



Civil Resolution Tribunal

Date Issued: March 19, 2024

File: AB-2023-001186

Type: Accident Claims

Category: Accident Benefits

Civil Resolution Tribunal

Indexed as: *Moscone v. ICBC*, 2024 BCCRT 283

BETWEEN:

DOMENICO MOSCONE

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about entitlement to income replacement benefits.
2. Domenico Moscone was in a motor vehicle accident on June 14, 2021. Mr. Moscone was not employed at the time of the accident. Mr. Moscone says the respondent

insurer, Insurance Corporation of British Columbia (ICBC), has not paid them income replacement benefits. Mr. Moscone did not claim a specified amount, but says they are entitled to income replacement benefits because they lost wages when they were unable to work due to their accident-related injuries.

3. ICBC says Mr. Moscone is not entitled to income replacement benefits under the *Insurance (Vehicle) Act* (IVA) and associated regulations. ICBC denies it owes Mr. Moscone any income replacement benefit compensation.
4. Mr. Moscone 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 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.
6. CRTA section 2 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. CRTA section 39 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. CRTA section 42 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 court.

Rehabilitation benefits

9. In their submissions, Mr. Moscone asked that ICBC extend their rehabilitation treatments to facilitate their recovery and improve their quality of life. This claim was not included in Mr. Moscone's application for dispute resolution. ICBC disputes this late claim, and says this dispute should be limited to the income replacement benefits issue raised in the Dispute Notice. I agree. I find ICBC did not have fair notice of Mr. Moscone's additional accident benefits claim or the opportunity to adequately respond. So, I find this additional claim is not properly before me in this dispute, and I make no findings on whether Mr. Moscone is entitled to further rehabilitation benefits. However, nothing in this decision prevents Mr. Moscone from re-applying to the CRT with further accident benefits claims, subject to the applicable limitation period.

Inadmissible evidence

10. ICBC submitted in evidence its notes of the parties' discussions during the CRT's facilitation phase. Under CRTA section 89 and CRT rule 1.11 communications during the dispute's facilitation stage are confidential and not admissible as evidence unless all parties' consent. There is no evidence that Mr. Moscone agreed to include ICBC's notes from the facilitation stage as evidence. So, I have not considered this evidence in my decision.

Late evidence

11. Mr. Moscone provided late evidence during ICBC's response submissions. ICBC was provided with an opportunity to review and provide submissions on the late evidence, so I find there is no actual prejudice in allowing this late evidence. Consistent with the CRT's flexible mandate, I have allowed and considered this late evidence.

ISSUE

12. The issue in this dispute is whether Mr. Moscone is entitled to any income replacement benefits, if so, how much.

BACKGROUND, EVIDENCE AND ANALYSIS

13. In a civil claim such as this, as the applicant, Mr. Moscone bears the burden of proof on a balance of probabilities, meaning “more likely than not”. While I have reviewed all of the parties’ evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
14. The parties agree that Mr. Moscone was in an accident on June 14, 2021 in Vancouver, British Columbia. Mr. Moscone was not working at the time of the accident. Mr. Moscone applied for income replacement benefits, and on February 2, 2003, ICBC advised Mr. Moscone that they were not eligible for income replacement benefits.
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. Moscone’s accident.
16. In determining an insured’s entitlement to income replacement benefits under IVA, sections 131, 133 and 134 require ICBC to calculate and determine the income replacement benefits for full-time earners, temporary and part-time earners, and non-earners in accordance with the regulations. The applicable regulation is the *Income Replacement and Retirement Benefits and Benefits for Students and Minors Regulation* (IRB).
17. As noted, Mr. Moscone was not employed at the time of the accident. Mr. Moscone says they have been unable to work since the accident due to their accident-related injuries. Mr. Moscone says they made attempts to return to work after the accident, but they were unable to continue working.
18. ICBC says Mr. Moscone was regularly incapable of work before the accident and was unable to work at the time of the accident due to pre-existing lower back issues. ICBC does not dispute that Mr. Moscone’s pre-existing lower back injuries were aggravated in the accident. However, ICBC says Mr. Moscone is not eligible for any income

replacement benefits because Mr. Moscone does not fit within any earner class under the IVA, including non-earners.

19. IVA section 113 defines a non-earner as an insured who was not employed at the time of the accident but is able to work.
20. IVA section 145 says that despite IVA Part 10 Division 6, Income Replacement Benefits – Earners and Non-Earners, an insured who ICBC is satisfied was regularly incapable, before the accident, of holding employment for any reason except age is not entitled to an income replacement benefit.
21. ICBC says Mr. Moscone only held various jobs for a short duration before the accident. Mr. Moscone does not dispute this. In an April 13, 2022 call to ICBC, Mr. Moscone reported they worked full time in 2016 and 2017, but were injured in a workplace accident towards the end of 2017. This is consistent with Mr. Moscone's WorkSafe records in evidence. Mr. Moscone reported that they attempted to work a couple months in 2018 but because of their limitations things got worse, which I infer means their symptoms worsened. Mr. Moscone also reported working a couple months in 2019, 2020, and 2021. Mr. Moscone's income tax returns show Mr. Moscone had no employment income in 2019, around \$3,900 in 2020, and around \$5,400 in 2021.
22. Mr. Moscone says they were in good shape and eager to return to work before the accident, and their back felt fine. However, the evidence shows Mr. Moscone resigned a month before the accident, in May 2021, due to their pre-existing back injuries. Notably, their May 14, 2021 resignation email to their employer said they were resigning due to their lower back issues. Given this email from Mr. Moscone themselves just prior to the accident, I find their recent submission that their back felt fine and they were eager to return to work when the accident occurred is not credible.
23. I find Mr. Moscone's clinical and employment history before the accident show that Mr. Moscone was regularly incapable of working before the accident due to their pre-existing low-back injuries. As discussed above, Mr. Moscone resigned shortly before

the accident occurred because of their pre-existing injuries. Therefore, I find IVA section 145 applies, and Mr. Moscone is not entitled to income replacement benefits on that basis.

24. Mr. Moscone and ICBC also provided various clinical records and medical reports in evidence that detail Mr. Moscone's injuries and symptoms since the accident. There is also evidence about Mr. Moscone's return to work attempts in December 2021 and again in 2023. However, given my finding above that under IVA section 145, Mr. Moscone is not entitled to income replacement benefits because they were regularly incapable of holding employment before the accident, it unnecessary to discuss their post-accident records in any detail.
25. Given all the above, I find Mr. Moscone has not proved they are entitled to any income replacement benefits. I dismiss Mr. Moscone's claims.

CRT fees and dispute-related expenses

26. 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. Moscone was not successful, I find they are not entitled to reimbursement for their paid CRT fees. For the same reason, I order Mr. Moscone to reimburse ICBC \$25 for its paid CRT fees. Neither party claimed dispute-related expenses.

ORDERS

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

Leah Volkers, Tribunal Member