



Civil Resolution Tribunal

Date Issued: August 19, 2022

File: AB-2021-008269

Type: Motor Vehicle Injury

Category: Accident Benefits

Civil Resolution Tribunal

Indexed as: *Singh v. ICBC*, 2022 BCCRT 934

BETWEEN:

TEJPAL SINGH

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about entitlement to income replacement benefits. The applicant, Tejpal Singh, was in a motor vehicle accident on September 30, 2021. He is an Uber driver and missed approximately one month of work. The applicant says the

respondent insurer, Insurance Corporation of British Columbia (ICBC), underpaid him for income replacement benefits. The applicant does not claim a specific amount but seeks more compensation for his income loss.

2. ICBC says the applicant has been paid what he is entitled to under the *Insurance (Vehicle) Act* (IVA). ICBC denies it owes the applicant any further income replacement benefit compensation.
3. The applicant is self-represented. ICBC is represented by an employee.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). 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 exclusive jurisdiction over the determination of entitlement to accident benefits paid or payable.
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.

ISSUE

8. The issue in this dispute is whether the applicant is entitled to a higher income replacement benefit than already paid and, if so, how much.

BACKGROUND, EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities, meaning “more likely than not”. 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. The applicant chose not to make any final reply submissions, despite having the opportunity to do so.
10. The applicant was in an accident on September 30, 2021 in Burnaby, British Columbia. The applicant is self-employed as an Uber driver. The accident occurred on the applicant’s first day of work. As a result of his accident injuries, the applicant was off work until the beginning of November 2021, though the exact date he returned to work was not provided. When he returned to work, he returned full time. None of this is disputed.
11. The applicant says ICBC improperly calculated his entitlement to income replacement benefits and paid him less than he says he is entitled to. ICBC says it calculated his entitlement correctly under the applicable legislation. ICBC says the applicant is not entitled to further payment.
12. ICBC undisputedly paid the applicant for 31 days of missed work, totaling \$1,142.88. The applicant does not argue he should be paid for more than 31 days, but rather says that the amount of income replacement benefits paid for that amount of time was unfair and too low.

13. Part 10 of the IVA, Enhanced Accident Benefits and Limits on Actions and Proceedings, applies to accidents that occur on and after May 1, 2021, which includes the applicant's accident.
14. In determining an insured's entitlement to income replacement benefits, IVA sections 131 and 133 require ICBC to calculate and determine the income replacement benefit for full-time earners and temporary and part-time earners, in accordance with the regulations. The applicable regulation is the *Income Replacement and Retirement Benefits and Benefits for Students and Minors Regulation* (IRB).
15. Although the applicant says his income replacement benefit should have been calculated using his projected earnings, I disagree. Section 4 of the IRB says that, for full-time self-employed earners, the income replacement benefit is based on the greater of (a) the full-time earner's gross yearly employment income (GYEI) from the earner's employment, or (b) the GYEI for the same class of employment from Table 1 in the IRB Schedule. Table 1, titled "Classes of Employment Income by Occupational Classification", sets out various employment classes, as discussed further below.
16. Section 18 of the IRB says if you are calculating GYEI for a self-employed earner using the earner's employment, it is based on at least the 52 weeks immediately preceding the accident. Section 18 further says if using Table 1, GYEI is derived using IRB, Part 8, Division 3, "Classes of Employment".
17. Given that the applicant was working his very first shift when the accident happened, and undisputedly was not employed at all the year before the accident, he did not have a GYEI calculable from at least 52 weeks of employment. The applicant argues he should receive income replacement benefits based on what he expected to make, which he says was between \$8,000 and \$10,000 per month. However, there is no relevant provision in the IRB for the applicant to have his GYEI calculated based on future expected income. So, I find his GYEI must be determined through Table 1 and Part 8, Division 3 of the IRB.

18. ICBC says the applicant's employment as an Uber driver falls within item 545, National Occupational Classification (NOC) 7513, in Table 1, "taxi and limousine drivers and chauffeurs". The applicant does not dispute this classification, and from my review of Table 1, I agree with the classification. The three levels of GYEI for NOC 7513 are:
- a. Level 1: \$16,579
 - b. Level 2: \$24,416
 - c. Level 3: \$35,169.
19. Section 42(1) of the IRB says "Level 1" means "less than 36 months of experience". I find Level 1 is the relevant GYEI for the applicant, given his undisputed work history. That means the applicant's GYEI is \$16,579 for the purposes of determining his entitlement to income replacement benefits.
20. Section 2 of the IRB says an insured's entitlement to income replacement benefits is equal to 90% of the insured's net income, to a maximum of \$100,000.
21. ICBC submitted a tax calculation worksheet which calculated net income on the \$16,579 GYEI as \$14,951.58. There is nothing obviously wrong with the calculations, and the applicant does not raise any issue with ICBC's calculations. So, I accept them as accurate.
22. 90% of \$14,951.58 is \$13,456.42. So, pursuant to section 2 of the IRB, the applicant's yearly income replacement benefit is \$13,456.42. This works out to \$36.87 per calendar day. As noted above, the number of days the applicant was unable to work is not disputed. So, \$36.87 per day for 31 days equals \$1,142.87. ICBC undisputedly paid the applicant \$1,142.88 in income replacement benefits. I find ICBC paid the applicant the total income replacement benefit he was entitled to for the time he was off work, based on the applicant's employment history and the applicable statute and regulations. So, I find the applicant is not entitled to any further income replacement benefit for that time period. I dismiss his claim.

FEES, EXPENSES AND INTEREST

23. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As the applicant was not successful, I find he is not entitled to reimbursement of tribunal fees. For the same reason, I order the applicant to reimburse ICBC \$25 for its paid CRT fees. Neither party claimed dispute-related expenses.

ORDERS

24. Within 30 days of the date of this decision, I order the applicant, Tejpal Singh, to pay the respondent, Insurance Corporation of British Columbia (ICBC), a total of \$25 as reimbursement of tribunal fees.
25. ICBC is also entitled to post-judgment interest under the *Court Order Interest Act*.
26. The applicant's claims are dismissed.
27. 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 if it is under \$35,000 through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Andrea Ritchie, Vice Chair