



Civil Resolution Tribunal

Date Issued: September 22, 2021

File: VI-2020-009512

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *McNaughton v. ICBC*, 2021 BCCRT 1021

B E T W E E N :

SHERINE MCNAUGHTON

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This dispute is about entitlement to wage loss benefits. The applicant Sherine McNaughton was in a motor vehicle accident on November 17, 2020. She is a nurse and missed around a month of work. Her employer paid her fully for the time she was off work out of her sick bank, which was \$6,075.90. She claims \$5,000 in wage loss

benefits from the respondent Insurance Corporation of British Columbia (ICBC). ICBC insures Ms. McNaughton.

2. ICBC says that Ms. McNaughton is not entitled to wage loss benefits under the *Insurance (Vehicle) Regulation* (IVR). ICBC asks that I dismiss Ms. McNaughton's dispute.
3. This dispute is linked to another Civil Resolution Tribunal (CRT) dispute, VI-2021-000892. In that dispute, Ms. McNaughton claims lost wages from the other driver in the accident, who was fully at fault. Ms. McNaughton brought separate claims against the other driver and ICBC because she was unsure who to make the claim against. I wrote a separate decision for that dispute because the disputes have different parties.
4. Ms. McNaughton is self-represented. ICBC is represented by an employee.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.

8. 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.

ISSUE

9. The issue in this dispute is whether Ms. McNaughton is entitled to wage loss benefits from ICBC and, if so, how much.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, Ms. McNaughton as the applicant must prove her claim on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
11. The facts are undisputed. Ms. McNaughton was in an accident on November 17, 2020 in Burnaby, BC. Ms. McNaughton is a nurse. She was unable to work from November 17, 2020, through December 14, 2020, due to her injuries. She missed 110 hours of work. Her employer paid \$6,057.90 in gross wages for that missed time, which came out of Ms. McNaughton's sick bank.
12. Ms. McNaughton says that her sick time is earned, so she has suffered a loss by using up sick time to cover her lost wages. She says that the purpose of insurance is to make an insured whole after a loss.
13. ICBC argues that Ms. McNaughton is not entitled to any wage loss benefits from ICBC because her employer paid 100% of her wages while she was disabled. ICBC relies on section 81(2) of the IVR, which I discuss further below.
14. I disagree with Ms. McNaughton's argument that an insurer must pay whatever amount it takes to make an insured whole after a loss. Rather, I find that an insurer must only pay an insured whatever their insurance policy requires it to pay. In ICBC's

case, the provincial government determines what ICBC must pay to an insured. As with most insurance, there are exceptions and limitations.

15. Sections 80 and 85 of the IVR set out who is eligible for wage loss benefits from ICBC after a motor vehicle accident. To be eligible, a person must be disabled from working within 20 days of an accident and must remain disabled for at least 7 days. Because Ms. McNaughton was disabled immediately following the accident and her disability lasted nearly a month, she is entitled to wage loss benefits, subject to section 81.
16. Section 81(2) of the IVR says that ICBC does not have to pay any benefits if Ms. McNaughton receives “other disability compensation” that is more than 75% of her pre-accident gross earnings. Section 81(1) defines “other disability compensation” as including compensation paid by an employer. The IVR does not differentiate between different types of benefits paid by an employer, so I find that the fact Ms. McNaughton earned her sick time through hours worked is not relevant. Because Ms. McNaughton received compensation from her employer that was more than 75% of her earnings, I find that ICBC did not have to pay her any wage loss benefits.
17. For this reason, I dismiss Ms. McNaughton’s claim against ICBC for wage loss benefits.

FEES AND EXPENSES

18. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their CRT fees and dispute-related expenses. As Ms. McNaughton was not successful, I find that she is not entitled to reimbursement of her CRT fees. For the same reason, I order Ms. McNaughton to pay ICBC \$25 for CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

19. Within 30 days of the date of this order, I order Ms. McNaughton to pay ICBC \$25 for CRT fees.

20. ICBC is also entitled to post-judgment interest under the *Court Order Interest Act*.

21. I dismiss Ms. McNaughton's claims.

22. 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.

Eric Regehr, Tribunal Member