



# Civil Resolution Tribunal

Date Issued: January 27, 2023

File: VI-2021-009038

Type: Motor Vehicle Injury

Category: Accident Benefits

Civil Resolution Tribunal

Indexed as: *Jinks v. ICBC*, 2023 BCCRT 70

B E T W E E N :

JOHN RAYMOND JINKS

**APPLICANT**

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Member Name

## INTRODUCTION

1. This dispute is about entitlement to accident benefits under Part 7 of the *Insurance (Vehicle) Regulation* (IVR). The applicant, John Raymond Jinks, says he was injured on a transit bus on January 4, 2020. Mr. Jinks asks for a decision about his entitlement to medical benefits for his injuries. He claims \$1,000 in undefined medical benefits.

2. The respondent, Insurance Corporation of British Columbia (ICBC), is an insurer that administers accident benefits under Part 7 of the IVR (also known as Part 7 benefits). ICBC says that Mr. Jinks is not entitled to any Part 7 benefits because he has not established that he was injured in an accident arising out of the use or operation of a motor vehicle, as required by the IVR. Specifically, ICBC says Mr. Jinks has not proven an incident as he described occurred or that his alleged injuries were sustained as a result of the incident.
3. ICBC also says that Mr. Jinks breached section 97 of the IVR, which requires individuals claiming accident benefits to give ICBC prompt notice of the accident. ICBC says Mr. Jinks' claim for accident benefits should be dismissed.
4. Mr. Jinks is self-represented. ICBC is represented by an authorized employee.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over motor vehicle injury disputes, or "accident claims", brought under section 133 of the *Civil Resolution Tribunal Act* (CRTA). Section 133(1)(a) of the CRTA give the CRT jurisdiction over the determination of entitlement to accident benefits.
6. 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.
7. 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.

8. 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**

9. The issue in this dispute is to what extent, if any, Mr. Jinks is entitled to the claimed medical benefits under Part 7 of the IVR.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant Mr. Jinks bears the burden of proof on a balance of probabilities. 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 that Mr. Jinks did not provide any evidence or substantive submissions in this dispute apart from the Dispute Notice that started this proceeding, despite having the opportunity to do so.
11. As noted, Mr. Jinks says he was involved in an incident on a transit bus on January 4, 2020, in which he says he suffered injuries. Mr. Jinks also asks the CRT to determine liability for the incident and to assess his resulting personal injury damages, which is the subject of a separate, but related, decision (dispute VI-2022-001367).
12. ICBC provided its file notes, which show that Mr. Jinks first called ICBC to report the bus incident on January 18, 2021, more than a year after it allegedly occurred. It is undisputed that Mr. Jinks did not record the bus number or obtain the driver's name at the time of the alleged incident. ICBC's file notes show that based on the limited

information Mr. Jinks provided, the bus company has been unable to locate any documentary evidence confirming the alleged incident or the bus driver's identity.

13. ICBC relies on section 97 of the IVR. Section 97(1) says that if an accident occurs for which Part 7 benefits are provided, the insured must give ICBC prompt notice of the accident, provide ICBC with a written report of the accident circumstances within 30 days, and provide a proof of claim form to ICBC within 90 days. Section 97(2) says that ICBC is not liable to an insured who fails to comply with section 97(1) to ICBC's prejudice.
14. As Mr. Jinks did not report the bus incident to ICBC for over one year, I find he breached section 97(1) of the IVR. I note that ICBC's file notes indicate that Mr. Jinks said he tried to report the incident to ICBC in July or August of 2020, but that the person he spoke with was confused and thought he was referring to an earlier August 2019 claim. Mr. Jinks did not provide any further explanation of his earlier attempt to report the bus incident. However, even if Mr. Jinks had successfully reported the bus incident to ICBC in July or August 2020, I find that still would not have complied with the requirement for "prompt" notice of the January 2020 incident.
15. Overall, I find Mr. Jinks' delay in reporting the incident likely prejudiced ICBC, as it reduced the likelihood of locating any witnesses or identifying the bus driver to confirm the alleged incident. Given Mr. Jinks' breach of section 97(1) of the IVR, I find that under section 97(2), ICBC is not liable to provide Mr. Jinks with Part 7 benefits.
16. I note that even if Mr. Jinks had complied with section 97(1) of the IVR, I still would have dismissed his claim for accident benefits. This is because I find Mr. Jinks has not proven that he requires medical benefits for any injuries from the alleged bus incident. Mr. Jinks stated in the Dispute Notice only that his right leg "jackknifed" when he fell, so that his foot and lower leg ended up under his right thigh, causing him pain. As noted, Mr. Jinks filed no evidence in support of his claim. This means he provided no medical evidence to explain the nature of his alleged injuries or whether any assessments or treatment were recommended. Mr. Jinks also did not say he has incurred any expenses for treatment that he wants covered by Part 7 benefits.

17. ICBC provided evidence showing it requested records from Mr. Jinks' family doctor, and the doctor's office responded that it had no records related to any ICBC injury between January and June 2020. I find the records provided from June 2020 to July 2021 also do not refer to the bus incident or any injury to Mr. Jinks' right leg. In other words, I find there is no medical evidence before me establishing that Mr. Jinks was injured in a January 4, 2020 bus incident for which he required any treatment or assessments. There are also no receipts for treatment in evidence, and Mr. Jinks has not explained what medical treatment he says he requires.
18. Mr. Jinks has the responsibility of proving his claim for entitlement to Part 7 benefits, and I find he has failed to do so. I dismiss Mr. Jinks' claim.

## **FEES AND EXPENSES**

19. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to the recovery of their paid CRT fees and dispute-related expenses. ICBC was successful, and so I find Mr. Jinks must reimburse it \$25 in paid CRT fees. No dispute-related expenses were claimed.

## **ORDERS**

20. Within 30 days of the date of this decision, I order Mr. Jinks to pay ICBC a total of \$25 as reimbursement of CRT fees.
21. ICBC is also entitled to post-judgment interest under the *Court Order Interest Act*.
22. I dismiss Mr. Jinks' claims.
23. 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.

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Kristin Gardner, Tribunal Member