



Civil Resolution Tribunal

Date Issued: December 9, 2020

File: VI-2020-003245

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Cruz v. ICBC*, 2020 BCCRT 1394

B E T W E E N :

RAMON RANDAL CRUZ

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Member Name

INTRODUCTION

1. This dispute is about entitlement to accident benefits under Part 7 of the *Insurance (Vehicle) Regulation* (IVR). The applicant, Ramon Randal Cruz, was involved in a motor vehicle accident that took place on December 22, 2019 in Vancouver, British Columbia. Mr. Cruz says he was injured in the accident and asks the Civil Resolution Tribunal (CRT) to make a decision about his entitlement to income replacement and

medical benefits. He claims \$1,500 for income replacement benefits. He also claims entitlement to 100% compensation for medical benefits following ICBC's internal determination that he was 50% liable for the accident and advice that he would receive only 50% compensation for his injuries.

2. The respondent, Insurance Corporation of British Columbia (ICBC), is an insurer that administers accident and medical benefits under Part 7 of the IVR (also known as Part 7 benefits). ICBC says that Mr. Cruz has not demonstrated that he is entitled to any income replacement benefits under the IVR. It also says it has fully funded all treatment recommended by Mr. Cruz's family doctor that is covered under Part 7 of the IVR, and that Mr. Cruz has not sought any additional treatment. ICBC asks that Mr. Cruz's claim be dismissed.
3. Mr. Cruz is self-represented. ICBC is represented by an employee.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. The CRT has jurisdiction over motor vehicle injury disputes, or "accident claims", brought under section 133 of the *Civil Resolution Tribunal Act* (CRTA). Section 133(1)(a) of the CRTA gives the CRT jurisdiction over the determination of entitlement to accident benefits.
5. 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
6. Section 39 of the CRTA says that 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 that the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Is Mr. Cruz entitled to \$1,500 for income replacement benefits?
 - b. Has Mr. Cruz been fully compensated for eligible medical benefits?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Mr. Cruz bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. It is undisputed that Mr. Cruz was injured in a motor vehicle accident on December 22, 2019. Mr. Cruz also asks the CRT to determine liability for the accident and to assess his resulting damages (dispute VI-2020-003508), which is the subject of a separate, but related, decision.
11. In this dispute over accident benefits, Mr. Cruz says he was unable to work for 2 weeks following the accident, due to his injuries. He claims disability benefits (which I will refer to as "income replacement benefits") under the IVR for the period he was unable to work, which he says ICBC has refused to pay.

12. Section 80(1) of the IVR says that an employed person injured in an accident, who is totally disabled from engaging in his employment, is eligible for income replacement benefits for the duration of the total disability, subject to section 85 of the IVR. Section 85 says that no income replacement benefits are payable under section 80 unless the person is disabled for a period of more than 7 days, and that income replacement benefit payments are not payable for the first 7 days of the injury.
13. Mr. Cruz provided a May 19, 2020 letter from his employer that confirmed Mr. Cruz's normal work schedule is on weekends, but that he was also scheduled to work December 25 to 27, in addition to his regular weekend shifts on December 28 and 29. The letter confirmed that Mr. Cruz missed those 5 days from December 25 to 29, 2019, but that he returned to his normal schedule on January 4, 2020. There is no evidence that Mr. Cruz was scheduled or would have been offered any additional shifts between December 29, 2019 and January 4, 2020.
14. ICBC argues that the employer's letter shows Mr. Cruz was only disabled from working between December 25 and 29, 2019, which is less than 7 days, so he is not entitled to income replacement benefits under the IVR.
15. For the reasons that follow, I find Mr. Cruz has not proven he is entitled to income replacement benefits. First, a December 23, 2019 medical report from Mr. Cruz's family doctor was filed in evidence. In the report, Mr. Cruz's doctor stated that Mr. Cruz was unable to perform all his regular work duties and his disability was anticipated to end 2 weeks later, on January 6, 2020. However, the letter from Mr. Cruz's employer confirms he returned to work on January 4, 2020.
16. Further, the January 2, 2020 chiropractic initial report in evidence suggests that Mr. Cruz was assessed to be capable of working with some modified duties as of that date. I find there is no evidence before me that Mr. Cruz's total disability from working extended beyond his last day off work on December 29, 2019.
17. Therefore, I find the evidence shows that Mr. Cruz was totally disabled from working only between December 23 and 29, 2019, which is a total of 7 days. Given his

disability did not last more than 7 days, as required by section 85 of the IVR, I find Mr. Cruz is not entitled to income replacement benefits.

18. However, even if I had found Mr. Cruz's disability lasted longer than 7 days, I would not have awarded income replacement benefits for this claimed time off work. That is because Mr. Cruz was already compensated for his time off due to the accident as a past wage loss award in dispute VI-2020-003508. To also award Mr. Cruz income replacement benefits would have resulted in double recovery for the same loss.
19. I turn now to Mr. Cruz's claim about compensation for medical benefits under the IVR.
20. Section 88(1)(a) of the IVR says that if an insured is injured in an accident for which Part 7 benefits are payable, ICBC must pay as benefits all reasonable expenses incurred by the insured as a result of the injury for necessary health care services. These health care services include, among other things, acupuncture, chiropractic, counselling, kinesiology, massage therapy, physiotherapy, and psychology.
21. ICBC does not dispute that Mr. Cruz is entitled to these medical benefits. Entitlement to Part 7 benefits does not follow the liability assessment for the accident, so benefits coverage is not reduced by the proportion that an injured person was assessed at fault for the accident.
22. ICBC says it has fully funded 2 chiropractic treatments, 2 family doctor visits, and 12 massage therapy treatments for Mr. Cruz under Part 7 benefits. It says it has not received any invoices for additional treatment or other expenses that should be covered as Part 7 benefits.
23. I find there is no evidence before me that ICBC did not fully compensate Mr. Cruz for eligible Part 7 medical benefits, or that ICBC has denied any Part 7 benefit coverage. I also note that Mr. Cruz does not request any further treatment at this time. Therefore, I dismiss Mr. Cruz's claims. However, nothing in this decision prevents Mr. Cruz from making a future application for a determination of entitlement to accident benefits, if necessary, subject to the applicable limitation periods set out in section 103 of the IVR.

CRT FEES AND EXPENSES

24. 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.
25. In dispute VI-2020-003508, I found it was appropriate to split Mr. Cruz's \$175 paid CRT fees between that liability and damages dispute and this accident benefits dispute. Given that Mr. Cruz was unsuccessful in this dispute, I find he is not entitled to reimbursement of the \$87.50 in fees applied to this dispute.
26. As ICBC was successful, I find it is entitled to reimbursement of the \$25 it paid in CRT fees for this dispute. Neither party claims dispute-related expenses.

ORDERS

27. Within 30 days of the date of this decision, I order Mr. Cruz to pay ICBC a total of \$25 for reimbursement of CRT fees.
28. ICBC is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
29. Mr. Cruz's claims are dismissed.
30. Under section 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia or the Provincial Court of British Columbia if it is under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Kristin Gardner, Tribunal Member