Civil Resolution Tribunal

Date Issued: February 26, 2021

File: VI-2020-005643

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Izsak v. Dhanju*, 2021 BCCRT 232

BETWEEN:

RANDY IZSAK

APPLICANT

AND:

JASPREET DHANJU and HARINDERPAL DHANJU

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on November 19, 2019 in Surrey, British Columbia.

2. The applicant, Randy Izsak, says he was rear-ended by a vehicle driven by the respondent, Jaspreet Dhanju. The role of the respondent, Harinderpal Dhanju, is

unknown, but I infer they are an owner or co-owner of the vehicle driven by Jaspreet Dhanju. Liability for the accident has been admitted by the respondents. Additionally, it is undisputed Mr. Izsak was injured as a result of the accident, and the parties have agreed Mr. Izsak is entitled to $5,500 in non-pecuniary (pain and suffering) damages and $1,000 for out-of-pocket expenses. Mr. Izsak also seeks $22,000 for past income loss and $4,000 for accelerated depreciation of his vehicle. The respondents say Mr. Izsak has not proven he is entitled to either of those remedies.

3. Mr. Izsak is self-represented. The respondents are represented by their insurer, Insurance Corporation of British Columbia (ICBC).

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). Section 133(1)(c) of the CRTA and section 7 of the *Accident Claims Regulation* (ACR) give the CRT jurisdiction over the determination of liability and damages claims, up to $50,000.

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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court

recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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 a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

Late evidence

8. In its submissions, ICBC as the respondents' representative referred to various medical documents that had not been submitted as evidence in this proceeding. In my review of the dispute, I determined the documents were relevant. So, through CRT staff, I requested ICBC provide a copy of the medical documents which were then given to the applicant for further submissions, which he provided.

9. Subsequently, Mr. Izsak attempted to submit additional financial evidence, his 2020 T4 statement. Although I acknowledge Mr. Izsak did not have access to this document earlier, because of the late timing of the evidence together with its minimal relevance given the numerous financial records already before me, I decline to admit the record.

ISSUE

10. The issue in this dispute is to what extent, if any, Mr. Izsak is entitled to $22,000 in past income loss and $4,000 for accelerated depreciation.

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil claim such as this, Mr. Izsak, as the applicant, bears the burden of proof on a balance of probabilities. 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 details of the accident are not in dispute and, as noted above, liability for the accident has been admitted by the respondents. Additionally, the parties have agreed Mr. Izsak is entitled to $5,500 for non-pecuniary damages and $1,000 for out-of-pocket expenses. The only remaining issues are whether Mr. Izsak is entitled to past income loss and accelerated depreciation damages and, if so, how much for each.

13. I will deal first with the claim for accelerated depreciation.

Accelerated depreciation

14. Mr. Izsak seeks $4,000 for accelerated depreciation of his 2018 Honda Accord Touring as a result of the November 19, 2019 accident. Although Mr. Izsak submits the total depreciation on the vehicle is over $8,000, he acknowledges this is also a result of a previous, unrelated property damage claim in July 2019 that exceeded $8,000 in value. In any event, Mr. Izsak says the November 19, 2019 accident caused additional depreciation and he seeks $4,000 in compensation for that. The respondents argue Mr. Izsak does not own the vehicle, and therefore has no claim for accelerated depreciation.

15. It is undisputed that Mr. Izsak co-leased the vehicle from White Rock Honda with his company, Back on Track Recovery (Back on Track). The full lease agreement was not produced in evidence, but a summary sheet shows the vehicle's registered owner as White Rock Honda, and Mr. Izsak and Back on Track as co-lessees.

16. The courts have held that a party does not have a claim for accelerated depreciation for a vehicle to which they have no claim of title (see: *Nguyen v. Johnson*, 2007 BCSC 388). These court decisions are binding on me. As noted, Mr. Izsak is a co-lessee of the vehicle, and White Rock Honda is the lessor and owner.

17. Here, I find Mr. Izsak has failed to prove that he, rather than White Rock Honda, is entitled to claim for accelerated depreciation of the vehicle. As a lessee, Mr. Izsak is not the vehicle's owner. In the absence of evidence that Mr. Izsak is the party bearing the accelerated depreciation cost, I decline to award damages for this claim (see: *Rana Enterprises Ltd. v. Wheeler*, 1992 CanLII 194 (BCSC)).

Past income loss

18. In his Dispute Notice, Mr. Izsak stated his "back and neck were painful and stiff for over 3 months", causing him a "fair amount of discomfort and decreased mobility and strength". Mr. Izsak claims $22,000 in past income loss as he says he was unable to work due to his accident injuries from November 20, 2019 to February 29, 2020. Mr. Izsak is Back on Track's director and founder, and says he earns $7,200 in gross income monthly.

19. In support of his claim that he was unable to work, Mr. Izsak submitted a February 24, 2020 letter from his family physician, Dr. Phil Chemerika. In the very brief note, Dr. Chemerika stated that Mr. Izsak was "unfit for work from Nov 19 to Feb 29 inclusive, due to medical reasons". Notably, Dr. Chemerika does not specifically state that the "medical reasons" were a result of the November 19, 2019 accident, nor does he explain why Mr. Izsak could not work, or what restrictions Mr. Izsak faced in relation to his injuries.

20. A November 28, 2019 physiotherapy initial report by Matthew Redekopp at Performance Integrated Health documented Mr. Izsak's subjective and objective symptoms at the time of assessment. Mr. Redekopp diagnosed Mr. Izsak with a grade 2 cervical spine soft tissue injury and a grade 1 strain to the lumbar/thoracic spine. Mr. Redekopp noted that, at that time, Mr. Izsak was not working due to pain, but that he was capable of performing modified hours and modified duties at work. Mr. Redekopp documented Mr. Izsak reported difficulty sitting, standing and driving, pain with prolonged walking, limited overhead reaching, and pain when going up and down stairs. Mr. Redekopp also noted Mr. Izsak had not returned to his activities of daily living, but was expected to within 12 weeks.

21. In response to the November 28, 2019 physio report, Mr. Izsak says that although it implies he could perform modified duties at work, this was not the case until the latter part of February 2020. He says up until that point he was unable to even drive.

22. The respondents say Mr. Izsak has not proven any income loss as a result of his accident injuries, and say this claim should be dismissed. However, the respondents do not argue that Mr. Izsak was capable of working, and in fact, in response to Mr. Izsak's further submissions on the medical evidence, stated they agreed with Mr. Izsak's assessment of his ability to work after the accident. Despite this, the respondents argue that Mr. Izsak has not proven he lost any income.

23. Ordinarily, I would have placed significant weight on the physiotherapist's assessment that Mr. Izsak was capable of modified duties as of November 28, 2019. However, given ICBC, on behalf of the respondents, expressly agreed with Mr. Izsak's assessment of his inability to work until February 29, 2020, I find Mr. Izsak is entitled to his proven lost wages for that time period, with no deduction for his potential ability to partially work.

24. What then, is Mr. Izsak's past income loss? Although Mr. Izsak said he earned $7,200 gross monthly income, his Record of Employment indicates he was earning $6,620 gross per month, and he admittedly collected $5,000 per month, net. Mr. Izsak says these payments resumed after he returned to work in March 2020, consistent with the banking records in evidence.

25. According to Back on Track's business records and Mr. Izsak's personal banking records, Mr. Izsak was paid $3,171.64 out of his normal $5,000 salary for November 2019 for work up to the date of the accident, and was not paid any salary for December 2019, or January or February 2020. Although Mr. Izsak claims $22,000 for past income loss, I find Mr. Izsak's net loss amounts to $16,828.36 (based on $5,000 monthly for 3 months, plus $1,828.36 for November 20 to 30, 2019). I find the respondents must compensate Mr. Izsak for his proven past income loss of $16,828.36. As this is already a net amount, I find no payroll deductions are necessary.

SUMMARY

26. In summary, Mr. Izsak is awarded the following:

Non-pecuniary damages	$5,500.00
Past income loss	$16,828.36
Out-of-pocket expenses	$1,000.00
Total	$23,328.36

27. Pre-judgment interest and reimbursement for tribunal fees and dispute-related expenses are also payable to Mr. Izsak, as discussed below.

FEES, EXPENSES AND INTEREST

28. The *Court Order Interest Act* applies to Mr. Izsak's award for past income loss and special damages (out-of-pocket expenses). The details of Mr. Izsak's special damages claim are not before me, given the parties' agreement on this amount. On a judgment basis, I find Mr. Izsak is entitled to pre-judgment interest on his past income loss and special damages from March 2, 2020, when Mr. Izsak says he returned to work. This equals $167.76.

29. Further to section 2 of the *Court Order Interest Act*, pre-judgment interest must not be awarded on non-pecuniary damages resulting from personal injury, or on costs (CRT fees and dispute-related expenses).

30. 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. Izsak was successful, I find that he is entitled to reimbursement of the $175 he paid in tribunal fees. No dispute-related expenses were claimed.

ORDERS

31. Within 30 days of the date of this decision, I order the respondents, Jaspreet Dhanju and Harinderpal Dhanju, to pay the applicant, Randy Izsak, a total of $23,671.12, broken down as follows:

    a. $23,328.36 in damages,

    b. $167.76 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $175 in tribunal fees.

32. Mr. Izsak is also entitled to post-judgment interest under the *Court Order Interest Act*.

33. 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.

Andrea Ritchie, Vice Chair