and 56.
31. Overall, I find that Mr. Mai fell short by a greater degree. He deliberately departed from the safety rules by breaching MVA section 165(1). This was a clear breach that created an unexpected situation. In contrast, I found it unproven that R breached MVA section 128 or 129(1). R should have proceeded more cautiously. However, R did not breach the rules of the road in as great a manner as Mr. Mai.
32. Ultimately, I conclude that liability should be apportioned 75% as against Mr. Mai and 25% as against R. As I find ICBC made the correct determination, I dismiss Mr. Mai's claim.
33. 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. I dismiss Mr. Mai's claim for reimbursement of CRT fees.

## **ORDER**

34. I dismiss Mr. Mai's claim and this dispute.

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David Jiang, Tribunal Member