



Civil Resolution Tribunal

Date Issued: November 3, 2022

File: VI-2021-006528

Type: Motor Vehicle Injury

Category: Accident Benefits

Civil Resolution Tribunal

Indexed as: *Vishwakarma v. ICBC*, 2022 BCCRT 1207

BETWEEN:

RAJEEV VISHWAKARMA

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 accident benefits under Part 7 of the *Insurance (Vehicle) Regulation* (IVR). The applicant, Rajeev Vishwakarma, was involved in a motor vehicle accident on August 26, 2019. He was working as a financial advisor

and was undisputedly injured as a result of the accident. Mr. Vishwakarma claims wage loss benefits in the amount of \$1,562 per week for 27 weeks, from August 26, 2019 to “April 2020”, for a total of \$42,174.

2. The respondent insurer, Insurance Corporation of British Columbia (ICBC), administers accident benefits under Part 7 of the IVR (also known as Part 7 benefits). ICBC admits Mr. Vishwakarma is entitled to some wage loss benefits, but disputes the amount he claims.
3. Mr. Vishwakarma 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 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.

ISSUE

8. The issue in this dispute is how much ICBC must pay Mr. Vishwakarma for wage loss benefits.

BACKGROUND, EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Mr. Vishwakarma 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. I note Mr. Vishwakarma did not provide any reply submissions, despite being given the opportunity to do so.
10. The facts are undisputed. Mr. Vishwakarma was rear-ended on August 26, 2019 in Richmond, British Columbia. He is a financial advisor and was unable to work for some time after the accident. The parties dispute how long that time was.
11. Mr. Vishwakarma says he started collecting the Canada Emergency Response Benefit (CERB) in April 2020. He did not say exactly what date he started collecting CERB. In any event, Mr. Vishwakarma seeks wage loss benefits from ICBC from August 26, 2019 to April 2020, which he says equals 27 weeks. Mr. Vishwakarma says these benefits should be based on an average monthly commission of \$6,500, which he calculates as \$1,562 per week.
12. As the accident happened on August 26, 2019, Part 7 of the IVR applies. Section 80(1) of the IVR says that an employed person injured in an accident, who is totally disabled from engaging in employment, is eligible for wage loss benefits for the duration of the total disability, subject to section 85 of the IVR. Section 85 says that no wage loss benefits are payable under section 80 unless the person is disabled for

a period of more than 7 days, and that benefits are not payable for the first 7 days of injury.

13. Mr. Vishwakarma had just started a new job in July 2019, not quite 2 months before the accident. It is undisputed that immediately after the accident Mr. Vishwakarma took some time off work due to his injuries. However, as noted the amount of time is unclear.
14. Mr. Vishwakarma says he was not able to work “for many months”. He says his job as a financial advisor required him to sit with clients, show them presentations, and explain the benefits. He says these meetings could take 2.5 to 4 hours, and that due to his injuries he was unable “to sit for a long time comfortably”. As a result, he says he was unable to get business.
15. ICBC says, under section 80(1) of the IVR, Mr. Vishwakarma must be “totally disabled” to be eligible for wage loss benefits. In *Kenni v. Insurance Corp. of British Columbia*, 1993 CanLII 1877 (BCSC), the court held that “totally disabled” does not mean an inability to do *any* of the acts or duties required of the injured person’s employment or occupation, but means an inability to do “substantially all the material acts in substantially [the] usual and customary manner”.
16. I turn to the submitted evidence of Mr. Vishwakarma’s disability. The parties provided various medical records including reports from Mr. Vishwakarma’s physiotherapist and chiropractor, as well as his family doctor, Dr. Dalip Sandhu.
17. Although a September 17, 2019 chiropractic initial report stated Mr. Vishwakarma was capable of modified hours and full duties, a physiotherapy initial report of the same day indicated he was not recommended to return to work in any capacity.
18. In Dr. Sandhu’s clinical records, an entry dated either November 14, 2019 or December 16, 2019 noted that Mr. Vishwakarma was back working “cold calls” one week prior.

19. Similarly, a December 27, 2019 physiotherapy reassessment report noted Mr. Vishwakarma was working full hours, full duties. A January 7, 2020 chiropractic reassessment report said he was working modified hours and duties.
20. Considering the evidence, I find Mr. Vishwakarma was substantially able to complete his employment tasks by December 9, 2019, one week before the latest date Dr. Sandhu noted Mr. Vishwakarma was back working. I find this date is consistent with both the physiotherapy and chiropractic records around the same time. I find nothing in the medical evidence before me indicates Mr. Vishwakarma was unable to substantially perform his work duties after that point. So, I find Mr. Vishwakarma was totally disabled from August 26 to December 9, 2019, a total of 15 weeks. Further to section 85 of the IVR, Mr. Vishwakarma is not entitled to benefits for the first 7 days, so he is entitled to a total of 14 weeks of wage loss benefits.
21. The next question is how much per week is Mr. Vishwakarma entitled to. As noted, Mr. Vishwakarma says it should be \$1,562, but does not explain how he arrived at that number.
22. Section 80(1)(b)(iii) of the IVR says that for accidents after January 1, 1991, wage loss benefits are calculated by taking 75% of Mr. Vishwakarma's total earnings for the 12 months preceding the accident and dividing it by the number of weeks actually worked during that period.
23. Although Mr. Vishwakarma says he earned an average monthly commission income of \$6,500, I find the evidence does not support that assertion. I review the documentary evidence and submissions on his earnings below.
24. Mr. Vishwakarma says that from August 2018 (12 months before the accident) he worked with a previous employer. He did not provide any employment records from his time with that employer, but did provide his 2018 Notice of Assessment (NOA) from the Canada Revenue Agency. The 2018 NOA reported \$9,880 in total income, which amounts to \$190 per week.

25. Mr. Vishwakarma produced commission statements from that previous employer for April and June 2019. By April 8, 2019, Mr. Vishwakarma earned \$21,967.87 in gross commissions, and by June 3, 2019, this amount increased to \$27,334.48. Although Mr. Vishwakarma said he did not earn business income from April to June 2019, I find this is inconsistent with his commission statements.
26. Mr. Vishwakarma admittedly did not work from June to July 2019, when he started with a new employer. Mr. Vishwakarma did not provide any employment documentation about his earnings after July 2019.
27. I find Mr. Vishwakarma earned \$3,420 ($\190×18 weeks) in 2018 plus \$27,334.48 (to June 3, a total of 22 weeks) in 2019 to the date of the accident. So, I find Mr. Vishwakarma earned \$30,754.48 in the 12 months before the accident. Using the formula from section 80(1)(b)(iii), this amounts to a weekly wage loss benefit of \$576.65 ($(\$30,754.48 \times 75\%) / 40$).
28. So, I find ICBC must pay Mr. Vishwakarma a total of \$8,073.10 in wage loss benefits from September 2 to December 9, 2019 ($\$576.65 \times 14$ weeks).

FEES, EXPENSES AND INTEREST

29. The *Court Order Interest Act* applies to the tribunal. Mr. Vishwakarma is entitled to pre-judgment interest on the \$8,073.10 from December 9, 2019, the date he was no longer totally disabled, to the date of this decision. This equals \$208.45.
30. 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. Although Mr. Vishwakarma was only partially successful, it is undisputed ICBC has paid no wage loss benefits to him, despite acknowledging he was entitled to them for at least some time period. So, I find it was necessary for Mr. Vishwakarma to start this dispute. I find ICBC must reimbursement him \$125 for paid tribunal fees. I dismiss ICBC's claim for reimbursement of tribunal fees. No dispute-related expenses were claimed.

ORDERS

31. Within 21 days of the date of this decision, I order ICBC to pay Mr. Vishwakarma a total of \$8,406.55, broken down as follows:
- a. \$8,073.10 in damages,
 - b. \$208.45 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in tribunal fees.
32. Mr. Vishwakarma is also entitled to post-judgment interest, as applicable.
33. 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