



Civil Resolution Tribunal

Date Issued: October 5, 2022

File: AB-2022-003366

Type: Motor Vehicle Injury

Category: Accident Benefits

Civil Resolution Tribunal

Indexed as: *Mukari v. ICBC*, 2022 BCCRT 1094

BETWEEN:

KHURBAN ALI MUKARI

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, Khurban Ali Mukari, was in a motor vehicle accident on October 29, 2021. He is a courier driver and was off work for some time after the accident. Mr. Mukari says the

respondent insurer, Insurance Corporation of British Columbia (ICBC), has underpaid him for income replacement benefits. He says the benefits should have been based on his previous year's Notice of Assessment (NOA) issued by the Canada Revenue Agency. Mr. Mukari claims \$18,298, which he says is the difference between what he is entitled to and what ICBC has paid him.

2. ICBC says it has paid Mr. Mukari what he is entitled to under the *Insurance (Vehicle) Act* (IVA). ICBC denies owing Mr. Mukari any further income replacement benefit compensation.
3. Mr. Mukari 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 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 Mr. Mukari 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 Mr. Mukari must prove his claim 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.
10. Mr. Mukari was involved in an accident on October 29, 2021 in Burnaby, British Columbia. At the time, Mr. Mukari was self-employed as a courier driver. It is undisputed that ICBC calculated Mr. Mukari’s entitlement to income replacement benefits based off his employment as a courier driver. However, Mr. Mukari says he was also running a contracting business.
11. Mr. Mukari’s evidence about the contracting business is unclear. At one point he says he ran the business from 2008 until 2019 “due to pandemic and restrictions”. Later, he says he continued to run the contracting business “on the side” while working as a courier driver. In any event, Mr. Mukari argues his entitlement to income replacement benefits should be based off his most recent NOA, not the method used by ICBC under the IVA. As noted, ICBC says it properly calculated Mr. Mukari’s entitlement to income replacement benefits under the applicable legislation (the IVA) and that Mr. Mukari is not entitled to a higher benefit.

12. ICBC undisputedly paid Mr. Mukari \$645.97 per week in income replacement benefits, for a total of \$26,484.27 to the time ICBC provided its submissions. It is unclear whether Mr. Mukari has returned to work or is still collecting income replacement benefits. In any event, the question before me is whether the \$645.97 weekly payment amount is correct, or whether it should have been higher given Mr. Mukari's alleged employment income from the contracting business.
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 Mr. Mukari'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. As noted, Mr. Mukari says his income replacement benefit should be based off the "total income" listed in his NOA. He says he should be entitled to 90% of his total income listed on his 2021 NOA, and argues he has been underpaid by \$18,298. Mr. Mukari does not explain how he arrived at the \$18,298 figure. In any event, I disagree that Mr. Mukari's income replacement benefit should be based off his prior year's NOA. I say this because "income replacement benefits" are intended to compensate an injured person for their loss of employment income, while "total income" on an individual's NOA can include income from various sources other than employment, such as pension income, government benefits, interest and investment income, scholarship income, and more.
16. Mr. Mukari alleges he has continued earning income from his contracting business, yet he provided no evidence in support of this, such as business records. He also provided no explanation or breakdown of his income as reported in the NOA he relies on. So, I find Mr. Mukari has not proven he was earning any income outside of his

employment as a courier driver before the accident occurred. Therefore, Mr. Mukari's entitlement to income replacement benefits is based on that employment alone.

17. Mr. Mukari started his employment as a courier driver on December 8, 2020. From December 9, 2020 to October 29, 2021, he earned a total of \$40,480.87. None of this is disputed.
18. ICBC calculated Mr. Mukari's income replacement benefit as a "temporary earner". Section 113 of the IVA defines a "temporary earner" as an insured who, at the time of the accident, holds regular employment on a temporary basis. Section 1 of the IRB defines "temporary basis" as an insured who is employed but not on a part-time or full-time basis. "Part-time basis" means the insured is employed for less than 28 hours per week. "Full-time basis" means the insured is employed 28 hours or more in each week of the year before the accident. As Mr. Mukari started his employment on December 9, 2020, he was not employed for a full year before the accident. So, I find Mr. Mukari was a "temporary earner".
19. Section 5 of the IRB says that, for temporary earners, the income replacement benefit is based on either (a) the gross yearly employment income (GYEI) of the same class of employment from Table 1 in the IRB schedule, or (b) the GYEI the temporary earner would have earned from employment, whichever is higher. Table 1, titled "Classes of Employment Income by Occupational Classification", sets out various employment classes, as discussed further below.
20. ICBC says it calculated Mr. Mukari's GYEI based off section 17 of the IRB, "GYEI for salaried worker". However, I find Mr. Mukari was not a salaried worker. There is no indication in his employment contract or anywhere else that he earned a salary. Instead, he is referred to as an "independent contractor" and his earnings were based solely on a percentage of the value of deliveries he made. So, I find section 17 does not apply.
21. 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”.

22. It is undisputed Mr. Mukari had not yet worked 52 weeks when the accident occurred, given he only started working as a courier driver in December 2020. So, he does not have a GYEI calculable from at least 52 weeks of employment. Therefore, his GYEI must be determined through Table 1 and Part 8, Division 3 of the IRB.

23. I find Mr. Mukari’s employment as a courier driver falls within item 138, National Occupational Classification (NOC) 1513, in Table 1, “couriers, messengers and door-to-door distributors”. The three levels of GYEI for NOC 1513 are:

a. Level 1: \$28,030

b. Level 2: \$46,794

c. Level 3: \$68,624

24. 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 Mr. Mukari, given he had worked as a courier for less than one year before the accident date. No other information about Mr. Mukari’s prior work history was provided. This means Mr. Mukari’s GYEI is \$28,030 for the purposes of determining his entitlement to income replacement benefits.

25. 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 yearly insurable income of \$100,000.

26. Neither party provided any submissions on the appropriate tax deductions. On a judgment basis, I deduct a nominal 10%. This means net income on the \$28,030 GYEI is \$25,227.

27. 90% of \$25,227 is \$22,704.30. So, further to section 2 of the IRB, Mr. Mukari’s yearly income replacement benefit is \$22,704.30. This works out to \$436.62 per week.

28. However, the matter does not end there. ICBC says it used the “alternate formula” available to it in section 3 of the IRB. Section 3(2) says an insured who is entitled to an income replacement benefit under section 2(1), is entitled to the greater of (a) the income replacement benefit calculated elsewhere within the regulation, or (b) the income replacement benefit determined under section 3, but not both.
29. Section 3(3) says the income replacement benefit in section 3(2)(b) is the lesser of \$740 per week, or an amount per week calculated by:

$$[(0.75 \times Y) / W] - \text{ODC}$$

Y = the insured's gross earnings for the 12-month period immediately preceding the accident

W = the number of weeks actually worked by the insured during that period

ODC = the other disability compensation

30. Using this formula and based only on Mr. Mukari's employment as a courier driver, Mr. Mukari is entitled to \$645.97 per week:

$$[(0.75 \times \$40,480.87) / 47] - 0 = \$645.97$$

31. As \$645.97 is greater than \$436.62, pursuant to section 3(2), Mr. Mukari is entitled to income replacement benefits calculated at \$645.97 per week, which is the amount ICBC undisputedly paid Mr. Mukari weekly. So, I find ICBC paid Mr. Mukari the total income replacement benefit he was entitled to on a weekly basis, based on Mr. Mukari's employment and the applicable statute and regulations.
32. As noted, the parties did not provide any evidence or submissions about whether Mr. Mukari is still receiving income replacement benefits, and there is no indication Mr. Mukari is arguing the length of time he was paid income replacement benefits was incorrect. Instead, his complaint in this dispute was solely about the weekly amount he was paid being too low. Given all the above, I find Mr. Mukari is not entitled to any higher income replacement benefit for benefits paid. I dismiss Mr. Mukari's claim.

FEES, EXPENSES AND INTEREST

33. 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 Mr. Mukari was not successful, I find he is not entitled to reimbursement of tribunal fees. For the same reason, I order Mr. Mukari to reimburse ICBC \$25 for its paid CRT fees. Neither party claimed dispute-related expenses.

ORDERS

34. Within 30 days of the date of this decision, I order the applicant, Khurban Ali Mukari, to pay the respondent, Insurance Corporation of British Columbia (ICBC), a total of \$25 as reimbursement of tribunal fees.
35. ICBC is also entitled to post-judgment interest under the *Court Order Interest Act*.
36. Mr. Mukari's claim is dismissed.
37. 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.

Andrea Ritchie, Vice Chair