



# Civil Resolution Tribunal

Date Issued: April 15, 2024

File: VI-2022-007220

Type: Accident Claims

Category: Accident Benefits

Civil Resolution Tribunal

Indexed as: *Bal v. ICBC*, 2024 BCCRT 352

BETWEEN:

NARINDER KAUR BAL

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

## INTRODUCTION

1. This dispute is about entitlement to accident benefits under Part 7 of the *Insurance (Vehicle) Regulation* (IVR). Narinder Kaur Bal was injured in a motor vehicle accident

on October 24, 2020, in Vernon, British Columbia. Mrs. Bal asks for a decision about her entitlement to medical benefits and wage loss benefits.

2. The 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 paid Mrs. Bal the medical benefits she is entitled to, and she is not entitled to wage loss benefits.
3. Mrs. Bal is self-represented, and 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 court.

8. I was unable to open 2 pieces of ICBC's evidence, but for the following reasons I find I can fairly decide this dispute without seeing this evidence. The first piece of evidence I cannot open is titled, "Personal Income Tax Returns – 2018". However, ICBC submitted another piece of evidence titled "Personal Income Tax Returns – 2016 to 2022", and this document includes Mrs. Bal's income tax return for 2018. Mrs. Bal also submitted her income tax return for 2018 as evidence.
9. The second piece of ICBC's evidence I was unable to open is titled, "PharmaNet Patient Record – Dec 14, 2016 to Jan 5, 2020". However, none of Mrs. Bal's medical benefits claims are for medication she paid for during this time. I also find that nothing in my analysis about Mrs. Bal's entitlement to wage loss benefits turns on any medications she paid for or took during this period.

## **ISSUE**

10. The issue in this dispute is whether and to what extent Mrs. Bal is entitled to the claimed benefits under Part 7 of the IVR.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

11. In a civil claim like this one, Mrs. Bal must prove her claims on a balance of probabilities, meaning "more likely than not". I have read all of the parties' evidence and submissions, but I have only addressed what I find relevant to explain my decision. For the following reasons, I dismiss Mrs. Bal's claims.
12. As noted, Mrs. Bal was injured in a motor vehicle accident on October 24, 2020. In addition to her claims for medical and wage loss benefits in this dispute, Mrs. Bal initially asked the CRT to make a minor injury determination, which was resolved during the CRT's facilitation stage. She also initially asked the CRT to make a fault and damages determination, but she has since withdrawn that claim. She also filed a Notice of Civil Claim in the BC Supreme Court for liability and damages related to the accident.

### ***Medical Benefits***

13. In her Dispute Notice Mrs. Bal claims \$1,633.43 in medical benefits. In her submissions she increased her medical benefits claim to \$2,564.60. ICBC objects to this increased claim amount because Mrs. Bal did not amend her Dispute Notice to reflect the higher claim amount, which ICBC says is procedurally unfair. However, I dismiss Mrs. Bal's medical benefits claim in its entirety for other reasons explained below, so I find nothing turns on the increased claim amount. I address each of Mrs. Bal's specific medical benefits claims below.

### ***Heat Pad and Tens Machine***

14. In her Dispute Notice Mrs. Bal claimed \$420 as reimbursement for a new heating pad and Tens machine. She does not specifically address this expense in her submissions, and it does not appear to be included in her calculations for her revised medical benefits claim amount. In any event, she provided no evidence that she incurred these expenses, so I dismiss this part of her claim.

### ***Feldenkrais, Massage, Yoga, and Magnesium Pills***

15. In her Dispute Notice Mrs. Bal claimed \$707.43 as reimbursement for Feldenkrais treatments and classes to calm her nervous system. In her submissions she reduced this claim to \$104.98 for 2 months of Feldenkrais membership fees in May and June 2023. In her Dispute Notice Mrs. Bal also claimed \$320 for reimbursement of massage therapy treatments, though in submissions she increased her massage claim to \$440. In her submissions she also claimed \$468.30 for reimbursement of yoga classes and \$70.33 for reimbursement of magnesium pills, neither of which were specifically claimed in her Dispute Notice.

16. ICBC submitted evidence that it reimbursed Mrs. Bal for all these amounts, which she does not dispute. So, I dismiss these parts of her claim.

### Chiropractic Treatments

17. In her Dispute Notice Mrs. Bal claimed \$186 as reimbursement for chiropractic treatments. In her submissions she increased her chiropractic claim to \$328. She submitted receipts showing she spent \$440 on chiropractic treatments between April 11 and October 5, 2023. She does not explain the discrepancy between the \$328 claimed and the \$440 she appears to have spent.
18. ICBC submitted evidence showing it reimbursed Mrs. Bal \$413 for these expenses. ICBC says it reimbursed Mrs. Bal the maximum allowed for chiropractic treatments under IVR section 88(1)(a), Schedule 3.1, Table 1. Mrs. Bal does not dispute any of this. So, I dismiss this part of her claim.

### Foot Pain Assessment and Related Equipment

19. Though she did not raise it in her Dispute Notice, in her submissions Mrs. Bal claims \$271.25 for reimbursement for foot pain assessments and related equipment. She submitted receipts showing she incurred these expenses between November 23 and December 9, 2021.
20. ICBC says there is no evidence these expenses are related to injuries Mrs. Bal sustained in the accident. In the alternative, it says she failed to provide medical opinion evidence that these treatments and equipment were required to treat her accident-related injuries as required by IVR section 88(2)(d.1) or (f). It also says she failed to obtain ICBC's approval before incurring these expenses, as required by IVR section 88(3). For the following reasons, I agree.
21. On the evidence before me, I find the first medical record of Mrs. Bal experiencing any issues with her foot is in her physiotherapy records from August 24, 2021, 10 months after the accident. That entry says Mrs. Bal was "having some right foot/ankle pain. Unknown cause but started after doing a walk recently". A later entry from her physiotherapist on February 8, 2022 says Mrs. Bal saw her family doctor who told her that her foot issue was a "nerve root issue at L4/5". Her family doctor's records from February 3, 2022 mention right leg pain and L4/5, but I find it is not clear from those

records what her doctor determined was the cause of her foot pain. Those family doctor records state that Mrs. Bal went to a podiatrist, but I find there is no record of any medical professional recommending that she do so. Overall, I find there is insufficient medical evidence that the accident caused Mrs. Bal's foot pain. Also, Mrs. Bal does not dispute that she failed to obtain ICBC's approval before incurring these expenses.

22. I also note that the IVR section 88.01 requires an insured to provide receipts for accident-related expenses to ICBC no more than 60 days from the date the expenses are incurred. ICBC is not required to pay for any receipts submitted after 60 days unless the insured has a reasonable excuse for the delay. There is no evidence Mrs. Bal submitted the receipts related to her foot treatments to ICBC within 60 days of incurring the expenses, and she provided no explanation for not doing so.

23. For these reasons, I dismiss this part of Mrs. Bal's claim.

#### Naturopath

24. Though she did not raise it in her Dispute Notice, in her submissions Mrs. Bal claims \$723.21 as reimbursement for naturopathic expenses she incurred between March 23 and October 10, 2023. She provided receipts supporting her reimbursement claim for these expenses.

25. ICBC says Mrs. Bal failed to provide medical opinion evidence that these services were required to treat her accident injuries, as required by IVR section 88(2)(d.1) or (f). It also says she failed to obtain ICBC's pre-approval for these expenses as required by IVR section 88(3). I agree. I find there is nothing in any of the medical reports or records in evidence suggesting that naturopathic services were required to treat her accident-related injuries. I note that Mrs. Bal's family doctor's January 9, 2023 reassessment medical report recommends acupuncture and counselling. However, I find it is not clear from the naturopathic receipts Mrs. Bal submitted that she received either acupuncture or counselling when she visited her naturopath, and she does not explain in her submissions the nature of the services she received. Mrs.

Bal also does not dispute that she failed to obtain ICBC's approval before incurring these expenses. So, I dismiss this part of her claim.

### Wim Hof Cold Water Therapy

26. Though she did not raise it in her Dispute Notice, Mrs. Bal claims \$158.53 as reimbursement for a Wim Hof cold water therapy workshop she took on November 8, 2023. ICBC says Mrs. Bal failed to obtain medical opinion evidence that this expense was necessary to treat her accident-related injuries, as required by IVR section 88(2)(d.1) or (f). It also says she failed to obtain ICBC's pre-approval for this as required by IVR section 88(3).

27. Mrs. Bal submitted a November 15, 2023 doctor's note from her family doctor recommending she try Wim Hof, but she does not explain why she attended the Wim Hof workshop and incurred the expense before receiving the recommendation from her doctor. She also does not dispute that she failed to obtain ICBC's approval before incurring the expense. For these reasons, I dismiss this part of her claim.

28. In summary, I dismiss Mrs. Bal's medical benefits claim in its entirety.

### **Wage Loss Benefits**

29. Mrs. Bal frames her claim as one for "income replacement benefits". However, based on the October 24, 2020 accident date, ICBC says her income loss claim is for temporary total disability benefits under Part 7 of the IVR, also known as wage loss benefits. I agree.

30. In her Dispute Notice Mrs. Bal claims \$205,905 in wage loss benefits, but in her submissions, she says she is entitled to \$740 per week in wage loss benefits from October 24, 2020 to the time of her submissions. This equals approximately \$120,000. She does not explain the discrepancy between these amounts. However, for the following reasons I dismiss Mrs. Bal's wage loss benefits claim, so I find nothing turns on this discrepancy.

31. Before the accident, Mrs. Bal and her husband ran a home-based business publishing an annual directory for the Okanagan region called Apni Directory. The directory included businesses, phone numbers, and advertisements, and it was translated into Punjabi and English. Mrs. Bal and her husband had been running the business together since 1994, and they were its only employees.
32. Advertising sales were the sole source of revenue for the business. Mrs. Bal's role was to solicit clients who paid for advertising and listings in the directory, and to maintain relationships with existing clients. She says the business had approximately 500 clients. She also did the invoicing and bookkeeping for the business. She says her husband's role was to do translations and design the directory's layout.
33. At the time of her submissions in November 2023, Mrs. Bal said she had been unable to work since the accident because of pain and anxiety. She said meeting with clients remotely from her home office required prolonged sitting, which she was unable to do for more than 20 minutes at a time. She also said she could not drive for more than 20 minutes at a time, so she was unable to visit her clients in person. I find the medical reports in evidence support Mrs. Bal's assertions.
34. Mrs. Bal says that at the time of the accident, she had completed the sales for the 2020/2021 directory, so the business was able to publish that edition. However, she says she was unable to start working on sales for the 2021/2022 edition because of her injuries. Mrs. Bal says she could not have hired someone else to take over her duties or had her husband do so because she had developed personal relationships with her clients over many years that could not be transferred to someone else. She says the business is now permanently closed because it could not exist without advertising sales.
35. ICBC does not dispute that Mrs. Bal was totally disabled from doing her job or engaging in other employment after the accident, but it says she is not eligible for wage loss benefits. For the following reasons, I agree.



36. 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. Those wage loss benefits are subject to deductions for “other disability compensation” under IVR section 81(1), which includes compensation from an employer. Under IVR section 81(2), if the weekly gross total of “other disability compensation” payable to the insured is 75% or more of the insured’s weekly gross lost earnings, ICBC “shall not pay” any disability benefits to the insured under IVR section 80. As ICBC notes, “shall not pay” means it has no discretion to pay wage loss benefits if the circumstances in IVR section 81(2) are met.

37. Before the accident Mrs. Bal’s annual income from her business consisted of \$3,500 in employment income, plus dividend payments. In the years leading up to the accident, the business paid her the following annual dividend amounts:

2016	\$24,621
2017	\$24,802
2018	\$65,780
2019	\$67,657
2020	\$71,246

38. In 2021 and 2022 Mrs. Bal continued to receive \$3,500 in annual employment income from her business as well as dividend payments. In 2021 her dividend payment was \$71,308, and in 2022 it was \$71,513. This means that in 2021 and 2022 she earned slightly more than she had in previous years, despite being unable to work. I find these payments Mrs. Bal received from her business were “other disability compensation” under IVR section 81(1), and so she is not entitled to any wage loss benefits under IVR section 80 for 2020, 2021, or 2022. Mrs. Bal did not submit any tax or other financial records beyond the end of 2022, so I find she has also not established entitlement to wage loss benefits after 2022.

39. In *Bradley v. ICBC* (1989), 42 BCLR (2d) at paragraph 326, the court said the IVR does not contemplate wage loss benefits for someone who lost neither wages nor profits. I find that is the case here. I find Mrs. Bal has not established that her inability to work after the accident caused her to lose either wages, or profits.
40. Mrs. Bal argues that she was a 51% shareholder in her business, and between 2017 and 2020, the company's net profit was over \$200,000, 51% of which was hers. She says the employment income and dividend payments she received from the company in 2021 and 2022 were paid out of money the business earned before the accident. Essentially, she argues that her business lost profits because of her disability after the accident. However, as ICBC notes, Mrs. Bal's wage loss benefits claim is for herself as an individual "insured", not her business. Based on the evidence before me, I find Mrs. Bal has failed to establish that she is entitled to wage loss benefits under the IVR. I dismiss this claim.

## **FEES AND EXPENSES**

41. 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. Since Mrs. Bal was unsuccessful, I find she is not entitled to reimbursement of her CRT fees. Since ICBC was successful, I find it is entitled to reimbursement of the \$25 it paid in CRT fees. Neither party claimed any dispute-related expenses.

## **ORDERS**

42. Within 14 days of the date of this decision, I order Mrs. Bal to pay ICBC \$25 as reimbursement of its CRT fees.
43. ICBC is entitled to post-judgment interest under the *Court Order Interest Act*.
44. I dismiss Mrs. Bal's claims.

45. 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.

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Sarah Orr, Tribunal Member