



# Civil Resolution Tribunal

Date Issued: December 14, 2022

File: AB-2022-003439

Type: Motor Vehicle Injury

Category: Accident Benefits

Civil Resolution Tribunal

Indexed as: *Oloumi v. ICBC*, 2022 BCCRT 1342

B E T W E E N :

SAEID OLOUMI

**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 accident benefits. On December 12, 2021, Saeid Oloumi fell off an electric scooter while avoiding an opening car door. He was undisputedly injured, requiring surgeries to his left knee and left wrist. Mr. Oloumi

alleges that the Insurance Corporation of British Columbia (ICBC) did not provide prompt enough support after the accident. He claims \$100,000 for “health care and rehabilitation”. He is self-represented.

2. ICBC says that it provided all the accident benefits required by the *Insurance (Vehicle) Act* (IVA) and the applicable regulation, the *Enhanced Accident Benefits Regulation* (EABR). ICBC also argues that the Civil Resolution Tribunal (CRT) does not have jurisdiction (or legal authority) under its accident claims jurisdiction to consider parts of Mr. Oloumi’s claims because he alleges bad faith. ICBC asks me to dismiss his claims. ICBC is represented by an employee.

## **JURISDICTION AND PROCEDURE**

3. These are the CRT’s formal written reasons CRT. The CRT has jurisdiction over accident claims brought under section 133 of the *Civil Resolution Tribunal Act* (CRTA). In resolving disputes, the CRT must apply principles of law and fairness.
4. 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.

### ***Format of Hearing***

5. 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. Mr. Oloumi does not explicitly request an oral hearing, but in his reply submissions, he says that he would be able to explain himself better in a phone hearing with a translator. He says that he did not have anyone who was able to help write his submissions.
6. Section 2 of the CRTA states that the CRT’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. I find that

accessibility includes ensuring that participants who have difficulty communicating in English have a meaningful opportunity to participate. The CRT's mandate also includes proportionality, which means that the CRT's process must be proportional to the potential remedies.

7. As mentioned above, Mr. Oloumi claims \$100,000. He does not explain how he arrived at that figure. Mr. Oloumi's claims are mainly about alleged delays in receiving certain accident benefits: a 1-month delay for cleaning services and a 5-month delay for counselling. It is undisputed that ICBC did provide both benefits eventually, and there is no suggestion of any ongoing failure to provide these benefits. More importantly, as described in more detail below, I find that Mr. Oloumi's claims about delay are outside the CRT's accident claims jurisdiction. With that, I find that there would be little practical point in having Mr. Oloumi explain them better. Mr. Oloumi's remaining claim is about the meal preparation benefits ICBC offered were appropriate or sufficient. While I acknowledge that the issues Mr. Oloumi raises are important to him, I find that the monetary stakes are low.
8. As for accessibility, I find that Mr. Oloumi's submissions about ICBC's handling of his accident benefits claim are clear, even though they are brief. There are also no credibility issues raised by either party. On balance, I find that an oral hearing is not necessary in this dispute. I decided to hear this dispute by written submissions.

## **ISSUES**

9. The issues in this dispute are:
  - a. Does the CRT have jurisdiction to decide Mr. Oloumi's claims about ICBC's alleged delay in providing benefits?
  - b. If so, did ICBC breach its obligations to Mr. Oloumi by delaying providing benefits?
  - c. Did ICBC fail to provide Mr. Oloumi with the required meal preparation benefits?

d. If so, what remedy is appropriate?

## **ANALYSIS**

10. In a civil claim such as this, Mr. Oloumi as the applicant must prove his claims 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. As mentioned above, Mr. Oloumi was injured on December 12, 2021. He was in a bike lane on an electric scooter when someone opened a car door, causing him to swerve and fall off his scooter. He was transported by ambulance to the hospital.
12. There are no clinical or hospital records in evidence, but Mr. Oloumi says he was in hospital until December 19, 2021. He had surgery on his left wrist and left knee and strained his left shoulder.
13. Mr. Oloumi reported the accident to ICBC by phone on December 23, 2021. There is no evidence that ICBC knew about the accident before this report. At around noon that day, ICBC sent Mr. Oloumi an email with forms to complete. Mr. Oloumi emailed the completed forms back on December 27, 2021.
14. It is undisputed that ICBC did not arrange for any rehabilitation benefits until January 6, 2022, when it retained an occupational therapist (OT). The OT visited Mr. Oloumi's home the next day.
15. In their January 12, 2022 report to ICBC, the OT noted that there had been no "discharge program" when Mr. Oloumi left the hospital. He was simply given a wheelchair and a walker. The OT also reported that Mr. Oloumi was not weightbearing on his left leg. The OT reported that they had recommended homecare support to assist with community outings and meal preparation, but Mr. Oloumi did not want that kind of help. The OT also reported that Mr. Oloumi had pre-existing mental health issues, which had worsened since the accident. Later records indicate that Mr. Oloumi was already under the care of a psychiatrist, who he continued to see during this time.

16. In a March 31, 2022 report, Mr. Oloumi's general practitioner, Dr. Sirous recommended physiotherapy and massage therapy but did not mention any recommendations for mental health treatment.
17. Another OT assessed Mr. Oloumi on April 25, 2022. That OT reported Mr. Oloumi's persistent low mood since the accident, and noted that ICBC had approved counselling, which began in early May. According to a September 8, 2022 OT report, Mr. Oloumi continued to see a clinical counsellor regularly. ICBC's records also show that it has provided physiotherapy and kinesiology treatment.
18. Mr. Oloumi essentially makes 3 complaints about how ICBC handled his claim. First, he argues that he should have received assistance before January 7, 2022, which was nearly a month after the accident. Second, he argues that he should have received counselling before May 2022. Third, he argues that the meal preparation service that ICBC offered was inappropriate or insufficient. ICBC raises issues about the CRT's jurisdiction to decide the first 2 of these claims.

### ***Jurisdiction***

19. Section 133(1)(a) of the CRTA gives the CRT jurisdiction over "a claim concerning the determination of entitlement to benefits paid or payable" under the IVA. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that is outside its jurisdiction.
20. Mr. Oloumi's claim about delay has 2 components: first, that ICBC should have proactively helped him make a claim sooner, and second, that after he made a claim, ICBC should have provided housekeeping and counselling benefits faster. ICBC argues that these claims are essentially bad faith claims, even though Mr. Oloumi does not describe it that way. ICBC argues that the CRT's accident claims jurisdiction is limited to determining the amount of benefits Mr. Oloumi was or is entitled to. Mr. Oloumi did not make submissions about this issue in his reply submissions.
21. I find that Mr. Oloumi's allegation that ICBC failed to proactively assist him with making a claim relates to ICBC's obligation under section 129 of the IVA to "assist an

individual with making a claim for benefits”. I find that this is not a claim about ICBC’s determination of Mr. Oloumi’s entitlement to benefits, so I find it is outside the CRT’s accident claims jurisdiction. I refuse to resolve it under section 10 of the CRTA.

22. As for the delay allegations, it is well-established that insurance contracts include an obligation for the insurer to act in good faith, which can include a duty of prompt performance. See *Heran v. Insurance Corporation of British Columbia*, 2018 BCSC 344, at paragraphs 23 to 26. I therefore agree with ICBC that Mr. Oloumi’s claims about delay are essentially bad faith claims.
23. I do not necessarily agree with ICBC that the CRT’s accident claims jurisdiction is limited to orders that ICBC must provide a certain benefit, or that the CRT could never award damages against ICBC for breaching its obligation to provide accident benefits. There is no specific limitation in the CRTA about what orders the CRT may make when resolving a claim under section 133. Damages claims are also not excluded from the CRT’s accident claims jurisdiction in section 134 of the CRTA.
24. That said, I find that the CRT’s accident claims jurisdiction in section 133(1)(a) of the CRTA is narrow in scope. A CRT claim must be about ICBC’s determination of Mr. Oloumi’s entitlement to benefits. Here, I find that there is no allegation (or evidence) that ICBC denied housekeeping or counselling benefits to Mr. Oloumi. The evidence establishes that ICBC approved these benefits promptly after they were recommended by his OT. In other words, to the extent that Mr. Oloumi alleges bad faith delay, I find that it is not related to ICBC’s determination of his entitlement to benefits. Although Mr. Oloumi’s bad faith claim falls within the subject matter of the CRT’s small claims jurisdiction, given the requested remedy of \$100,000, it far exceeds the CRT’s small claims monetary limit of \$5,000. I refuse to resolve Mr. Oloumi’s claims about delay under section 10 of the CRTA.

## ***Meal Preparation***

25. Mr. Oloumi's remaining allegation is about meal preparation benefits. It is undisputed that during their initial consultation, the OT recommended a homecare worker for meal preparation, but Mr. Oloumi declined. Mr. Oloumi argues that the meal preparation assistance that the OT had proposed (3 days a week for 2 hours each day) was impractical and inadequate. He says that ICBC should have paid for takeout instead.
26. Section 28 of the EABR says that an insured is entitled to benefits to assist with activities of daily living if the insured was able to perform those activities before the accident. Section 1(1) of the IVA defines "activities of daily living" as including meal preparation. ICBC does not dispute that Mr. Oloumi was entitled to meal preparation benefits based on his injuries, as he had undisputedly cooked for himself before the accident.
27. Mr. Oloumi says that he rejected the proposed meal preparation for 2 reasons. First, he says that the person who would have provided the service did not have cooking training and was not from the same culinary culture as him. I find that there is nothing in the EABR that requires ICBC to pay for assistance from a person with specific training or to match an insured's preferred cuisine.
28. Second, Mr. Oloumi questions how a person could have cooked all his meals in 3 visits a week. The EABR governs the monetary value of the benefits an insured is entitled to receive based on injury severity but does not say how that money must be spent. I find that there is nothing inherently unreasonable or impractical in having someone cook multiple meals for an insured at once, to be eaten later. I find that Mr. Oloumi has not proven that he was entitled to meal preparation benefits beyond what ICBC offered and he declined. I therefore find that he has not proven that ICBC failed to provide him with the benefits he was entitled to. I dismiss this claim.

## **FEES AND EXPENSES**

29. 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. Mr. Oloumi was not successful, I find that he is not entitled to reimbursement of his CRT fees. I order Mr. Oloumi to pay ICBC's \$25 in CRT fees.

## **ORDERS**

30. I refuse to resolve Mr. Oloumi's claims about ICBC's alleged delay in providing housekeeping services and counselling under section 10 of the CRTA.

31. I refuse to resolve Mr. Oloumi's claim about ICBC's alleged failure to assist him with making a claim sooner under section 10 of the CRTA.

32. I dismiss Mr. Oloumi's remaining claims.

33. I order Mr. Oloumi to pay ICBC \$25 in CRT fees.

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

35. 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