



Civil Resolution Tribunal

Date Issued: October 26, 2023

Amended Decision Issued: December 20, 2023

File: AB-2022-004857

Type: Accident Claims

Category: Accident Benefits

Civil Resolution Tribunal

Indexed as: *Tiwari v. ICBC*, 2023 BCCRT 922

BETWEEN:

NIHARIKA TIWARI

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about entitlement to accident benefits. On June 27, 2021, the applicant, Niharika Tiwari, was involved in a motor vehicle accident. Mrs. Tiwari was

the front seat passenger of a vehicle that was T-boned on the driver's side. It is undisputed Mrs. Tiwari suffered injuries as a result. Mrs. Tiwari says the respondent insurer, Insurance Corporation of British Columbia (ICBC), prematurely ended her accident benefits. She seeks additional health care and rehabilitation benefits, as well as caregiver benefits.

2. ICBC says it reasonably funded various treatment and health care expenses for Mrs. Tiwari, and says she does not qualify for additional health care expenses. Similarly, ICBC says Mrs. Tiwari no longer qualifies for a caregiver benefit.
3. Mrs. Tiwari 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.

Late Evidence

8. ICBC provided late medical evidence in this dispute. Mrs. Tiwari did not object to this evidence and had an opportunity to respond to it. Consistent with the CRT's mandate that includes flexibility, I find there is no prejudice to the parties in allowing the late evidence. So, I allow it as I find it is relevant to the issues before me.

ISSUES

9. The issues in this dispute are whether Mrs. Tiwari is entitled to the health care and rehabilitation and caregiver benefits she seeks, and if so, how much.

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant Mrs. Tiwari 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.
11. As noted, Mrs. Tiwari was undisputedly injured as a result of the June 27, 2021 accident. The parties agree that Mrs. Tiwari suffered soft tissue injuries to her neck, right shoulder, and low back. Mrs. Tiwari also says she suffered a left wrist injury which ICBC argues is unrelated to the accident.
12. ICBC undisputedly paid Mrs. Tiwari various benefits after the accident, including health care and rehabilitation and caregiver benefits. Mrs. Tiwari says ICBC unreasonably terminated her benefits when she should still be receiving them.

Health Care and Rehabilitation Benefits

13. Mrs. Tiwari seeks 3 aspects of health care and rehabilitation benefits. First, she wants ICBC to fund her ongoing rehabilitation treatments. Second, she seeks reimbursement for transportation costs of getting to and from her rehabilitation treatments. Finally, Mrs. Tiwari wants ICBC to continue paying her for her inability to perform her activities of daily living (ADLs).

Additional Treatment

14. I will first deal with Mrs. Tiwari's claim for further treatment sessions. As a result of the accident, ICBC says it has paid for 10 massage sessions, 126 physiotherapy treatments, 31 chiropractic treatments, 27 counselling sessions, 19 acupuncture treatments, 56 kinesiologist sessions, and 29 occupational therapy sessions. ICBC says it authorized physiotherapy and kinesiology treatments until June 30, 2023, as recommended by a Comprehensive Medical Assessment Report (CMA) it obtained from Dr. Lawrence Kei.
15. Section 123 of the *Insurance (Vehicle) Act* (IVA) says an insured is entitled to the payment or reimbursement of reasonable expenses incurred for health care services. Section 19 of the *Enhanced Accident Benefits Regulation* (EAB) says an insured is entitled to payment or reimbursement under section 123(1) only if the health care is provided to facilitate the insured's recovery from bodily injury or to address a decline in the insured's physical or mental function because of their bodily injury.
16. ICBC says it has reasonably funded all recommended treatments and that there is no indication any "additional treatment will facilitate her recovery". It says Mrs. Tiwari's further requested treatment does not meet the criteria in the IVA or EAB. I disagree on both aspects of ICBC's argument.
17. First, I disagree that ICBC has funded all recommended treatments. It is undisputed ICBC authorized further treatments pursuant to Dr. Kei's February 24, 2023 CMA report. However, on June 26 and 28, 2023, Mrs. Tiwari's kinesiologist and physiotherapist each provided ICBC with a treatment plan. In each report, the health

professional noted that Mrs. Tiwari was still complaining of pain in her neck, shoulder, and lower back, and reported difficulty with her ADLs. Her kinesiologist noted that Mrs. Tiwari was improving but then ICBC stopped her treatment and her pain had increased, and recommended 20 additional kinesiology sessions, twice per week for 10 weeks. Similarly, her physiotherapist noted that before her treatment was cut off, Mrs. Tiwari had “improved moderately”, and recommended re-starting treatment with 20 additional physiotherapy sessions, one per week for 20 weeks. Both health professionals stated they believed more treatment after the initial recommended sessions would be necessary, given Mrs. Tiwari’s condition on examination.

18. Based on this, contrary to ICBC’s submissions, I find the medical evidence supports Mrs. Tiwari’s request for additional treatment. Both her kinesiologist and her physiotherapist believe additional treatment will benefit Mrs. Tiwari, and I find there is nothing in the evidence that contradicts this. In a July 22, 2023 Reassessment Report, Mrs. Tiwari’s family physician, Dr. Sandeep Sawhney, also recommended further treatment. Although Dr. Kei’s February 2023 CMA report recommended 3 to 4 months of additional treatment, Dr. Kei did not express an opinion that any treatment after that would be unwarranted. Instead, Dr. Kei gave an estimated recovery timeline of 3 to 4 months, but stated a review and progressive conditioning program would be required at that point. Additionally, I find that the fact Mrs. Tiwari may require further treatments after these recommended sessions does not mean the treatments are no longer of any benefit. As noted, both her physiotherapist and kinesiologist have stated that Mrs. Tiwari was improving with the previous treatments before they were terminated by ICBC. Given the medical evidence before me, I do not accept ICBC’s argument that Mrs. Tiwari is no longer benefiting from rehabilitation treatment. I find the requested treatment is expected to facilitate Mrs. Tiwari’s recovery as required by section 19 of the EAB. So, I find ICBC must fund at least 20 additional treatments for both kinesiologist and physiotherapy sessions.
19. Mrs. Tiwari also seeks additional hand therapy. ICBC argues Mrs. Tiwari’s wrist injury is unrelated to the accident, which I address in detail below. In any event, given the July 2023 MRI findings (also discussed below), I find it is premature to award Mrs.

Tiwari additional hand therapy until it is known whether she will have to undergo a second surgery. So, I make no findings about Mrs. Tiwari's entitlement to additional hand therapy at this time.

20. Although Mrs. Tiwari requests additional acupuncture treatments, I find there is nothing in the medical evidence that suggests any additional acupuncture treatment is necessary or would be beneficial at this time. Similarly, I find there has been no recommendation for further occupational therapy treatment since May 2022. It is unclear whether this is still recommended or not. Mrs. Tiwari is able to re-apply to the CRT for a decision on whether she is entitled to further occupational therapy or acupuncture sessions if and when this treatment is recommended and she is denied entitlement.

Transportation Costs

21. Prior to the accident, it is undisputed that Mrs. Tiwari did not drive, and used walking and public transportation to get around. Mrs. Tiwari asks that ICBC reimburse her for transportation costs, specifically taxi and rideshare expenses, to and from recommended appointments. Mrs. Tiwari did not submit any receipts for transportation costs she allegedly paid, so I infer Mrs. Tiwari is asking me to require ICBC to reimburse her for transportation costs relating to any future treatment she is entitled to. ICBC says it funded these transportation costs up to the end of March 2023. However, I find this is irrelevant to its obligation to fund transportation costs in the future. In any event, ICBC argues that as of April 27, 2022, an occupational therapist (OT), Jillian Ross, recorded Mrs. Tiwari was able to walk 6 minutes and that Dr. Lei's February 2023 report did not put any "absolute restrictions" on her. ICBC argues Mrs. Tiwari is therefore capable of walking and taking public transit to her appointments, as she did before the accident, and that further transportation costs are not reasonable or necessary.
22. Section 125(2) of the IVA says that Mrs. Tiwari is entitled to reimbursement of reasonable and necessary transportation costs she incurs to receive care or rehabilitation. Although the April 2022 PCA report noted Mrs. Tiwari's ability to walk

and take public transit was “potentially” limited by her limited standing tolerance, I find there is no recent medical evidence before me confirming this is still the case. I find Mrs. Tiwari has not provided sufficient evidence to justify an ongoing order that ICBC fund her requested transportation costs at this time. However, nothing in this decision precludes Mrs. Tiwari from requesting reimbursement from ICBC for transportation services if she finds they are necessary when she restarts treatment.

Activities of Daily Living Benefit

23. I turn to Mrs. Tiwari’s claim for what ICBC calls the “ADL benefit”. Section 125 of the IVA says that if an insured is unable to perform their ADLs without assistance due to their accident injuries, they are entitled to payment or reimbursement necessary to assist them with those ADLs. Sections 29 and 31 of the EAB set out how to calculate an insured’s entitlement to the ADL benefit.
24. ICBC undisputedly paid Mrs. Tiwari \$7,723.85 as an ADL benefit, ending May 30, 2022. Mrs. Tiwari says she underwent left wrist surgery as a result of her accident injuries in April 2022 and continued to require ADL assistance, which ICBC denied. In support of this, Mrs. Tiwari provided a Personal Care Assistance (PCA) Assessment Report by her OT, Ms. Ross. Ms. Ross attended Mrs. Tiwari’s home to assess her ability to complete everyday activities, including meal preparation, light and heavy housekeeping, laundry, yard work, and self-care.
25. Section 31 of the EAB provides that each of the activities in the PCA report are given a score which is then used in a legislated formula to calculate Mrs. Tiwari’s entitlement to the ADL benefit. Ms. Ross undisputedly gave Mrs. Tiwari a weighted score of 20.5. There is no indication ICBC disagrees with this score. However, it says that the score is mostly related to Mrs. Tiwari’s left wrist injury, which it argues is unrelated to the accident. I disagree.
26. After the accident, Mrs. Tiwari undisputedly developed a ganglion cyst in her left wrist, which she had surgery to remove in April 2022. ICBC argues this injury was not related to the accident because it says Mrs. Tiwari did not report any complaints about

her left wrist until September 14, 2021, nearly 3 months after the accident. In response, Mrs. Tiwari explains she struck her left wrist on the vehicle's centre console during the accident, but that she just had "a little pain". She explains that as she was taking painkillers for her other, more serious, injuries, she "could hardly feel the pain" in her wrist. However, after approximately 6 weeks, the cyst appeared and the pain worsened.

27. I accept Mrs. Tiwari's explanation as it is consistent with the clinical records, which indicate that Mrs. Tiwari complained of left wrist pain by August 5, 2021, not mid-September as alleged by ICBC.
28. Additionally, Dr. Lei, who examined Mrs. Tiwari and authored the February 24, 2023 CMA report, explained that pain from wrist injuries can be delayed. Dr. Lei further stated that the left wrist ganglion cyst injury was an injury that Mrs. Tiwari "sustained in the accident", and recommended hand therapy, which ICBC then provided. In the February 24, 2023 report, Dr. Lei also noted that Mrs. Tiwari continued to complain of left wrist pain that may be the result of a recurrence of the ganglion cyst, or a ligament injury, and recommended further imaging. A July 2023 MRI confirmed a new or recurrent ganglion cyst.
29. Based on all the above, I find it is more likely than not that Mrs. Tiwari's left wrist injury, including the ganglion cyst, was a result of the June 27, 2021 accident. I find the April 2022 PCA report recommended ongoing ADL assistance for Mrs. Tiwari, for both her ongoing neck, back and shoulder injuries, as well as her inability to perform her ADLs as a result of her left wrist injury and resulting surgery. Ms. Ross's accompanying OT report recommended Mrs. Tiwari would need assistance for an additional "3-month treatment period". So, I find Mrs. Tiwari was entitled to at least an additional 3 months of ADL benefit, pursuant to the IVA and EAB.

30. Section 31 of the EAB says the payment or reimbursement for the ADL benefit is calculated by:

$$\left(\frac{\text{total weighted score}}{89} \right) \times \$5,033$$

31. Using this formula and Mrs. Tiwari's undisputed total weighted score of 20.5, Mrs. Tiwari is entitled to \$1,159.29 per month:

$$\left(\frac{20.5}{89} \right) \times \$5,033 = \$1,159.29$$

32. As I have found Mrs. Tiwari was entitled to an additional 3 months of ADL benefit, I find ICBC must pay Mrs. Tiwari a total of \$3,477.87 in additional ADL benefits. Given ICBC terminated Mrs. Tiwari's treatment in May 2023 and cancelled a further PCA report assessment scheduled for June 2022¹, I find there is insufficient medical evidence before me as to what, if any, ADL benefit Mrs. Tiwari may be entitled to after these 3 additional months. This does not preclude Mrs. Tiwari from asking for additional benefits from ICBC. That said, I note ICBC's obligation to provide accident benefits is not limited to what I have ordered in this dispute.

Caregiver Benefits

33. Mrs. Tiwari cares for her 2 young children and her spouse, who was also injured in the accident. ICBC undisputedly paid Mrs. Tiwari \$53,923.40 in caregiver benefits, which it says it discontinued after February 24, 2023. Mrs. Tiwari says she is unable to take her kids to "frequently visit parks" or participate in the same summertime activities as other children. She says the caregiver benefit will assist in giving her children the attention they deserve.

¹ Amended under section 64(a) of the CRTA to correct a typographical error.

34. Section 152(1) of the IVA says an insured whose main occupation is taking care of others who are unable to work is entitled to a caregiver benefit if the insured is no longer able to continue providing that care because of their accident injuries.
35. Here, the medical evidence consistently notes that Mrs. Tiwari is able to provide for and care for her children. Ms. Ross's April 2022 OT report notes Mrs. Tiwari is responsible for "100% of the homemaking and childminding tasks", but reports she had additional difficulty given her left wrist surgery. Ms. Ross recommended continued caregiver assistance for an additional 3 months. As noted, ICBC undisputedly continued Mrs. Tiwari's caregiver benefit until February 2023.
36. Dr. Lei's February 2023 CMA report notes Mrs. Tiwari was able to prepare food for her family for 2-3 days and order food online when necessary. Dr. Kei further stated that Mrs. Tiwari reported pain with household activities, including picking up her children's toys, but that she was able to clean the house independently, it just takes longer and requires breaks and pacing.
37. I find there is nothing in the medical evidence before me that indicates Mrs. Tiwari has been unable to care for her children or spouse since her caregiver benefit ended in February 2023. Although she undisputedly experiences some challenges in caring for her family, I find that does not satisfy section 152(1) of the IVA, which says an insured is entitled to a caregiver benefit if they are "unable to continue" providing care. I dismiss Mrs. Tiwari's claim for additional caregiver benefits.

SUMMARY

38. In summary, I find ICBC must fund 20 additional sessions of both kinesiology sessions and physiotherapy treatments, and pay Mrs. Tiwari \$3,477.87 in additional ADL benefits from June 1 to August 30, 2022.
39. Nothing in this decision precludes Mrs. Tiwari from claiming additional rehabilitation benefits from ICBC beyond what I have ordered here.

40. I make no findings about Mrs. Tiwari's entitlement to ADL benefits beyond August 30, 2022, and she may re-apply to the CRT if those benefits are requested and subsequently denied by ICBC.

FEES, EXPENSES AND INTEREST

41. The *Court Order Interest Act* applies to the CRT. Mrs. Tiwari is entitled to pre-judgment interest on the \$3,477.87 ADL benefit award from August 30, 2022 to today. This equals \$152.49.
42. 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. Tiwari was generally successful but did not pay any tribunal fees or claim dispute-related expenses. I dismiss ICBC's claim for reimbursement of tribunal fees.

ORDERS

43. Within 7 days of the date of this decision, I order ICBC to approve 20 physiotherapy treatments and 20 kinesiology sessions for Mrs. Tiwari.
44. Within 14 days of the date of this decision, I order ICBC to pay Mrs. Tiwari a total of \$3,630.36, broken down as follows:
- a. \$3,477.87 for ADL benefits, and
 - b. \$152.49 in pre-judgment interest under the *Court Order Interest Act*.
45. Mrs. Tiwari is also entitled to post-judgment interest under the *Court Order Interest Act*.

46. 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