



Civil Resolution Tribunal

Date Issued: November 3, 2023

File: AB-2022-009195

Type: Accident Claims

Category: Accident Benefits

Civil Resolution Tribunal

Indexed as: *Almaar v. ICBC*, 2023 BCCRT 952

BETWEEN:

OMAR ALMAAR

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 income replacement benefits. The applicant, Omar Almaar, was in 3 motor vehicle accidents: June 28, 2021, December 29, 2021, and January 21, 2022. The respondent insurer, Insurance Corporation of British

Columbia (ICBC), undisputedly paid Mr. Almaar income replacement benefits until May 7, 2022. Mr. Almaar seeks an unspecified amount of income replacement benefits beyond that date.

2. ICBC administers income replacement benefits under the *Insurance (Vehicle) Act* (IVA). ICBC says Mr. Almaar is not entitled to further income replacement benefits.
3. Mr. Almaar 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.

Claim for compensation

8. In his submissions, Mr. Almaar asks that ICBC “pay him compensation” in addition to further income replacement benefits, as he alleges they “make him suffer too much”. This claim was not included in the Dispute Notice, nor is it a claim for “accident benefits” under section 133(1)(a) of the CRTA. So, I have not addressed it any further in this decision.

ISSUE

9. The issue in this dispute is whether Mr. Almaar is entitled to further income replacement benefits than already paid and, if so, how much.

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant Mr. Almaar must prove his claim 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 above, Mr. Almaar was in 3 accidents between June 28, 2021 and January 21, 2022. Prior to the first accident on June 28, 2021, Mr. Almaar had secured work as a driver with Damy Logistics, but had not yet started. After the first accident, Mr. Almaar also started a position with DoorDash.
12. After the first accident, Mr. Almaar started with Damy, but worked only 1 week: July 21 to 29, 2021. Mr. Almaar says he had to quit his job with Damy due to his accident injuries. Mr. Almaar worked with DoorDash from July 23, 2021 to at least November 8, 2021.
13. ICBC undisputedly paid Mr. Almaar a total of \$23,742.84 in income replacement benefits for the time period of July 5, 2021 to May 7, 2022. In May 2022, ICBC terminated Mr. Almaar’s income replacement benefits as it says it determined Mr. Almaar did not actually qualify for income replacement benefits in the first place. ICBC

says Mr. Almaar should not have been paid the \$23,742.84, but does not seek its reimbursement.

14. Mr. Almaar does not specifically argue ICBC should have paid him more in income replacement benefits before May 7, 2022. Rather Mr. Almaar says ICBC should have continued paying income replacement benefits beyond that date.
15. Part 10 of the IVA, Enhanced Accident Benefits and Limits on Actions and Proceedings, applies to accidents that occur on and after May 1, 2021, which includes Mr. Almaar's 3 accidents.
16. The IVA and *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 or part-time earners, and non-earners are entitled to income replacement benefits if they are unable to continue or hold employment because of their accident injuries.
17. Mr. Almaar alleges he suffered back and right shoulder injuries as a result of the 3 accidents. He says he is unable to hold employment as a result. However, I find that is not consistent with the medical evidence. My reasons follow.
18. Mr. Almaar relies on a September 7, 2022 letter from Dr. Pankaj Dhawan, a physiatrist, to Dr. Syed Jaffri, Mr. Almaar's family physician. In that letter Dr. Dhawan stated an MRI of Mr. Almaar's back showed compression fractures that Dr. Dhawan believed were "due to the car accident". Mr. Almaar argues this is proof he is unable to work. I do not accept Mr. Almaar's argument. First, Dr. Dhawan's September 7, 2022 opinion does not say that Mr. Almaar is unable to work due to the compression fractures. Second, the medical evidence indicates that the compression fractures were present in Mr. Almaar's spine since at least June 2019. It is unclear whether Dr. Dhawan had copies of Mr. Almaar's prior back scans showing the compression fractures before providing his opinion, but the evidence shows Dr. Dhawan was treating Mr. Almaar for chronic back pain prior to the accidents. I place no weight on Dr. Dhawan's September 7, 2022 opinion.

19. Next, I find Mr. Almaar's own reports to his treating doctors are inconsistent about his ability to work, based on those doctors' clinical records. For example, on February 16, 2022, Mr. Almaar reported to Dr. Jaffri that he was self-employed, working in delivery. Similarly on June 3, 2022, Mr. Almaar told Dr. Jaffri he was self-employed and working full time. Six weeks later on July 14, 2022, Mr. Almaar told Dr. Jaffri he had not worked in any capacity since August 2021, which is inconsistent with Mr. Almaar's evidence in this dispute about his DoorDash employment. Finally, on July 22, 2022, Mr. Almaar requested Dr. Jaffri write a medical note stating that his ongoing neck and shoulder pains were a result of his accidents, which Dr. Jaffri refused given he had been treating Mr. Almaar for these complaints since before the first accident.
20. On balance, I find the medical evidence does not support a finding that Mr. Almaar was unable to work due to his accident injuries rather than his pre-existing back and shoulder complaints.
21. Additionally, although Mr. Almaar argues he had to quit his job at Damy due to his accident injuries, ICBC submits it spoke to each of Damy's 2 owners, who both explained that Mr. Almaar was terminated due to continued safety concerns with his driving. ICBC provided contemporaneous notes of its employees' phone conversations with Damy's owners, which I find is hearsay evidence. 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, including hearsay evidence. I accept ICBC's employees' notes about their conversation with Damy's owners as evidence as they were created as part of its standard procedures when investigating an insured's accident injuries, subject to weight.
22. Mr. Almaar argues the statements from Damy's owners "may not be true". He says he has a good relationship with the supervisors and manager at Damy, and that they would not say what the owners said. However, Mr. Almaar did not provide any witness statement from anyone at Damy. So, I place significant weight on ICBC's internal notes from the conversations. As a result, I find Mr. Almaar was terminated from his

employment with Damy for safety concerns which had no relation to his accident injuries.

23. Overall, I find Mr. Almaar's evidence about his ability to work and the extent and severity of his accident injuries is not credible. As noted above, Mr. Almaar must prove his entitlement to his claimed accident benefits. I find he has not proven he was unable to work as a result of his accident injuries, as required by sections 131 to 134 of the IVA. I dismiss his claim.

FEES, EXPENSES AND INTEREST

24. 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 Mr. Almaar was not successful, I dismiss his claim for reimbursement of tribunal fees and dispute-related expenses. ICBC was successful, so I find Mr. Almaar must reimburse it \$25 in paid tribunal fees.

ORDERS

25. Within 30 days of the date of this decision, I order Mr. Almaar to pay ICBC \$25 as reimbursement of tribunal fees.
26. ICBC is also entitled to post-judgment interest under the *Court Order Interest Act*.
27. Mr. Almaar's claims are dismissed.

28. 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