



Civil Resolution Tribunal

Date Issued: April 30, 2024

File: AB-2022-007593

Type: Accident Claims

Category: Accident Benefits

Civil Resolution Tribunal

Indexed as: *Saska v. ICBC*, 2024 BCCRT 409

BETWEEN:

LASZLO SASKA

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. This dispute is about entitlement to health care benefits, income replacement benefits, and caregiver benefits.

2. The applicant, Laszlo Saska, was in two motor vehicle accidents. The first was on January 5, 2022 and the second on May 13, 2022. In his Amended Dispute Notice, he claims up to \$5,000 for health care and rehabilitation benefits, up to \$55,000 for income replacement benefits, and up to \$3,500 for caregiver benefits.
3. The respondent insurer, Insurance Corporation of British Columbia (ICBC), administers the claimed benefits under the *Insurance (Vehicle) Act* (IVA). It says it has provided the applicant with all medically supported treatment to which he is entitled. It says the applicant has not provided the necessary evidence to support his claim for income replacement benefits or caregiver benefits but says it will consider his claim when he has done so. It asks me to dismiss the applicant's claim.
4. The applicant is self-represented. The respondent is represented by an employee.
5. For the following reasons, I dismiss the applicant's claim.

JURISDICTION AND PROCEDURE

6. These are the Civil Resolution Tribunal's (CRT) formal written reasons. The CRT has jurisdiction over accident claims brought under *Civil Resolution Tribunal Act* (CRTA) section 133. CRTA section 133(1)(a) gives the CRT jurisdiction over the determination of entitlement to accident benefits.
7. CRTA section 2 states 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.
8. CRTA section 39 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. Each party received permission to provide extended submissions beyond the CRT's standard character limit and the applicant provided a

number of medical records from his physician. The applicant did not request an oral hearing and, after reviewing his written submissions, I find it unlikely that any oral testimony would contribute additional meaningful evidence. 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.

9. 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 a court of law.

Preliminary Issue – Amending Pleadings

10. As indicated above, the applicant amended his original Dispute Notice. Most notably, he removed a claim for benefits for reimbursement of expenses for a family business.
11. In his written argument, however, he requests further amendments. First, he asks for an amendment to increase the amounts he claims for each category of benefits. Second, he asks to add a statement about how the accidents were not his fault. Finally, he asks to add a claim for non-pecuniary damages of \$50,000 to \$95,000, then withdrew that request in his final reply submissions. Though it responded to the requested amendments, the respondent opposes any changes to the Dispute Notice.
12. The applicant cites CRT rule 1.19(3) which says the CRT will only issue an amended Dispute Notice after the dispute has entered the tribunal decision process in extraordinary circumstances.
13. The applicant argues that I had not yet reviewed any evidence when he made his submissions. He further argues the respondent had ample time to review and respond to his amendments. He says there were extraordinary circumstances that meant evidence was not available to him when he first amended his Dispute Notice and that I should consider that evidence. Specifically, he says he did not have all his medical evidence.

14. As CRT rule 1.1 sets out, I must apply CRT rules in a way that considers fairness and proportionality and that facilitates speedy, flexible, and informal processes. CRT rule 1.2 grants me broad discretion to waive or vary rules to facilitate fair and efficient dispute resolution. Especially in the CRT's accident benefits jurisdiction, the degree of a person's entitlement can change throughout the tribunal decision process.
15. While I must consider the specific language of rule 1.19 requiring extraordinary circumstances, I also must consider the CRT's overriding mandate to provide flexibility and increase access to justice. I find the applicant's request to increase the quantum of damages in his claim does not significantly change the underlying legal rationale, meaning the respondent's submissions address either quantum effectively. Furthermore, as noted above, the respondent took the opportunity to respond to the proposed amendments, so I find it has not been prejudiced by the late amendments.
16. So, in making my decision, I have considered the applicant's requested increase in quantum of damages and refer to those revised amounts throughout. But for my dismissal below, I would have directed CRT staff to make formal amendments and issue a new dispute notice. However, since I dismiss the applicant's claim in any event, there is no benefit to doing so.
17. As I note above, in his final reply submissions, the applicant acknowledged he had no claim for non-pecuniary damages and withdrew his request to amend the dispute notice.
18. I also decline to amend the pleadings to include the applicant's argument that the accidents were not his fault. This does not have any bearing on his entitlement to benefits and does not change his claim.
19. Finally, I note the applicant does not require an amended Dispute Notice for me to consider the evidence he submitted along with his request for an amendment. It was provided on time. I have considered all relevant evidence the applicant provided.

ISSUES

20. The issues in this dispute are:
- a. Is the applicant entitled to additional health care and rehabilitation benefits, and if so, to what extent?
 - b. Is the applicant entitled to income replacement benefits, and if so, how much?
 - c. Is the applicant entitled to caregiver benefits, and if so, how much?

BACKGROUND, EVIDENCE AND ANALYSIS

21. In a civil claim such as this, the applicant must prove his 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.
22. The parties agree the applicant was involved in two separate motor vehicle accidents: January 5 and May 13, 2022. They also agree he is entitled to accident benefits under IVA Part 10 and the regulations.
23. The accidents undisputedly caused the applicant back, shoulder, and neck injuries. As set out in a September 2023 doctor’s report, these injuries have resulted in stiffness and a decreased range of motion. He reports difficulty standing, sitting, walking, driving, and sleeping. Since the accident, he has attended a number of physiotherapy and massage appointments both to further his treatment and to address ongoing pain.
24. The applicant says he is employed as a homemaker. In a separate family law proceeding, he says he was imputed an income of \$90,000. I address his employment and income in greater detail below when considering his claim for income replacement benefits.

Health Care and Rehabilitation Benefits

25. The applicant seeks an order for \$15,000 for past and future health-care related expenses as well as punitive damages.
26. Entitlement to health care, rehabilitation and related benefits is set out in IVA Part 10, Division 4, and *Enhanced Accident Benefits Regulation* (EAB), Part 5.
27. IVA section 123(1) entitles an insured to payment or reimbursement of reasonable expenses for health care and prescribed services respecting a bodily injury arising from the accident.
28. Where an insured seeks physiotherapy or massage treatments more than 12 weeks after the accident, such as here, under EAB section 19(3), they must prove the treatment will either facilitate their recovery from the injury or address a decline in their physical or mental function because of the injury.
29. The respondent says it paid for 26 physiotherapy and 22 massage appointments between January 6, 2022 and March 27, 2023. While the applicant claims for past health care expenses, he did not provide evidence of any expenses for which he is out-of-pocket. So, I decline his claim for past expenses and turn to his claim for future expenses.
30. On September 6, 2023, the applicant's doctor prepared a Reassessment Report to update the respondent on the applicant's injuries. The doctor relayed the applicant's ongoing soft tissue pain throughout his back and shoulders, aggravated by "basically all activities," including standing, sitting, driving, lifting, and carrying. Consistent with a previous reassessment report, the doctor recommended ongoing physiotherapy and massage, as well as trigger point injections.
31. The respondent says it is not opposed to approving further physiotherapy or massage but requires the applicant to provide a functional limitation update. A December 7, 2023 ICBC email asked the applicant to provide updates about the soft tissue pain he is experiencing and to explain what activities are causing the most difficulty,

however his response did not answer those questions. The ICBC representative explained that it would consider any treatment plan from a physiotherapist or massage therapist, but the applicant's response made it clear he was frustrated that ICBC would not facilitate him getting those plans.

32. Regardless of what ICBC asked the applicant to provide, he has not submitted sufficient medical evidence in this dispute to satisfy EAB section 19(3). He bears the onus of proving that additional physiotherapy or massage treatments will facilitate his recovery or address a decline in his function and I find his evidence does not do so.
33. So, I find he has not proved he is entitled to an order that the respondent fund ongoing physiotherapy or massage treatments. However, nothing in this decision precludes him from requesting reimbursement from the respondent for those treatments in the future if he obtains evidence that meets one of the EAB section 19(3) requirements.
34. I note the respondent says trigger point injections are available to the applicant through MSP and that he should pursue them. The applicant does not address the respondent's position, so I accept it.
35. To the extent the applicant asks for a pre-emptive lump sum payment to address future health care benefits, I dismiss that part of his claim. EAB section 19(2) says an insured is entitled to payment or reimbursement under section 123(1) only if the health care is provided by an authorized care provider, using evidence-informed practice. EAB section 4(a) says the health services set out in Table 1 are payable if they are provided by the applicable health care practitioner.¹ I find nothing in the relevant legislation provides for an insured to be paid for potential treatments that they may or may not undergo in due course. On that basis, I dismiss the applicant's claim for a lump sum payment.
36. The applicant also alleges the respondent has treated him in a high-handed manner and claims punitive damages on that basis. This part of the applicant's claim goes

¹ See: *Yun v. ICBC*, 2023 BCCRT 880.

beyond entitlement to benefits and requires me to consider whether the CRT has authority to award punitive damages in a proceeding like this.

37. As noted above, this is an accident claim. The CRT's jurisdiction to address accident claims is set out in CRTA section 133. While subsection 133(1)(c) addresses the CRT's authority to award "damages" related to an accident, I find that the respondent's conduct in the course of administering the applicant's claim is distinct from the accident itself. This dispute is limited to determining the applicant's entitlement to benefits under the IVA and regulations.
38. I note the applicant does not direct me to any other authority to grant punitive damages against the respondent in the course of a CRT claim to determine accident benefits. So, I find I don't have jurisdiction to consider that claim in this proceeding.
39. I note even if I had found I had jurisdiction to award punitive damages, I would not have done so in any case. I have reviewed the correspondence between the applicant and ICBC and while the applicant's frustration is evident, I find the respondent consistently communicated with him in a professional manner in attempting to obtain the information it needed to administer his claim. I find the evidence does not establish the respondent's conduct as malicious or outrageous such that it would attract punitive damages.

Income Replacement Benefits

40. The applicant seeks an order for \$45,000 to \$90,000 in income replacement benefits. To the extent he frames his claim for past and future income loss, I note that he cannot bring that claim under the tort ban.
41. Instead, entitlement to income replacement benefits is determined under IVA Part 10, Division 6 and the *Income Replacement and Retirement Benefits and Benefits for Students and Minors Regulation* (IRB).
42. Under IVA sections 131, 133, and 134, the respondent must calculate income replacement benefits for full-time, temporary and part-time earners, and non-earners

in accordance with the IRB. So, I must first determine which section applies to the applicant.

43. The applicant's evidence about his income is minimal. The respondent says it has repeatedly requested income information from the applicant. It also says the applicant has incompletely filled out required forms and failed to provide the necessary information to determine his status under IVA sections 131, 133, and 134. This is consistent with the applicant's submissions, where he claims his tax information is private. He also implies that the pandemic made his tax information irrelevant and that the respondent should consider his value as a person.
44. His unwillingness to provide employment information is also reflected in his doctor's notes. As set out in the Reassessment Report, the applicant was unwilling to provide information about his employment to his doctor. While the doctor repeats the applicant's statements that he is limited in terms of duties and number of hours, I find the doctor was not able to provide any independent, informed opinion. So, I give the doctor's reports little weight.
45. The applicant says he is a homemaker who is responsible for raising his children. He says before the accidents, he intended to return to the workforce when his children were in high school. He provided no evidence of employment either at the accidents' time or in the year before. Without evidence of employment, he has not proved he meets the definition of a full-time, temporary or part-time earner, so IVA sections 131 and 133 do not apply.
46. IVA section 113 defines a non-earner as an insured who does not hold employment but, at the time of the accident, was able to work, subject to certain exceptions which do not apply here (such as students or minors).
47. The applicant says he has an MBA, an economics degree, and various engineering certificates. This suggests he has a varied education and a variety of marketable skills. While I acknowledge he has chosen to be a homemaker and care for his

children, this does not mean he is unable to work. Since he has provided no other explanation as to why he is unable to work, I find the applicant is a non-earner.

48. Under IVA section 134, a non-earner is only entitled to an income replacement benefit if, because of their injuries, they are unable to hold employment they would have held but for the accident or they are deprived of a benefit under the *Employment Insurance Act* (Canada) to which they were entitled at the time of the accident.
49. There is no evidence that either of those conditions applies. So, I find the applicant is not entitled to the income replacement benefit and I dismiss his claim.
50. I note the applicant argues that since he was imputed to have a \$90,000 income in a separate family law action, the respondent and the CRT should impute the same amount. I disagree. In a family law context, imputed income is used to determine a payor spouse's obligations for child and spousal support in certain circumstances, including intentional underemployment. It is not used to establish an income for the purpose of benefit entitlement, so it has no bearing on these proceedings.

Caregiver Benefits

51. The applicant claims \$1,500 to \$3,500 in caregiver benefits.
52. Entitlement to caregiver benefits is determined under IVA Part 10, Division 11, section 152(1) and EAB section 43.
53. Under IVA section 152(1), an insured whose main occupation at the time of the accident is taking care of, without remuneration, one or more persons who are 16 years of age is entitled to a caregiver benefit if the insured is unable to continue providing that care because of their injury.
54. The applicant says that is not able to do home activities, including "looking after all the needs of the children." He specifically notes that he is unable to coach his children's competitive sports and must now pay a third-party coach. He did not provide any evidence of those payments.

55. The respondent does not dispute that the applicant has minor children. However, it says he has not proven that his main occupation at the time of the accident was taking care of his children, that he is unable to continue to care for the children, or that any inability to care for the children is a result of his accident injuries.
56. Even if I accept the applicant's evidence that his primary occupation was caring for his children, I find the applicant has not proven that is unable to continue to care for them.
57. In the Reassessment Report, the applicant's doctor reports that his back pain limits his ability to perform household duties and either must get help or do the duties very slowly. The report does not include any specific examples of the duties in which the applicant is limited, how his injuries impact him, or from whom he receives assistance and how often. The applicant's other medical evidence, similarly, does not address how the applicant's injuries render him unable to provide childcare.
58. While I acknowledge that it is more difficult for the application to care for the children, I find the evidence does not support a conclusion that he is unable to do so as required by IVA section 152(1). I dismiss this element of the applicant's claim.

FEES, EXPENSES, AND INTEREST

59. 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. The applicant was unsuccessful but did not pay any CRT fees. To the extent the applicant claimed his time spent working on this dispute as a dispute-related expense, I dismiss his claim.
60. As respondent, ICBC typically must pay a fee of \$25. Since the respondent was successful, it would generally be entitled to reimbursement of its paid CRT fees. However, the CRT has no record of ICBC's fee payment and it did not respond to CRT staff's request for proof of payment by the deadline I set. So, I find it unproven that ICBC paid the \$25 fee. In the circumstances, I exercise my discretion under CRT

rule 1.2(2) and waive ICBC's rule 1.6 obligation to pay the response fee. Since ICBC did not pay any fees, I make no order for their reimbursement.

ORDER

61. I dismiss the applicant's claims and this dispute.

Christopher C. Rivers, Tribunal Member