



# Civil Resolution Tribunal

Original Decision Issued: July 26, 2024

Amended Decision Issued: August 29, 2024

File: AB-2023-009046

Type: Accident Claims

Category: Accident Benefits

Civil Resolution Tribunal

Indexed as: *Jalloh v ICBC*, 2024 BCCRT 720

BETWEEN:

INNOCENT JALLOH

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## **AMENDED REASONS FOR DECISION**

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Tribunal Member:

Amanda Binnie

## **INTRODUCTION**

1. This dispute is about entitlement to health care and rehabilitation benefits, income replacement benefits and the amount of a permanent impairment benefit.

2. The applicant, Innocent Jalloh, was in a motor vehicle accident on August 19, 2021. The applicant was a roofer at the time of the accident. The applicant says the respondent insurer, Insurance Corporation of British Columbia, should pay for further treatment for their injuries, pay them income replacement benefits, and pay the proper permanent impairment compensation. The applicant claims \$999,999 in healthcare rehabilitation benefits, \$999,999 in income replacement benefits, and \$999,999 in permanent impairment compensation.
3. The respondent says it has paid for all of the applicant's medical treatments to date. It also says the applicant has not shown what additional treatments they are claiming. The respondent says it is currently paying the applicant income replacement benefits, and that the applicant is not entitled to a lump sum payment for future income replacement benefits. Finally, the respondent says it has paid the applicant the permanent impairment compensation for the left shoulder partial rotator cuff and nothing further is owing.
4. The applicant is self-represented. The respondent is represented by an 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. 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.
7. 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. In this case, the parties provided much of the same medical evidence and I find the issues before me come down to application of the law, not credibility. 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. 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.

### ***Late evidence***

9. The applicant provided the CRT late evidence after their deadline to do so. This evidence was dated after the applicant made their submissions, so I find the applicant would not have been able to submit it earlier. As the respondent was provided an opportunity to respond to this evidence, I find there is no prejudice to the respondent in allowing this late evidence. Consistent with the CRT's mandate of being flexible and informal, I have allowed and considered this late evidence.

## **ISSUES**

10. The issues in this dispute are:
  - a. Is the applicant entitled to further healthcare and rehabilitation benefits?
  - b. Is the applicant entitled to further income replacement benefits?
  - c. Did the respondent pay the correct amount for permanent impairment compensation?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

11. In a civil claim such as this, the applicant must prove their 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.

12. The applicant was involved in more than one accident. The first was on August 19, 2021, the second on December 23, 2022, and the third on March 13, 2023. The parties agree the first accident was the most significant accident and caused the applicant to briefly lose consciousness. The applicant did not provide much detail about the second and third accidents, but I accept they occurred and had an impact on their symptoms, which I discuss below.
13. The applicant is currently 28 years old. At the time of the first accident, they were employed as a roofer. The first accident occurred while the applicant was returning to the shop from a work trip. As a result, they also have a claim with WorkSafeBC (WSBC).
14. The applicant's injuries are largely undisputed, though there is some disagreement as to their severity. In the first accident, the applicant sustained a concussion, injuries to their left shoulder, and neck pain. I do not have evidence about specific injuries from the second and third accidents but accept the applicant's evidence that there was an aggravation of the injuries from the first accident.
15. It is undisputed that the applicant has not returned to roofing since the first accident and likely never will. WSBC paid for the applicant to retrain as a paralegal, and they received their diploma in May 2023. However, I have no evidence that the applicant has returned to any type of employment since the accident.

### ***Healthcare and rehabilitation benefits***

16. The respondent says it has paid for 3 sessions of acupuncture, 4 sessions of chiropractic treatment, 42 sessions of counselling, 27 sessions of kinesiology, 14 sessions of massage therapy and 56 sessions of physiotherapy. As the applicant does not dispute this, I find the respondent paid for these treatments.

17. Insurance (*Vehicle*) Act (IVA), Part 10, Enhanced Accident Benefits and Limits on Actions and Proceedings, applies to accidents that occur on and after May 1, 2021, which includes all of the applicant's accidents.
18. The applicant did not provide details on which treatments the respondent had not paid or refuses to pay. The applicant instead says the \$999,999 is a "comprehensive assessment of the expenses incurred due to the accidents".
19. The respondent says healthcare and rehabilitation benefits are not paid out in lump sums but are paid or reimbursed as they are incurred. I agree. Though not binding on me, the vice chair in *Yun v. ICBC*, 2023 BCCRT 880 found there is nothing in the IVA or its regulations which allows for payment of treatments an insured has not attended. I agree with this reasoning and follow it here.
20. So, I find the applicant has not proven they are entitled to a lump sum for healthcare and rehabilitation benefits.
21. I also find that the applicant has not shown there is any specific benefit that the respondent has refused to pay. The respondent's evidence shows the applicant stopped attending ICBC-funded physical treatments in May 2023, which the applicant does not dispute. Though the applicant emailed ICBC asking for further treatment, the applicant does not respond to emailed questions from the respondent's employee about what specific treatments they're seeking.
22. The applicant takes issue with the respondent's practice of consolidating multiple claims under one "main" accident. However, I accept that this is a matter of practicality and the applicant has not shown that it affected their entitlement to benefits.
23. So, I find the applicant has not proven entitlement to any lump sum amount of reimbursement for unpaid healthcare and rehabilitation benefits and I dismiss their claim for them.

### ***Income replacement benefits***

24. The applicant claims \$999,999 in income replacement benefits. They do not say why they are entitled to this amount. The applicant refers to a significant loss of income and earning capacity and an effect on their future prospects.
25. To the extent that the applicant is asking for damages for a future loss of earning capacity, I note that is a remedy based in tort law. As such, I find it is not available to the applicant because of the “tort ban” for accidents after May 1, 2021. 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).
26. Though the applicant does not explicitly say there is an error in the respondent’s calculation of their benefits, I find the breadth of their claim suggests they may believe there is an error. So, I will go through how the respondent arrived at the applicant’s income replacement benefit.
27. The respondent says it has paid \$51,850.22 in income replacement benefits. The applicant does not dispute this, and I accept the respondent has made these payments.
28. The respondent also says it currently is paying \$765.08 in income replacement benefits, less the \$327.82 that WSBC is paying. As the applicant does not dispute this, I accept the respondent is currently making these payments.
29. The IVA and IRB set out an insured’s entitlement to income replacement benefits. IVA Division 6 provides that full-time earners, temporary and part-time earners, and non-earners are entitled to income replacement benefits if they fit the required criteria. The applicant does not dispute they were a temporary worker at the time of the first accident, and I find that they were, based on their employment history.
30. The respondent says it calculated the amount of the applicant’s income replacement benefits based on the applicant’s pay period of August 1, 2021 to

August 14, 2021, and came to an annual gross yearly employment income (GYEI) of \$51,896.03. I find the respondent properly calculated this amount as required by IRB section 17.

31. The respondent then calculated the applicant's net income as \$41,146.25, as required by IRB section 28. I find no issues with this calculation. So, under IRB section 2, the applicant's income replacement benefit was 90% of this, or \$710.20 per week. In February 2024, the respondent adjusted this amount to \$765.08 to account for inflation. I find no error in this calculation.
32. Finally, the respondent says that any payments from WSBC related to the first accident are deductible. Under IVA section 122(2), if a person receives payments for an accident from WSBC, the respondent is only required to pay the difference between the WSBC benefits and the income replacement benefits a person is entitled to under the IVA<sup>1</sup>. This means the respondent can deduct the applicant's WSBC benefits from any payments it owes.
33. Based on the above, I find the respondent properly deducted the applicant's WSBC benefits, and I find no error in the respondent's calculation of the applicant's income replacement benefit. So, I find the applicant has not proven entitlement to income replacement benefits they have received or are receiving, and I dismiss their claim for these benefits.

### ***Permanent impairment compensation***

34. The applicant claims \$999,999 for permanent impairment compensation. The applicant does not say how they came to this amount, only that this "reflects the severity and cumulative effect of all injuries". I accept the applicant's injuries have had a significant impact on their life. However, I find that the applicant is essentially claiming non-pecuniary damages, often called "pain and suffering". These types of damages are not available to the applicant under the tort ban.
35. Instead, for accidents occurring after May 1, 2021, IVA section 129(1) says if an insured suffers a permanent impairment from an accident, the insured is entitled to

a lump sum payment for the permanent impairment. IVA section 129(2) requires the respondent to calculate and determine the compensation an insured is entitled to, according to the regulations.

36. Permanent impairment compensation is calculated according to the *Permanent Impairment Regulation* (PIR). PIR section 10(1) says an impairment is “permanent” when, following a “period of time sufficient for optimal tissue repair”, the impairment has become static, has stabilized, or is unlikely to change significantly with further therapy. PIR section 10(2) says the respondent must not pay compensation until the impairment is permanent.
37. The respondent says based on an MRI showing the applicant had tiny tears on the infraspinatus tendon, it paid the applicant \$3,349.30 for their partial left rotator cuff tear. This is 2% of \$167,456, based on section 5(2) of the PIR Schedule. I accept that the respondent made this payment, which the applicant does not dispute.
38. However, the applicant says the respondent’s calculation does not account for the labral tear. I agree.
39. While I find there is no specific category in the PIR for “labral tear”, I find this is captured under section 7 of the PIR Schedule, which addresses “permanent range of motion loss”.
40. I find the medical evidence supports that the first accident caused a reduced range of motion in the applicant’s left shoulder. I accept that the applicant presently has a reduced range of motion in his shoulder. However, the difficulty for the applicant is that the respondent *must not pay* permanent impairment compensation until the impairment is permanent.
41. So, is the applicant’s reduced range of motion permanent? For the following reasons, I find it is not.
42. The applicant provided “range of motion loss” reports from their physiotherapist, two of which are from 2024, March and July. While both have roughly similar results for



the applicant's uninjured right shoulder, there is a significant improvement in the left shoulder measurements in the July 2024 report.

43. In addition, orthopaedic surgeon Dr. Farhad Moola's February 2024 report suggests further improvement is possible with a less conservative approach. This improvement explicitly includes regaining range of motion. This is supported by the October 2023 report of orthopaedic surgeon Dr. Danny Goel, who recommends further investigations and, based upon the results of those investigations, further procedures. Dr. Goel said the length of the applicant's disability could not be determined until after the investigations were complete. Notably, Dr. Goel does not say the applicant's range of motion reduction is permanent.
44. As the applicant has not proven their range of motion reduction is permanent, I find the applicant has not proven they are entitled to further permanent impairment compensation at this time.

## **SUMMARY**

45. I dismiss the applicant's claims and this dispute.
46. I note nothing in this decision prevents the applicant from re-applying to the CRT for accident benefits, should the respondent stop paying income replacement benefits or refuse to pay specific healthcare and rehabilitation benefits, subject to the applicable limitation period. This also applies should the applicant's loss of range of motion in their shoulder become permanent.

## **FEES, EXPENSES AND INTEREST**

47. Under CRTA section 49, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. Here, the applicant was unsuccessful, but they did not pay CRT fees in any event. As the respondent was the successful party, I find it is entitled to the \$25 it paid in CRT fees. Neither party claimed dispute-related expenses.

## ORDERS

48. I dismiss the applicant's claims.
49. Within 30 days of this decision, the applicant must pay the respondent \$25 in CRT fees.
50. The respondent is also entitled to post-judgment interest under the *Court Order Interest Act*.
51. This is a validated decision and order. Under CRTA sections 57 and 58, 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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Amanda Binnie, Tribunal Member

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<sup>1</sup> Paragraph 32 has been amended under CRTA section 64(b) to correct an inadvertent error.