

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Eberhardt v. Insurance Corporation of British
Columbia,*
2025 BCSC 1069

Date: 20250610
Docket: M201492
Registry: Victoria

Between:

Thea Analise Eberhardt

Plaintiff

And:

John Doe, Jane Doe, and Insurance Corporation of British Columbia

Defendants

Before: The Honourable Mr. Justice A. Saunders

Reasons for Judgment

Counsel for the Plaintiff: E. Kahs

Counsel for the Defendant Insurance
Corporation of British Columbia: M.J.C. Smith

Place and Date of Hearing: Victoria, B.C.
October 15-16, 2024

Place and Date of Judgment: Victoria, B.C.
June 10, 2025

[1] The defendant Insurance Corporation of British Columbia (“ICBC”) applies for dismissal of the plaintiff’s claim by way of summary trial, under R. 9-7 of the *Supreme Court Civil Rules*.

[2] The plaintiff alleges she was injured in a single-vehicle accident on the Trans-Canada Highway on October 28, 2018, when, as she was driving southbound, south of Ladysmith B.C., she collided with a large truck tire that was resting on the roadway. In her Notice of Civil Claim filed on April 20, 2020, she alleges that her claim arises out of the negligence of an unknown vehicle owner or operator, and that ICBC is liable under the hit-and-run provisions of s. 24 of the *Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 231.

[3] At the material times, the relevant portions of s. 24 read:

24(1) If bodily injury to or the death of a person or damage to property arises out of the use or operation of a vehicle on a highway in British Columbia and

(a) the names of both the owner and the driver of the vehicle are not ascertainable, or

(b) the name of the driver is not ascertainable and the owner is not liable to an action for damages for the injury, death or property damage,

any person who has a cause of action

(c) as mentioned in paragraph (a), against the owner or the driver, or

(d) as mentioned in paragraph (b), against the driver,

in respect of the bodily injury, death or property damage may bring an action against the corporation as nominal defendant, either alone or as a defendant with others alleged to be responsible for the injury, death or property damage, but in an action in which the names of both the owner and the driver of the vehicle are not known or ascertainable, recovery for property damage is limited to the amount by which the damages exceed the prescribed amount.

(2) Proceedings must not be brought against the corporation as nominal defendant under this section unless the person bringing them gives written notice to the corporation as soon as reasonably practicable and in any event within 6 months after the accident that caused the bodily injury, death or property damage.

...

(5) In an action against the corporation as nominal defendant, a judgment against the corporation must not be given unless the court is satisfied that

(a) all reasonable efforts have been made by the parties to ascertain the identity of the unknown owner and driver or unknown driver, as the case may be, and

(b) the identity of those persons or that person, as the case may be, is not ascertainable.

[4] ICBC says the plaintiff is unable to prove that the identity of an unidentified owner or driver responsible for this collision was not ascertainable, and that the plaintiff failed to take all reasonable efforts to identify them, and seeks dismissal under s. 24(5).

[5] Reasonableness in this context has both objective and subjective elements. The subjective aspect of the test “allows us to take into account a claimant’s personal circumstances”: *Abdi v. Leigh*, 2012 BCSC 2218 at para. 24. In one of the leading decisions on the former s. 24, *Leggett v. Insurance Corporation of British Columbia* (1992), 72 B.C.L.R. (2d) 201, 11 C.C.L.I. (2d) 10 (B.C.C.A.), Justice Taylor said,

[12] The test seems to me to be subjective in the sense that the claimant must know that the vehicle has been in an accident and must have been in such a position and condition that it would be reasonable for the claimant to discover and record the appropriate information. But the claimant cannot be heard to say: "I acted reasonably in not taking the trouble to find out".

[6] The objective component of the test requires consideration of whether the claimant has “pursued the investigation to identify the vehicle and its owner and driver as resolutely and resourcefully as they would have done in like circumstances’ had there been no such provision”: *Leggett*, para. 13, quoting Hinkson L.J.S.C. (as he then was) in *King v. A.G.(B.C.)* (1968), 66 W.W.R. 223 at 226 (B.C.S.C.).

[7] The obligation on a plaintiff to take such steps extends beyond the date and time of the accident and its immediate aftermath: *Slezak v. ICBC*, 2003 BCSC 1679, para. 42.

[8] In this case, the plaintiff’s evidence on her examination for discovery was that her collision with the truck tire occurred at about 7:00 p.m. on the evening of October 28, 2018. Her six-year-old son was in the back seat. It was dark, and raining fairly heavily. There was a car ahead of her in the southbound lane, and a car behind her, and for some distance prior to the collision there had been a semi tractor-trailer travelling in the lane beside her. She saw the car in front of her swerve, and then she suddenly saw there was a large tire in front of her on the highway. She said it “kind of looked like it was moving a little bit, and then it fell down, and then I hit it”. She said that it “might not have even been moving that much”. She had no opportunity to avoid it, and hit it straight on. Her impression was that the steel wheel was inside the tire.

[9] The plaintiff testified that after the collision, she saw that a vehicle was stopped off to the right side of the highway. She is unable to say whether the tire she collided with had come from that vehicle. She said,

I could barely see anything. It was dark, and there was that truck in my way.

She did not get the license plate number of that parked vehicle.

[10] Some distance further down the highway she was able to pull off into a gas station, and she got out to look for damage; the front end of her car was hanging off. She testified,

All I can remember is that I needed to get my son home to bed, and I just continued driving home and phoned ICBC in the morning.

Similarly, in her affidavit sworn in opposition to this application, the plaintiff says:

I was in shock, and only thought about keeping my son safe and to get him home as soon and as securely as possible.

...

I immediately put my son to bed, and then passed out. I was very tired from driving all day and having been involved in the accident.

[11] The plaintiff could have taken steps that evening to locate the tire she had collided with and photograph it or record particulars of its type and dimensions, as well as the size and configuration of its steel wheel. Such information might very well have yielded clues as to the tire's origin. She also might have gone back and made some effort to locate the vehicle she had seen parked off to the side, to determine if it had somehow been involved. In the circumstances however, it being late and her attention being on her child's well-being, I cannot find that her failure to take such steps was unreasonable. The focus therefore must be on the reasonableness of the steps she took in the days that followed. The plaintiff's evidence as to her personal circumstances throughout that time is that she was a full-time mother to her young child, was working "almost full-time" at a café, and was in an abusive relationship with her boyfriend.

[12] Those steps the plaintiff did take after the collision consisted of the aforementioned call to ICBC; and, her eventual retainer of counsel, who placed classified newspaper ads seeking witnesses.

[13] ICBC's records document the plaintiff phoning-in the following morning to report the accident. The particulars recorded include the date and time of the accident – 7:00 p.m. the previous evening; "Cause of Loss: Impact/Collision"; "Type: Vehicle"; and "Detail: Side Impact". There is nothing in this record indicating that the plaintiff was reporting a personal injury or intending to make a claim for injury due to an unidentified driver; indeed, the plaintiff's discovery evidence was that she only began experiencing symptoms two or three days after the accident. The plaintiff states in her affidavit,

I am confident that ICBC did not tell me to locate potential witnesses or to also report the accident to the police; and that if they had, I would have done so.

There is, however, no duty on ICBC to give a party such advice. This is so, even when ICBC has notice that personal injury has been suffered. The plaintiff submits that ICBC's failure to have given her such advice was in breach of the insurer's duty of utmost good faith. This position is untenable. A claimant's obligation is to act reasonably in their own interest, as if there was no statutory recourse against ICBC. Notice to ICBC does not discharge a claimant's obligation, and ICBC is under no duty to investigate on a claimant's behalf.

[14] The plaintiff then at some point in time retained counsel, who arranged for a classified ad in the Victoria Times Colonist and the Nanaimo News Bulletin in the month of January 2019. The text of the ad read:

On October 28, 2018 at approximately 6 pm on Highway 1 at or near the intersection of Panorama Ridge Road, a white SUV Kia Rio struck a truck tire which was left in the middle of the Highway.

Anyone with any information with respect to this incident is asked to contact [name and contact details of counsel].

Though it makes no difference to the outcome of this application, I note that the focus of the ad is the collision – the "incident" – rather than the presence of the tire on the highway; and, that the time of the collision is out by one hour, relative to the plaintiff's report to ICBC and her discovery evidence.

[15] The plaintiff did not contact any of the area's RCMP detachments to determine if they had any information about a truck tire being in the roadway at the time of her collision. Neither did she make any inquiries of the Ministry of Transportation's highway maintenance contractor for that location, to determine if they had moved the tire off the road or had had any reports of it. At a minimum,

those are steps that she could have taken without any great effort on her part, even considering her personal circumstances.

[16] Further investigatory steps available to the plaintiff might have included returning to the scene of the collision, to see if the tire was still located there, e.g. pushed off to the side of the road; posting messages on social media; and posting signage in the vicinity of nearby residences and businesses. The plaintiff did none of these things.

[17] As there were reasonable avenues of investigation open to the plaintiff which were not pursued, I cannot find that the plaintiff acted resolutely or made “all reasonable efforts” within the meaning of s. 24(5)(a). Judgment therefore cannot be given against ICBC, and the action against ICBC must be and hereby is dismissed.

“A. Saunders J.”