



Civil Resolution Tribunal

Date Issued: May 23, 2024

File: AB-2022-009113

Type: Accident Claims

Category: Accident Benefits

Civil Resolution Tribunal

Indexed as: *Yang v. ICBC*, 2024 BCCRT 472

BETWEEN:

FANG YANG

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. Fang Yang was in a motor vehicle accident on January 17, 2022, on the Alex Fraser Bridge in Delta. This dispute is about her entitlement to accident benefits from the Insurance Corporation of British Columbia (ICBC). Ms. Yang claims \$29,400 in

income replacement benefits, plus \$20,000 in other compensation. She is self-represented.

2. ICBC says that Ms. Yang was not working at the time of the accident and has not proved that she would have started working if not for the accident. So, ICBC says that she is not entitled to income replacement benefits. ICBC also says that Ms. Yang's \$20,000 claim is not a claim for accident benefits. Instead, ICBC says she is asking for compensation for pain and suffering, which she is not entitled to under the *Insurance (Vehicle) Act* (IVA). An employee represents ICBC.
3. For the reasons that follow, I dismiss Ms. Yang's claims.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over motor vehicle injury disputes, or "accident claims", brought under section 133 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 133(1)(a) gives the CRT jurisdiction over the determination of entitlement to accident benefits.
5. CRTA section 2 says 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.
6. 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. I have considered the potential benefits of an oral hearing, in particular because of my finding that Ms. Yang failed to prove her entitlement to income replacement benefits. I decided against it. My main reason is that Ms. Yang did not take advantage of the procedures available to her to prove her case.
7. First, ICBC's submissions about Ms. Yang's income replacement benefits claim were detailed and clear. Despite this, Ms. Yang did not provide final reply submissions to respond to ICBC's arguments.

8. More significantly, Ms. Yang had an opportunity to provide additional evidence. There were several pieces of Ms. Yang's evidence I could not open. Through CRT staff, I asked Ms. Yang to provide them via email. She did not respond for several weeks, and then simply stated that she had just received the CRT's email. Again through staff, I offered her more time to provide the missing evidence, and at the same time I asked her for specific additional evidence about her income replacement benefits claim. She responded only that "the evidence has been provided", so I asked staff to try to connect with her by phone to explain. The phone number Ms. Yang provided did not work, and when staff emailed asking for a different number, Ms. Yang responded asking why her decision was not done yet.
9. Given this, I find that Ms. Yang has decided that she has provided all the evidence and submissions she wishes to provide. She had a reasonable opportunity to make her case. I find that it would be wasteful of the CRT's resources to hold an oral hearing in these circumstances, and given the delays to date, contrary to the CRT's mandate for speedy dispute resolution.
10. 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.

ISSUES

11. The issues in this dispute are:
 - a. Is Ms. Yang entitled to income replacement benefits?
 - b. Is Ms. Yang entitled to compensation for psychological injuries?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, Ms. Yang as the applicant must prove her claims on a balance of probabilities. This means more likely than not. While I have read all the

parties' evidence and submissions, I only refer to what is necessary to explain my decision.

13. Ms. Yang was rear-ended on January 17, 2022. She says the other driver fled the scene. She injured her neck, lower back, and knees. She also says she has suffered from anxiety and depression since the accident. In her application for dispute resolution, she admits she was not working at the time of the accident. Ms. Yang was 59 years old on the accident date.
14. For accidents after May 1, 2021, injured people like Ms. Yang are not entitled to sue other drivers for compensation, with very few exceptions that do not apply here. Instead, the IVA establishes what benefits Ms. Yang is entitled to. ICBC administers those benefits. ICBC does not have to pay for anything unless it is in the IVA or the IVA's regulations.

Is Ms. Yang entitled to income replacement benefits?

15. Division 6 of the IVA provides for income replacement benefits for people who are unable to work because of an accident. A person's eligibility for benefits is based on whether the insured was a full-time earner, part-time earner, temporary earner, or a non-earner.
16. The evidence about Ms. Yang's employment status when the accident happened is inconsistent. In her application for dispute resolution, she says she was employed, but on an unpaid leave. I do not accept this characterization of her work status. I rely primarily on the certificate of earnings form her employer, a home care company, filled out for ICBC. That form said Ms. Yang was employed from November 28, 2020, to December 4, 2021. It said that she worked variable hours averaging 12 hours per week. The form includes a space for the "date work to resume", but the employer left it blank, suggesting there was no return date.
17. I also rely on Ms. Yang's own application to ICBC for benefits, where she indicated her employment end date was November 28, 2021. Ms. Yang provided no evidence to prove that she remained employed after late November or early December 2021.

I find that Ms. Yang was not employed on the accident date. This means she does not fit the definition of a full-time earner, part-time earner, or temporary earner under the IVA.

18. IVA section 113 defines a “non-earner” as someone who was not employed on the accident date but was able to work. I find that Ms. Yang was a non-earner because there is no evidence that anything prevented her from working before the accident. IVA section 134(1)(a) says that a non-earner is entitled to benefits if they are unable to hold employment that they would have held if the accident had not occurred.
19. ICBC argues that Ms. Yang is not entitled to income replacement benefits as a non-earner for two reasons: first, because she has not proved that her injuries prevented her from working, and second because she has not proved that she would have obtained employment but for her injuries.

Was Ms. Yang disabled from working, and if so, for how long?

20. The first question is whether Ms. Yang’s accident injuries prevented her from obtaining employment. ICBC says the medical evidence does not support her position that she could not work because of the accident. ICBC relies primarily on medical assessments Ms. Yang’s family doctor, Dr. Yue Xiao, filled out. Specifically, on both an April 8 and an August 3, 2022 form, Dr. Xiao answered “no” to a question asking whether Ms. Yang was absent from work because of the accident. On its own, I find that answer is ambiguous. By answering “no”, Dr. Xiao could have been expressing an opinion that Ms. Yang was not disabled from working, as ICBC suggests. However, Dr. Xiao also could have been acknowledging that Ms. Yang’s was unemployed when the accident happened because she did not have work to be absent from.
21. ICBC argues that Dr. Xiao’s medical assessments say that “there is no medical support for being off work”. I disagree. The April 8, 2022 form was an “Extended Medical Report”. According to the form’s header, Dr. Xiao should only use that form “if the patient is NOT ABLE to complete work, training or studying activities”. The form

includes a section called “Off Work/Modified Work Details”. The form’s instructions are to only fill out that section if the patient is off work or working modified hours or duties. Dr. Xiao filled it out. Dr. Xiao said “yes” to the question “Have you discussed with your patient their specific work duties?” and “no” to the question “Can the patient perform all regular duties?”. Dr. Xiao then indicated that Ms. Yang could not do heavy lifting, and that the “disability start date” was the accident date. I find that this report is consistent with the clinical records before me. I find that Ms. Yang was likely disabled from working as a home care aide until at least April 8, 2022.

22. Dr. Xiao’s next report is an August 3, 2022 “Reassessment Medical Report”. This form does not include detailed questions about work. In this form, Dr. Xiao indicated that Ms. Yang was 70% improved, and that the primary ongoing issue was her left knee. I find that this report is unclear about whether Dr. Xiao believed Ms. Yang could return to work. However, on August 31, 2022, ICBC asked Dr. Xiao several follow-up questions. Specifically, ICBC asked what barriers existed for Ms. Yang to return to work. Dr. Xiao reported that Ms. Yang said “home care is physically demanding and difficult to maintain full time”. Dr. Xiao also said there were “no restrictions for daily activity”.
23. On August 12, 2022, Ms. Yang’s physiotherapist, Yin Fun Cheung, provided ICBC with a physiotherapy progress report. In that report, the physiotherapist reported significant improvement and recommended that Ms. Yang begin active recovery treatments. The physiotherapist recommended that Ms. Yang return to “modified work”, without filling out the next part of the form that explains what modified work Ms. Yang was capable of.
24. Ms. Yang also received treatment from an acupuncturist and kinesiologist. There is no record of any treatment after November 2022.
25. On July 10, 2023, Dr. Xiao wrote a one-sentence letter that Ms. Yang was “off work due to MVA from Jan 17, 2022 until December 25, 2022.” In a second letter on July 21, 2023, Dr. Xiao added that “in previous assessment last year, client was actually off work due to MVA. She was doing active therapy.”

26. Despite Dr. Xiao's July 2023 letters, I find that the weight of the evidence establishes that Ms. Yang was medically able to return to work by August 2022. Both Dr. Xiao's and the physiotherapist's reports to ICBC suggest that she was able to work part-time as she had before the accident. That said, given my conclusion about ICBC's other argument below, it is unnecessary for me to establish an exact date Ms. Yang was able to return to work.
27. I note that ICBC provided internal notes of a September 26, 2022 phone conversation with Ms. Yang. The notes say that Ms. Yang told the adjuster that she got a job after the accident, and asked what would happen if she could not continue working there. The notes say that was the first time Ms. Yang mentioned a new job. The notes then say that Ms. Yang said she would resume work. ICBC requested documentation about this job, but Ms. Yang never provided any. As noted above, she also did not respond to my request for additional evidence, which was mostly about her post-accident work history. The medical evidence before me suggests she never told any of her practitioners about any new job or any attempt to return to work. I have therefore drawn no conclusion from this note.

Would Ms. Yang have worked if the accident had not happened?

28. As noted above, IVA section 134(1)(a) says that a non-earner is only entitled to benefits if they would have been employed if the accident had not occurred. ICBC argues that Ms. Yang has not proved this. ICBC says that Ms. Yang needed to provide evidence that she had either been hired or promised a job that she was unable to start because of the accident. ICBC says that Ms. Yang did not prove that she was "scheduled to start employment".
29. I do not agree with ICBC that an insured must provide this sort of evidence to prove an entitlement to non-earner benefits. This interpretation would force injured people to look for a job they cannot medically perform, obtain a job offer, and then decline the job offer. However, I agree with ICBC that IVA section 134(1)(a) requires a non-earner to prove that they likely would have worked during the time they are injured. An insured could prove this by showing they had a job offer in hand, but they could

prove it in other ways. For example, an insured could rely on past work history, pre-accident attempts to find work, or their work searches and work history after they were medically able to return to work.

30. Here, Ms. Yang has not proved that she likely would have worked during the period of time she was unable to work. There is no evidence that Ms. Yang had looked for work or communicated with her former employer in the roughly seven weeks between her last day and the accident. There is no evidence she looked for other work. According to ICBC's September 26, 2022 file note, ICBC asked Ms. Yang for documentation about her return to work plans and she responded that she was taking a "vacation without any set return date".

31. According to Ms. Yang's tax records, she did not work at all in 2020 and earned just over \$8,000 in employment income from two sources in 2019. Neither employer was a home care provider. This suggests a sporadic work history. There is no evidence that Ms. Yang returned to work after December 2022, when Dr. Xiao says she was no longer off work due to her injuries. Ms. Yang provided her evidence in December 2023.

32. Overall, I find that Ms. Yang has not proved that she would have worked but for her accident injuries. I dismiss her claim for income replacement benefits.

Is Ms. Yang entitled to compensation for psychological injuries?

33. Ms. Yang claims an additional \$20,000. The basis for this claim is not entirely clear. In her application for dispute resolution, she said it was for health care and rehabilitation, but in her description of the claim she said it was for mental suffering and depression. In her written submissions, she says she suffered from anxiety, depression, and psychological trauma.

34. ICBC says that Ms. Yang's \$20,000 claim is essentially a claim for pain and suffering compensation because it is not related to any health care or rehabilitation benefits under the IVA. ICBC argues that Ms. Yang has likely confused the new accident benefits scheme with the former tort system, where injured people could receive pain

and suffering compensation from at-fault drivers. I agree that this is the likely explanation for Ms. Yang's claim, given how she framed it. I dismiss it on that basis.

35. I note that ICBC's argument that injured people are no longer entitled to compensation for pain and suffering as they were under the tort system is technically true, but somewhat misleading. Under the IVA, ICBC must pay a lump sum if the insured person suffers a "permanent impairment". The *Permanent Impairment Regulation* provides different sums for different injuries, including physical injuries and psychiatric conditions. This compensation essentially serves the same purpose as pain and suffering compensation. Nothing in this decision prevents Ms. Yang from claiming compensation for any permanent impairment, or from bringing a new CRT dispute if ICBC denies that claim. For clarity, I make no comment on whether any of Ms. Yang's injuries are permanent impairments.

FEES AND EXPENSES

36. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Ms. Yang was unsuccessful, so I dismiss her claim for CRT fees. I also order her to pay ICBC \$25 reimbursement for ICBC's paid CRT fees. Neither party claimed any dispute-related expenses.

ORDER

37. I dismiss Ms. Yang's claims.
38. I order Ms. Yang to pay ICBC \$25 in CRT fees. ICBC is entitled to post-judgment interest under the *Court Order Interest Act*.
39. 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.

Eric Regehr, Vice Chair