

CANADA / JUDGMENT

Dosanjh v. Johal

2021 BCSC 150

COURT

Supreme Court of British Columbia

DECIDED

11 January 2021

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2021 BCSC 150 Dosanjh v. Johal IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Dosanjh v. Johal, 2021 BCSC 150 Date: 20210111 Docket: M140866 Registry: Vancouver Between: Jasmeen Kaur Dosanjh Plaintiff And Harman Johal, Davinder Johal, Inderjit Jammu and Bhupinder Sandhu Defendants And Insurance Corporation of British Columbia Third Party And: Docket: M156884 Registry: Vancouver Between: Jasmeen Kaur Dosanjh Plaintiff And Sandip Natasha Samra Defendant Before: The Honourable Madam Justice Matthews (Appearance via telephone) Oral Reasons for Judgment In Chambers Counsel for Jasmeen Kaur Dosanjh appearing by teleconference: D. Miura Counsel for the Third Party Insurance Corporation of British Columbia appearing by teleconference: C.G. Kelly Counsel for Natasha Samra appearing by teleconference: R.W. Richardson No other appearances Place and Date of Hearing: Vancouver, B.C. January 11, 2021 Place and Date of Judgment: Vancouver, B.C. January 11, 2021

Introduction

- [1] These two actions rise out of a motor vehicle accident that occurred on October 12, 2013, in which Jasmeen Kaur Dosanjh was a passenger in a vehicle driven by the defendant, Sandeep Natasha Samra. During a police chase, a vehicle driven by the defendant Harman Johal and owned by the defendant Davinder Johal ran a red light and struck a vehicle driven by Inderjit Jammu which then struck the Samra vehicle. The Samra vehicle and a vehicle driven by the defendant Bhupinder Sandhu also collided. Ms. Dosanjh's injuries are significant. Her claim has been valued by the Third Party, the Insurance Corporation of British Columbia. It is likely that all of the claims arising from this accident against the third party insurance available will exceed the amount of insurance. Ms. Dosanjh has underinsured motorist protection, but under the terms of that policy, that first party insurance is not available until she has exhausted her claim against the third party insurance. ICBC is prepared to waive its right that she exhaust her claims so long as certain declarations are made.
- [2] Accordingly, Ms. Dosanjh and ICBC seek a declaration that ICBC may pay advances to Ms. Dosanjh from her underinsured motorist protection and the advances paid will not extend the limits of the third party liability insurance of the Johal defendants. As well, they seek a declaration that all claimants, including Ms. Dosanjh, will remain entitled to their pro rata share of the insurance limit once all claims have been valued with the individual uninsured

motorist protection issues to be dealt with following that sharing. Finally, they seek certain ancillary orders including costs.

[3] I gave these reasons orally. I have edited them without changing the substance. Discussion

[4] The orders are sought in both actions. They are as follows:

1. The Plaintiff, Jasmeen Kaur Dosanjh, and the Third Party seek the following declarations:

- a) The Third Party can pay to Jasmeen Dosanjh advance payments from her Underinsured Motorist Protection policy pursuant to Part 10 of the Insurance (Motor Vehicle) Act, BC Reg 447/83;
- b) Any and all advances paid will not extend the Johal Defendants insurance limits of \$2,000,000 under the policy issued by the Third Party to them (the "Insurance Limits");
- c) All claimants, including the Plaintiff, will remain entitled to their pro rata share of the Insurance Limits once all claims have been valued, with the individual Underinsured Motorist Protection issues to be dealt with following that sharing;
- d) In the event that a claimant having a potential insurance third party claim against the Third Party dies or has a change in legal status prior to the time that all the Other Claimant's claims against the Third Party are resolved, this declaration will have no effect on the legal consequence that would otherwise flow from the change; and
- e) The parties and respondents affected by this Declaration shall have leave to apply for further directions.

2. The parties each bear their own costs.

[5] Based on the submissions of counsel, I am satisfied that all persons who ought to have notice and could be served have been served or given notice. I was advised that counsel believe that the claims of the driver of one of the vehicles that the Samra vehicle collided with, Bhupinder Sandhu, have been settled. Counsel for another claimant, Ms. Samra, is attending this application. Counsel for the plaintiff, Ms. Dosanjh, is also counsel for another claimant and so has notice of this application through counsel. In addition, notice has been given to a potential claimant, Mr. Jammu, of these applications. The Johal defendants have been breached by their insurance carrier and have not been reachable.

[6] There are multiple claims arising out of this accident. In addition to Ms. Dosanjh's claims, the driver of the vehicle in which Ms. Dosanjh was a passenger, Ms. Samra, has brought a claim. The other passenger in the Samra vehicle has brought a claim. Mr. Sandhu brought a claim. Mr. Jammu has brought a claim. One claim has a trial date in 2022 and the other two claims do not yet have trial dates. I have been advised that attempts have been made to resolve all the claims, but not successfully.

- [7] In this application, the ICBC as third party, supported by Ms. Dosanjh, applies to address the fact that Ms. Dosanjh's claims for her serious injuries involve a third party insurance coverage which must be shared pro rata between the claims of all persons who advance them successfully. That pro rata determination, obviously, cannot be made until the conclusion of those claims by either trial or settlement.
- [8] Ms. Dosanjh has underinsured motorist protection in the amount of \$2,000,000. ICBC is prepared to provide her compensation through that prior to the pro rata distribution of the third party insurance proceeds despite that the applicable policy requires Ms. Dosanjh to exhaust all other remedies which, in this case, would include her claim against the third party insurance.
- [9] The declarations sought are to protect ICBC from which protect ICBC from paying out more than it would be required to pay out if the usual steps in the policy required sequence are undertaken.
- [10] The declarations sought will address the fact that Ms. Dosanjh's serious injuries have resulted in a significant claim which has been valued but cannot be paid out. It is now seven years after the accident. The other claims will not be resolved in the foreseeable future. That leaves Ms. Dosanjh in a position where her claim is resolved or resolvable, but she cannot receive her compensation because her pro rata entitlement to the third party limit cannot be ascertained and her right to be compensated under her underinsured motorist protection are not available until she has exhausted her claim against the third party insurance.
- [11] This type of situation was addressed by Mr. Justice Betton in *Clark v. Bullock*, 2013 BCSC 164. The substance of the application was almost identical to this one, although the circumstances were slightly different in that the potential claimants included infants and therefore a very long limitation period before all the claims could be known and quantified.
- [12] Mr. Justice Betton set out the essential issues and his reasons for granting the declarations sought as follows:
- [23] In this particular case, ICBC determined that it would waive the entitlement that it has by virtue of the legislation to require that Mr. Clark exhaust all of his remedies, including awaiting the payment of his pro rata entitlement to the \$5,000,000 coverage under the Bullock policy; that is, ICBC would waive its entitlement to insist on all of those steps being taken before accessing the underinsured motorist protection coverage.
- [24] The condition it attaches is that it requires a declaration from court that would protect it against the potential for having to pay out more than the amount of the Bullock policy.

- [25] With that concession or that position being adopted by ICBC, these parties come before me with a request for a declaration. That declaration essentially allows ICBC to access the underinsured motorist protection coverage available to Mr. Clark to pay the amount that Justice Barrow has determined Mr. Clark is entitled to with adjustments as agreed to by the parties.
- [26] This would effectively be an interim measure pending the determination of the other claims and, with that, the ability to determine Mr. Clark's pro rata entitlement to the \$5,000,000 in coverage. At that stage, any of the appropriate adjustments would be made to make Mr. Clark whole, as it were, and to pay out, on a pro rata basis, other plaintiffs arising from the incident.
- [27] Of concern in any type of arrangement or declaration such as this is whether there is any risk to those other claimants that they would have their pro rata entitlement adversely affected by such an order.
- [28] Given the nature of the declaration which is sought here, I am satisfied that that risk is addressed. The arrangement that is proposed here would insure that each of those plaintiffs would have full entitlement to their pro rata share of that \$5,000,000 in coverage.
- [13] I agree with Mr. Justice Betton's reasoning and adopt it in this case. The circumstances are substantively identical and the proposed settlement and declarations sought will resolve a problem without negatively affecting the rights of any of the other claimants or defendants.
- [14] Accordingly, the application is granted in the form set out in the notice of application, paragraphs 1(a) through (e) and paragraph 2 of both notices of application.
- [15] Anything arising, counsel?
- [16] [Discussion between counsel and the Court]
- [17] Thank you, counsel, for your comprehensive material and helpful submissions. "Matthews J."

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