



Civil Resolution Tribunal

Date Issued: August 22, 2023

File: VI-2021-007939

Type: Accident Claims

Category: Accident Benefits

Civil Resolution Tribunal

Indexed as: *Kachouh v. ICBC*, 2023 BCCRT 712

BETWEEN:

LOUAY KACHOUH

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, Louay Kachouh, was involved in a motor vehicle accident on November 29, 2019, in Vancouver, British Columbia. Mr.

Kachouh says he was injured in the accident and asks for a decision about his entitlement to medical benefits, homemaker benefits, and 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 says it has fully funded, or agreed to fund, all requested medical benefits. ICBC further says Mr. Kachouh has not proven he is entitled to any other Part 7 benefits.
3. Mr. Kachouh represents himself. 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 to what extent, if any, Mr. Kachouh is entitled to the claimed benefits under Part 7 of the IVR.

BACKGROUND, EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Mr. Kachouh must prove his 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. Mr. Kachouh did not provide any final reply submissions, despite having the opportunity to do so.
10. As noted, Mr. Kachouh was involved in a motor vehicle accident on November 29, 2019. It is undisputed that he was injured as a result of the accident. Mr. Kachouh also asks the CRT to make a minor injury determination (VI-2021-009744) and to determine whether he is entitled to personal injury damages (VI-2021-009745). Those 2 disputes are the subject of a separate, but related, CRT decision.
11. In this accident benefits dispute, Mr. Kachouh claims for 3 different categories of accident benefits: medical benefits, homemaker benefits, and wage loss benefits.

Medical Benefits

12. It is undisputed that as a result of his accident injuries Mr. Kachouh underwent various treatments, including physiotherapy, massage therapy, and kinesiology. ICBC says it has already fully funded 30 physiotherapy sessions, 19 massage therapy sessions, and 5 kinesiology sessions.

13. Mr. Kachouh says his family doctor, Dr. Paul Beveridge, says he should receive further treatments for massage and physiotherapy, and provided a February 14, 2023 note from Dr. Beveridge in support.
14. ICBC says it approved Mr. Kachouh's request for further physiotherapy and massage therapy sessions on February 27, 2023. It says it directed Mr. Kachouh to have his preferred clinics contact ICBC directly with their treatment plan and to set up direct billing. It is undisputed Mr. Kachouh has not done so. As noted, Mr. Kachouh did not provide any final reply submissions, so he did not address ICBC's submissions that ICBC has already approved the medical benefits he seeks.
15. On balance I find ICBC has funded, or has agreed to fund, all medical benefits Mr. Kachouh has sought to date. So, I dismiss Mr. Kachouh's claim for a declaration about entitlement to medical benefits.

Homemaker Benefits

16. In the Dispute Notice, Mr. Kachouh claimed an unspecified amount for "disability or homemaker" benefits, and stated ICBC "never offered" him these benefits. When given the opportunity to make submissions about this claim, Mr. Kachouh only wrote "n/a".
17. ICBC says Mr. Kachouh has not provided any medical evidence to support a claim for homemaker benefits.
18. Given Mr. Kachouh's submissions, I find he has effectively abandoned this claim. As a result, I dismiss his claim for homemaker benefits.

Wage Loss Benefits

19. Mr. Kachouh claims \$80,000 in the Dispute Notice for wage loss benefits. Although Mr. Kachouh frames his claim as one for "income replacement benefits", based on the November 29, 2019 accident date, ICBC says his claim is for income loss is a claim for temporary total disability (TTD) benefits under Part 7 of the IVR, also known as wage loss benefits. I agree.

20. Mr. Kachouh says, as a result of the accident, he was off work for 7 months as he was “unable to perform his duties” as a geomatics freelancer in the global oil and gas exploration field. Mr. Kachouh says his job requires physical and intensive labour work and close attention to detail. He says his work requires a lot of travel and that as a result of the accident he lost freelance overseas contracts from December 2019 to June 2020, resulting in a loss of income. He estimates his average loss of income was around \$5,626 USD per month. I note \$5,626 USD per month for 7 months equals a total loss of \$39,382 USD, or approximately \$53,094.81 CAD.¹ Mr. Kachouh does not explain the difference between this number and the \$80,000 claimed in the Dispute Notice.
21. In any event, ICBC says Mr. Kachouh has not proven he is entitled to wage loss benefits, both because he has not proven he was unable to work and because he has not proven he suffered any actual loss.
22. I turn to the relevant law. 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.
23. Apart from his brief submissions about his employment and estimated wage loss, Mr. Kachouh provided no evidence of any income loss. He did not provide any employment records, copies of the allegedly lost contracts, financial statements, or tax documents indicating that he has suffered a monetary loss. ICBC provided copies of emails in which it repeatedly asked Mr. Kachouh for such documentation, with no response. I find Mr. Kachouh was aware that these types of records would be required to support his claim for wage loss benefits, yet he failed to provide any. Parties are told during the CRT process to submit all relevant evidence and there is no explanation for Mr. Kachouh’s failure to submit any to support this aspect of his claim.

¹ <https://www.bankofcanada.ca/rates/exchange/daily-exchange-rates/>

24. On the evidence before me I find Mr. Kachouh has not proven he suffered any loss that would entitle him to wage loss benefits under the IVR (see: *Kenni v. Insurance Corp. of British Columbia*, 1993 CanLII 1877 (BCSC) and *Bradley v. ICBC* (1989), 42 BCLR (2d) 323 (BCCA) at 326). I dismiss Mr. Kachouh's claim for wage loss benefits.

FEES, EXPENSES AND INTEREST

25. 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 Mr. Kachouh must reimburse it \$25 for paid tribunal fees.
26. Mr. Kachouh's claim for tribunal fees and both parties' claim for reimbursement of dispute-related expenses are addressed in a separate, but related, CRT decision about Mr. Kachouh's claim for damages.

ORDERS

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

