



Civil Resolution Tribunal

Date Issued: December 7, 2022

File: VI-2021-000020

Type: Motor Vehicle Injury

Category: Accident Benefits

Civil Resolution Tribunal

Indexed as: *Ali v. ICBC*, 2022 BCCRT 1316

BETWEEN:

FARTUN ALI

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, Fartun Ali, was involved in a motor vehicle accident on November 19, 2020. Mrs. Ali was undisputedly injured as a result of the

accident. She seeks 4 weeks of disability wage loss benefits for a total of \$2,720, and reimbursement for 4 physiotherapy sessions.

2. The respondent insurer, Insurance Corporation of British Columbia (ICBC), administers benefits under Part 7 of the IVR (also known as Part 7 benefits). ICBC says Mrs. Ali was in breach of the conditions of her driver's license, and so is not entitled to any Part 7 benefits.
3. Mrs. Ali represents herself. ICBC is represented by an authorized 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 whether Mrs. Ali is entitled to Part 7 benefits and, if so, to what extent.

BACKGROUND, EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Mrs. Ali must prove her claims 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. Mrs. Ali did not provide any evidence, despite the opportunity to do so.
10. As noted, Mrs. Ali claims for disability wage loss benefits (4 weeks at \$680 per week) and medical benefits (4 physiotherapy sessions at an undeclared value). Mrs. Ali did not provide any documentary evidence in support of these claims, such as employment records or receipts from her physiotherapist. In any event, as noted ICBC argues Mrs. Ali is not entitled to any Part 7 benefits because she was in breach of her insurance contract at the time of the accident.
11. It is undisputed that at the time of the accident, Mrs. Ali possessed a learner’s license, issued February 1, 2020. *Motor Vehicle Act Regulation* section 30.06 says that a person with a learner’s license must not operate a motor vehicle unless the person is accompanied by another person who is at least 25 years of age, holds a valid and subsisting driver’s license, and occupies the seat beside the operator.
12. Mrs. Ali does not deny she was alone in the vehicle when the accident happened. Although she acknowledges she was not supposed to drive without a supervisor, she argues she already had 6 years of driving experience in another country, so she thought it would be fine, and it was only a short distance. She also says the insurance broker never explained to her that she could be responsible for all costs relating to an accident if she was found to be driving without a supervisor. However, the insurance broker is not a party to this dispute, so I make no findings about their obligations.

13. ICBC undisputedly gave Mrs. Ali an opportunity to receive coverage for the accident. At the time of the accident she had a road test scheduled for December 12, 2020. ICBC told Mrs. Ali that if she passed the road test successfully, the breach of her insurance would be waived. Mrs. Ali undisputedly failed the December 12, 2020 road test, so ICBC upheld the breach.
14. I find Mrs. Ali breached her insurance policy with ICBC by driving without an authorized supervisor.
15. Section 55(3) of the IVR states, among other things, that an insured must not operate a vehicle if the insured is not authorized or qualified by law to do so. By driving alone, contrary to the restrictions on her learner's license and to section 30.06 of the *Motor Vehicle Act Regulation*, I find Mrs. Ali was not authorized or qualified by law to be driving (see: *King v. Insurance Corp. of British Columbia*, 2010 BCSC 1740). So, I find Mrs. Ali breached section 55(3) of the IVR.
16. Under section 55(1.1) of the IVR, ICBC is not liable to an insured who breaches a condition of section 55. Therefore, Mrs. Ali is not entitled to Part 7 benefits from ICBC. I dismiss her claims.

FEES, EXPENSES AND INTEREST

17. 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. Mrs. Ali was unsuccessful and did not pay any tribunal fees. ICBC paid \$25 in tribunal fees and so I find Mrs. Ali must reimburse this amount. Neither party claimed dispute-related expenses.

ORDERS

18. Within 30 days of the date of this decision, I order Mrs. Ali to pay ICBC a total of \$25 as reimbursement of tribunal fees.
19. ICBC is also entitled to post-judgment interest under the *Court Order Interest Act*.

20. Mrs. Ali's claims are dismissed.

21. 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