



# Civil Resolution Tribunal

Date Issued: October 27, 2023

File: AB-2022-007480

Type: Accident Claims

Category: Accident Benefits

Civil Resolution Tribunal

Indexed as: *Timi v. ICBC*, 2023 BCCRT 924

B E T W E E N :

DUMEBI MARIAN TIMI

**APPLICANT**

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Alison Wake

## INTRODUCTION

1. This dispute is about entitlement to accident benefits. The applicant, Dumebi Marian Timi, was in a motor vehicle accident on June 19, 2021. Ms. Timi claims health care and rehabilitation benefits, income replacement benefits, permanent impairment

compensation, and loss of studies benefits from the respondent insurer, Insurance Corporation of British Columbia (ICBC).

2. ICBC says it has funded the health care benefits Ms. Timi is eligible for, and that she does not qualify for income replacement benefits, permanent impairment compensation, or loss of studies benefits.
3. Ms. Timi 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. Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
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. 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.
6. Section 42 of the CRTA says 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.

### ***Preliminary issues – new arguments and evidence***

7. In her submissions, Ms. Timi raised several arguments and allegations that were not included in her Dispute Notice. In particular, Ms. Timi says that her permanent residency card has been stolen, a microchip has been put in her hand, ICBC has

failed to release information to her and has acted negligently, she has suffered “mental torture”, and she has incurred travel and moving expenses. For some of these issues Ms. Timi requests specific compensation, whereas others she raises more generally. The purpose of the Dispute Notice is to define the issues and provide fair notice to the respondent of the claims against it. CRT Rule 1.19 says that the CRT will not issue an amended Dispute Notice after the dispute has entered the tribunal decision process except in extraordinary circumstances. I find no extraordinary circumstances before me to allow adding new claims at this late stage in the CRT process, and I note that many of these issues are likely outside the CRT’s jurisdiction over claims for accident benefits in any event. Accordingly, this decision only addresses Ms. Timi’s claims for specific accident benefits as set out in the Dispute Notice.

8. Ms. Timi also argues that her credit score has been affected as a result of her not receiving accident benefits. She asks in submissions that her credit score be “back to what it used to be with no penalties.” As this remedy was not included in the Dispute Notice, I find it is not properly before me and I decline to consider it. In any event, I note such an order is likely outside the CRT’s jurisdiction over claims about accident benefits.
9. Lastly, Ms. Timi asked to provide new evidence after the parties had finished providing their evidence and arguments. Ms. Timi’s description of this new evidence is unclear, but I infer she generally seeks to provide videos of her symptoms. Ms. Timi did not explain why she did not provide these videos with the rest of her evidence. I find the objective medical evidence before me is sufficient to consider Ms. Timi’s claims for accident benefits and videos of her symptoms would be unlikely to change my decision. Given the CRT’s mandate to provide speedy and economical dispute resolution, I decided not to admit or consider this evidence, which would have required a further round of submissions.

## ISSUES

10. The issues in this dispute are whether Ms. Timi is entitled to payment for health care benefits, income replacement benefits, permanent impairment compensation, or loss of studies benefits, and if so, how much.

## EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant Ms. Timi must prove her claims on a balance of probabilities (meaning “more likely than not”). While I have read all the parties’ submitted evidence and arguments, I have only referred to what is necessary to explain my decision.
12. As noted, Ms. Timi was in a motor vehicle accident on June 19, 2021. She was a passenger on a bus which braked and swerved, causing her to fall off her bus seat. Ms. Timi was undisputedly injured in the accident. She seeks accident benefits from ICBC, including loss of studies benefits, health care treatments, income replacement benefits, and permanent impairment compensation.

### ***Loss of Studies***

13. Ms. Timi claims an unspecified amount in loss of studies benefits. ICBC says Ms. Timi is not entitled to loss of studies benefits because she was not a “student” as defined by the *Insurance (Vehicle) Act* (IVA) at the time of the accident. I agree. Loss of studies benefits are available to students under section 136 of the IVA. Section 113 of the IVA says that a student is an insured who, at the time of the accident, is attending a secondary school or post-secondary educational institution on a full-time basis. It is undisputed that Ms. Timi was not attending a secondary school or post-secondary educational institution at the time of the accident. So, I find she was not a student and is not entitled to receive a loss of studies benefit. I dismiss this aspect of her claim.

## ***Health Care and Rehabilitation Benefits***

14. ICBC says that it has paid for the following medical treatments for Ms. Timi: 29 chiropractor sessions, 20 general practitioner visits, 26 kinesiology visits, 27 massage therapy sessions, 12 occupational therapy sessions, and 7 physiotherapy sessions. ICBC provided a medical calendar in support of this, and Ms. Timi does not dispute that ICBC paid for these sessions. So, I accept that it did so.
15. ICBC has undisputedly not paid for treatment since Ms. Timi's most recent kinesiology treatment in March 2023. Ms. Timi says she wants her treatments to continue, and also asks for \$10,000 in reimbursement for "cut off" benefits. Ms. Timi provided receipts for 8 physiotherapy treatments she received in another province in October 2022, and February, March, April and May 2023. I infer Ms. Timi paid out-of-pocket for these treatments and seeks reimbursement for them.
16. Section 123(1) of the IVA says that an insured is entitled to the payment or reimbursement of reasonable expenses incurred for, among other things, necessary health care services. Section 19(3) of the *Enhanced Accident Benefits Regulation* (EAB) says that an insured is not entitled to payment or reimbursement for health care services that are provided more than 12 weeks after the accident unless the expense is incurred to facilitate the insured's recovery from their bodily injury or to address a decline in their physical or mental function because of their bodily injury.
17. ICBC relies on a February 24, 2023 Comprehensive Medical Assessment (CMA) report prepared by Dr. Dimitri Louvish, a licensed physician and authorized CMA Lead Assessor. According to the CMA report, Dr. Louvish reviewed Ms. Timi's medical records from after the accident date, and then interviewed and examined Ms. Timi on February 16, 2023.
18. After examining Ms. Timi, Dr. Louvish concluded that "within all reasonable medical certainty, Ms. Timi's uncomplicated accident-related soft tissue type physical injuries have essentially resolved and she has reached her pre-subject accident functional baseline." Dr. Louvish found that Ms. Timi "does not have any ongoing subject

accident-related functional limitations and physical restrictions that would warrant any additional therapy.” However, Dr. Louvish noted that Ms. Timi reported “ongoing post-concussive symptomatology” and recommended that she be referred to a neuropsychologist for further investigation of her complaints.

19. While the evidence shows that Ms. Timi’s general practitioner had referred her to a neurologist prior to the CMA, there is no evidence before me that Ms. Timi has received a neurology evaluation or treatment. Ms. Timi reported to ICBC in August 2023 that she is no longer seeing her general practitioner and is searching for a new one. ICBC says it will review any recommendations and will fund recommended treatments under the IVA and the EAB if and when Ms. Timi is referred to a neuropsychologist.
20. Ms. Timi provided various clinical notes from her out-of-province physiotherapist appointments in March and May of 2023. These notes describe Ms. Timi’s subjective complaints of pain, nausea, dizziness, and sensitivity to light and sound. They also describe the physiotherapist’s observations of Ms. Timi’s frequent tics, which are exacerbated “on effort”. The notes indicate that the physiotherapist’s opinion is that Ms. Timi “needs more physio treatment” and that they recommend continuing physiotherapy for 3 months. However, they do not explain whether and how physiotherapy would address Ms. Timi’s neurological symptoms.
21. While I accept that the physiotherapist’s observations are consistent with the CMA report’s recommendation that Ms. Timi be referred to a neuropsychologist, I find these observations fall short of establishing that further physiotherapy treatment is required to facilitate her recovery, particularly in light of the CMA report’s conclusion that she no longer has physical restrictions that would warrant additional therapy. So, I dismiss Ms. Timi’s claim for her treatments to continue, and for reimbursement for her physiotherapy treatments after February 16, 2023. I note ICBC’s medical calendar indicates it paid for Ms. Timi to attend 3 kinesiology visits in late February and early March 2023. ICBC does not argue that it should not have paid for these treatments, and I make no findings about them.

22. In terms of Ms. Timi's request for reimbursement for previous treatment, this leaves one \$120 physiotherapy invoice dated October 14, 2022. I find I do not need to determine whether this treatment was required to facilitate Ms. Timi's recovery, because I find she is not entitled to reimbursement in any event. Section 57 of the EAB requires the insured to provide ICBC with a receipt for benefit expenses within 180 days of the date the expenses are incurred. There is no evidence before me that Ms. Timi provided this invoice to ICBC before providing it as evidence in this dispute in July 2023. So, I find Ms. Timi is not entitled to reimbursement for her October 14, 2022 physiotherapy treatment.
23. Ms. Timi also submitted receipts for taxi transportation, which I infer she used to attend the physiotherapy appointments discussed above, and rent expenses which she says are for her accommodation while receiving treatment. Section 125(2) of the IVA says that Ms. Timi is entitled to reimbursement of reasonable and necessary transportation and lodging costs she incurs to receive care or rehabilitation. As I have found above that Ms. Timi is not entitled to reimbursement for these treatments, it follows that she is not entitled to reimbursement for transportation or lodging expenses to attend them.
24. In summary, I dismiss Ms. Timi's claims for health care and rehabilitation benefits and associated travel and lodging expenses.

### ***Income Replacement Benefits***

25. Ms. Timi says that she is unable to work because of her concussion symptoms. Ms. Timi claims \$38,446.52 in income replacement benefits, but does not explain how she calculated this amount.
26. At the time of the accident, Ms. Timi was undisputedly not working because she had suffered a workplace injury to her right ankle and knee in February 2019. WorkSafe BC records in evidence show that it determined Ms. Timi would not be able to return to her previous occupation, which was providing housekeeping and shelf stocking services. WorkSafe placed Ms. Timi into its vocational rehabilitation program, and

provided her with wage loss benefits until June 19, 2022. A WorkSafe vocational rehabilitation consultant reported to ICBC that WorkSafe stopped paying Ms. Timi's benefits for a number of reasons, including that she did not complete her computer training courses and participated very minimally in the job search process.

27. Ms. Timi argues that ICBC should have paid her income replacement benefits of 90% of her income, less what she received from WorkSafe. The IVA and the *Income Replacement and Retirement Benefits and Benefits for Students and Minors Regulation* (IRB) set out an insured's entitlement to income replacement benefits. Division 6 of the IVA provides that full-time earners, temporary and part-time earners, non-earners, and students are entitled to income replacement benefits if they fit the required criteria.
28. Section 113 of the IVA defines a temporary earner as an insured, other than a minor or student, who, at the time of the accident, holds regular employment on a temporary basis. I find Ms. Timi does not meet this definition, nor was she a full-time or part-time earner, as she undisputedly was not working at the time of the accident. I also find she was not a non-earner, which is defined as an insured who at the time of the accident does not hold employment but is able to work. The WorkSafe records in evidence show that Ms. Timi was unable to work at the time of the accident. Lastly, I have found above that Ms. Timi was not a student at the time of the accident.
29. So, I find that Ms. Timi does not meet the applicable definitions of any categories which are entitled to income replacement benefits. Section 145 of the IVA says that an insured who, before the accident, is regularly incapable of holding employment for any reason except age is not entitled to income replacement benefits. I find Ms. Timi was incapable of holding employment at the time of the accident due to her previous work injury. So, I find Ms. Timi is not entitled to income replacement benefits under the IVA or IRB. I dismiss this aspect of her claim.



## ***Permanent Impairment***

30. Ms. Timi says that her injuries have caused permanent impairment, and she claims \$288,144 in permanent impairment compensation.
31. The applicable regulation is the *Permanent Impairment Regulation* (PIR). Section 10(1) of the PIR says an impairment is “permanent” when, following a “period of time sufficient for optimal tissue repair”, the impairment has become static or has stabilized, and is unlikely to change significantly with further therapy. Section 10(2) says ICBC must not pay compensation until the impairment is permanent.
32. ICBC says that based on the CMA report, Ms. Timi’s accident-related physical injuries have essentially resolved and she has reached her pre-accident functional baseline. ICBC acknowledges the CMA report recommended Ms. Timi be referred to a neuropsychologist for further investigation of her concussion-related complaints. However, it says Ms. Timi’s doctor has not referred her to a neuropsychologist and so there is no medical evidence to support that Ms. Timi has sustained a permanent impairment.
33. As discussed above, Ms. Timi’s only additional medical evidence is the clinical notes from her out-of-province physiotherapist appointments in March and May of 2023. Again, while I accept that the physiotherapist’s observations are consistent with the CMA report’s recommendation that Ms. Timi be referred to a neuropsychologist, I find they fall short of establishing that Ms. Timi has suffered a permanent impairment.
34. As noted, in order to successfully claim for permanent impairment compensation, Ms. Timi must show that it is more likely than not that her injuries are “permanent” as defined by section 10(1) of the PIR. I find she has not done so. So, I dismiss her claim for permanent impairment compensation at this time. Nothing in this decision prevents Ms. Timi from reapplying for permanent impairment compensation if and when her injuries become permanent.

## **FEES, EXPENSES AND INTEREST**

35. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to the recovery of their CRT fees and dispute-related expenses. Ms. Timi was unsuccessful, so I dismiss her claim for CRT fees. As ICBC was successful, it is entitled to reimbursement of the \$25 it paid in CRT fees. Neither party claimed dispute-related expenses.

## **ORDERS**

36. I dismiss Ms. Timi's claims.

37. Within 30 days of this decision, I order Ms. Timi to pay ICBC \$25 as reimbursement for CRT fees.

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

39. 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 for the court that it is filed in.

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Alison Wake, Tribunal Member