



Civil Resolution Tribunal

Date Issued: January 5, 2023

File: AB-2022-004633

Type: Motor Vehicle Injury

Category: Accident Benefits

Civil Resolution Tribunal

Indexed as: *Schramek v. ICBC*, 2023 BCCRT 10

BETWEEN:

DENISE PEARL SCHRAMEK

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, Denise Pearl Schramek, was involved in a

motor vehicle accident on July 8, 2019 in Nanaimo, British Columbia. Mrs. Schramek says she was injured in the accident and asks for \$50,000 in wage loss benefits.

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 denies Mrs. Schramek is entitled to any wage loss benefits.
3. Mrs. Schramek is self-represented. 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.

ISSUES

8. The issues in this dispute are:
 - a. Does the CRT have jurisdiction to decide this claim?
 - b. Is Mrs. Schramek's claim out of time?
 - c. To what extent, if any, is Mrs. Schramek entitled to the claimed \$50,000 in wage loss benefits?

BACKGROUND, EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Mrs. Schramek 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.
10. The general facts are undisputed. Mrs. Schramek was involved in a car accident on July 8, 2019 in Nanaimo, British Columbia. She was 63 years old at the time and working as a rehabilitation sales representative.
11. Mrs. Schramek says, as a result of her accident injuries, she was unable to continue with her employment and has suffered a loss of income. She says she was planning to work until at least 70 years old, and asks for \$50,000, which she says is a year's salary.

Does the CRT have jurisdiction over this claim?

12. ICBC says the CRT does not have jurisdiction to resolve this dispute because Mrs. Schramek was a worker in the course of her employment when the accident happened. ICBC submitted a September 25, 2019 email from WorkSafeBC which states that Mrs. Schramek was "deemed a worker in the course of her employment" and was given the right to choose between receiving WorkSafeBC compensation benefits or bringing an action against the other driver (see: section 128 of the *Workers Compensation Act* (WCA)).

13. It is unclear why ICBC argues the CRT does not have jurisdiction over Mrs. Schramek's claim for accident benefits. To the extent it argues the Workers Compensation Appeal Tribunal has exclusive jurisdiction to determine whether a person is a worker in the course of their employment, I agree, but that is not the issue before me. The issue before me is whether Mrs. Schramek is entitled to any accident benefits under the IVR.
14. Section 82(1) of the IVR says that if an insured is a worker under the WCA and is injured in their course of their employment, ICBC is not liable to pay benefits under Part 7 of the IVR, except to the extent the benefit payable under Part 7 exceeds the amount payable under the WCA. This means that Mrs. Schramek can only claim against ICBC for any difference between what she would have received under the WCA and what she is entitled to under the IVR, to the extent it is greater than the WCA benefits. Section 82(2) says section 82(1) applies even if the insured elects not to make a claim under the WCA.
15. Mrs. Schramek made no submissions on this issue. She does not deny she was a worker at the time. The evidence before me is that Mrs. Schramek elected to bring an action against the other driver involved in the July 8, 2019 accident instead of receiving WorkSafeBC benefits. However, the details of any such action, or whether an action was started at all, are not before me. There is also no evidence before me about what benefits, or the extent of those benefits, Mrs. Schramek may have been entitled to under the WCA.
16. In any event, I find the CRT has jurisdiction to resolve this claim. However, I find I do not need to determine what benefits Mrs. Schramek is entitled to, given my findings below.

Is Mrs. Schramek's claim out of time?

17. Section 103 of the IVR sets out the process for obtaining Part 7 benefits from ICBC.
18. Section 103(3) says an insured may give ICBC written notice of their intention to commence an action for accident benefits if their claim for benefits has been denied

by ICBC or if ICBC has not made a payment within the time limits prescribed in section 101. Here, there is no evidence Mrs. Schramek provided any written notice under section 103(3). Apart from this dispute, there is no indication ICBC has denied Mrs. Schramek any benefits, nor any evidence ICBC failed to make payment for any benefits within the prescribed time limits.

19. Further, section 103(1)(b)(i) of the IVR says that, if written notice was given to ICBC under section 103(3), an insured may commence an action for accident benefits within 3 months of the date of ICBC's response to the written notice, within 2 years of the date of the accident, or within 2 years after the date the last benefit was paid, whichever is later.
20. Section 103(1)(b)(iii) says that, if written notice was **not** given to ICBC under section 103(3), an insured may commence an action for accident benefits within 2 years of the date of the accident or within 2 years after the date the last benefit was paid, whichever is later.
21. As noted, the accident was July 8, 2019. There is no evidence before me ICBC has paid Mrs. Schramek any accident benefits. Mrs. Schramek filed her application for dispute resolution on July 11, 2022, more than 3 years after the accident. So, pursuant to section 103(1) of the IVR, I find Mrs. Schramek is not entitled to start an action against ICBC for Part 7 benefits. Her claim for Part 7 benefits is out of time. On that basis, I dismiss Mrs. Schramek's claim.

Entitlement to Part 7 benefits

22. Even if Mrs. Schramek's claim for benefits was not out of time, I would not have awarded her claimed benefits in any event.
23. Although Mrs. Schramek lists various injuries and ailments that she says are a result of the accident, the only evidence she provided is a 2020 MRI which indicated mild degenerative changes in Mrs. Schramek's cervical spine. There is no medical opinion about whether these changes were caused by the accident. She also provided no

evidence about her hours of work, how much she earned, or any supporting medical evidence that she was unable to work after the accident.

24. The evidence provided by ICBC shows that Mrs. Schramek only missed 4 days of work after the accident, for which she used her sick time. A July 10, 2019 medical note from her family doctor stated Mrs. Schramek was to return to work on July 15, 2019 after the accident. There is nothing before me to indicate she did not return to work at that time.
25. Further, in Mrs. Schramek's insurance claim application to ICBC dated March 1, 2020, she indicated she was not unable to work.
26. So, I find Mrs. Schramek's claim for wage loss benefits is unproven in any event.

FEES, EXPENSES AND INTEREST

27. 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 ICBC was successful, I find Mrs. Schramek must reimburse it the \$25 it paid in tribunal fees. I dismiss Mrs. Schramek's claim for reimbursement of tribunal fees. Neither party claimed dispute-related expenses.

ORDERS

28. Within 30 days of the date of this decision, I order Mrs. Schramek to pay ICBC a total of \$25 as reimbursement of tribunal fees.
29. ICBC is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
30. I dismiss Mrs. Schramek's claims.
31. 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