



# Civil Resolution Tribunal

Date Issued: August 12, 2021

File: VI-2021-001762

VI-2021-001764

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Vaidyanathan v. Kaye*, 2021 BCCRT 882

BETWEEN:

SUBRAMANI VAIDYANATHAN

**APPLICANT**

AND:

STEPHEN THOMAS KAYE

**RESPONDENT**

---

## REASONS FOR SUMMARY DECISION

---

Tribunal Member:

Eric Regehr

### INTRODUCTION

1. These linked disputes are about a motor vehicle accident that took place on May 28, 2019, in Langley, BC, between the applicant, Subramani Vaidyanathan, and the respondent, Stephen Thomas Kaye. The specific details of the accident are not before me, but it is undisputed that Mr. Vaidyanathan was injured in the accident.

2. On July 23, 2021, Mr. Vaidyanathan accepted a settlement from the Insurance Corporation of British Columbia (ICBC), which insures Mr. Kaye, for \$5,500. At the time, this was the maximum amount that a person could receive for non-pecuniary (pain and suffering) damages for “minor injuries” under the *Insurance (Vehicle) Act* (IVA).
3. Mr. Vaidyanathan started 2 Civil Resolution Tribunal (CRT) disputes about the accident. In dispute VI-2021-001764, Mr. Vaidyanathan asks for a determination of whether his injuries are minor injuries. In dispute VI-2021-001764, Mr. Vaidyanathan asks for a determination of who was liable for the accident, and for \$50,000 in damages.
4. The question before me in this preliminary hearing is whether Mr. Vaidyanathan’s disputes should proceed through the CRT’s process or be dismissed because the parties have already settled. Mr. Vaidyanathan argues that his injuries are still significantly impacting his life, so the settlement was unfair. Mr. Kaye argues that Mr. Vaidyanathan’s disputes should be dismissed because the settlements are binding.
5. Mr. Vaidyanathan is self-represented. Mr. Kaye is represented by an ICBC employee.

## **JURISDICTION AND PROCEDURE**

6. These are the CRT’s formal written reasons. 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)(b) of the CRTA gives the CRT jurisdiction over the determination of whether an injury is a “minor injury” under the IVA. 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.
7. On March 2, 2021, the BC Supreme Court ordered that sections 133(1)(b) and 133(1)(c) of the CRTA were unconstitutional and no longer in effect. It also ordered that section 16.1 of the CRTA was unconstitutional to the extent it applied to these

provisions. The BC Supreme Court's decision was appealed. The BC Court of Appeal granted a partial stay of the BC Supreme Court's order on April 8, 2021. This means that parts of the BC Supreme Court's order are suspended until the BC Court of Appeal makes its final decision. The partial stay allows the CRT to resolve claims under sections 133(1)(b) and (c) of the CRTA. It also allows a court to resolve these types of claims without needing to consider whether the claim should be heard by the CRT instead.

8. The CRT provided the applicant with information about the BC Supreme Court's decision and the BC Court of Appeal's partial stay. The CRT asked Mr. Vaidyanathan whether he wanted to continue with the CRT dispute or file a court proceeding instead. He chose to continue at the CRT.
9. 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.
10. Section 39 of the CRTA 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. 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.
11. 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.

## **ISSUE**

12. The issue in this decision is whether I should dismiss Mr. Vaidyanathan's disputes because he already entered into an enforceable settlement agreement.

## **EVIDENCE AND ANALYSIS**

13. In a civil claim such as this, Mr. Vaidyanathan as the applicant must prove his claims on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
14. As mentioned above, Mr. Vaidyanathan was injured in a motor vehicle accident on May 28, 2019, in Langley BC. While it is not entirely clear on the evidence before me, it does not appear that ICBC disputed that Mr. Kaye was responsible for the accident. Mr. Vaidyanathan's alleged injuries were to his left foot, back, hip and mouth.
15. According to an internal ICBC note, Mr. Vaidyanathan and an ICBC adjuster, GJ, discussed his claim on July 23, 2019. GJ said that their conversation lasted 40 minutes. According to the notes, the only injury they talked about was to Mr. Vaidyanathan's mouth. Mr. Vaidyanathan said that he clenched his teeth during the accident, damaging his wisdom tooth. He said that his tooth and gums were extremely tender.
16. GJ said that they brought up compensation. Mr. Vaidyanathan said that he had received legal advice and knew about the minor injury cap. However, GJ said that despite that legal advice, Mr. Vaidyanathan did not seem to realize that the minor injury cap applied to him. GJ told him that it did and offered \$5,500. GJ said that Mr. Vaidyanathan asked whether there was a "cushion of time" after he settled, and GJ told him that if he settled, the "compensation portion" of his claim would be over. I take this to refer to Mr. Vaidyanathan's tort claim. GJ also said that they explained that the "medical portion" of Mr. Vaidyanathan's claim would remain open, which I take to refer to Mr. Vaidyanathan's entitlement to accident benefits under Part 7 of

the IVA (also called no fault benefits). Mr. Vaidyanathan accepted the settlement offer.

17. The adjuster's notes are hearsay. As mentioned above, section 42 of the CRTA says that the CRT can accept evidence that is not admissible in court, such as hearsay. I accept GJ's note as a reasonably accurate summary of their conversation with Mr. Vaidyanathan. I find that it was part of GJ's job to accurately record phone conversations. Also, Mr. Vaidyanathan did not dispute the accuracy of the note.
18. Mr. Vaidyanathan signed a final release on July 24, 2019. The release says that Mr. Vaidyanathan released and forever discharged Mr. Kaye from any and all actions for injuries arising from the May 28, 2019 accident. The release also said in bold print that it was a final settlement.
19. Mr. Vaidyanathan says that during the July 23, 2019 conversation, he was "totally confused" because of pain and a lack of sleep. He also said that he was out of money and could not work. He says that he "unintentionally" signed the release without advice. Given that GJ said that Mr. Vaidyanathan received legal advice before discussing settlement, I find that Mr. Vaidyanathan did not get further legal advice about ICBC's offer before accepting it. Mr. Vaidyanathan says that he no longer believes that the settlement was fair.
20. In this proceeding, Mr. Vaidyanathan says that he is suffering ongoing impacts from the accident although his evidence is not entirely clear about his current condition. His submissions focus on his left foot, which he says is in severe pain. He also says that his mouth still bothers him significantly. He also says that his doctor increased his blood pressure medication to deal with the stress of the accident. He says that his injuries were not minor injuries because he was substantially unable to work or take care of himself more than 12 months after the accident.
21. In general, a settlement agreement and release between an injured person and ICBC will be enforceable even if the injured person's injuries end up being worse than they thought. To set aside the settlement agreement, Mr. Vaidyanathan must prove that

the settlement was unconscionable. In the context of this dispute, I find that this means that Mr. Vaidyanathan must prove that ICBC took advantage of an inequality of bargaining power to induce him into entering into a settlement that was not fair, just and reasonable. See *Gindis v. Brisbane*, 2000 BCCA 73. Put another way, in order to be set aside, the settlement must diverge from “community standards of morality”. See *McCullough v. Hilton*, 1998 CanLII 4316 (BC CA).

22. First, I am not satisfied that GJ took advantage of the inequality in bargaining power between ICBC and Mr. Vaidyanathan to induce settlement. Mr. Vaidyanathan says that he settled in part because he needed the money, but there is no evidence that GJ knew or should have known that Mr. Vaidyanathan was in financial difficulty. I also do not accept that Mr. Vaidyanathan was so confused that he did not understand what he was signing. I say this mostly because Mr. Vaidyanathan attended an ICBC office the day after the July 23 phone conversation, which means he had some time to reconsider the offer or seek further legal advice about it. There is also no evidence that he raised any concerns about the settlement until he filed the CRT Dispute Notices in March 2021.
23. The next question is whether the settlement was fair, just and reasonable. This is assessed on the date of the settlement. This means that I must look only at what the parties knew about Mr. Vaidyanathan’s injuries and potential claim as of July 23, 2019. See *McCullough*. I turn then to the medical evidence.
24. ICBC received a physiotherapist report dated June 28, 2019. According to that report, Mr. Vaidyanathan reported pain in his mid to lower back and hip, left heel, and jaw. He reported taking pain medication and receiving only temporary relief from resting or changing posture. The physiotherapist’s report focused on the back and hip pain, which they concluded was caused by a soft tissue injury. The physiotherapist diagnosed Mr. Vaidyanathan with a grade II whiplash injury to his back and a strained hip, both caused at least in part by the accident. The physiotherapist noted that Mr. Vaidyanathan had returned to his activities of daily living with “some difficulty” but was “continuing to manage”. The physiotherapist did not provide a prognosis.

25. ICBC also received a report from Mr. Vaidyanathan's dentist on July 22, 2019. In that report, the dentist said that Mr. Vaidyanathan had tenderness and pain chewing after the accident because of damage to his wisdom tooth. The dentist recommended removing the tooth and confirmed that Mr. Vaidyanathan's extended health insurance would cover this procedure.
26. With respect to his foot, Mr. Vaidyanathan relies on the fact that he had an angiogram through his foot. He provided a copy of what appears to be an appointment card for May 20, 2020. It is unclear how this procedure could be related to the accident. In any event, because this happened well after the accident, I find that it is not relevant to determining whether the settlement was fair. The only objective evidence about his foot is from the physiotherapist, who reported that Mr. Vaidyanathan had a pre-existing corn on his heel which was more painful after the accident.
27. So, was the settlement fair and reasonable based on the information the parties had on July 23, 2019? I find that it was. I find that the most crucial information was that the physiotherapist reported that Mr. Vaidyanathan had returned to his pre-accident activities with difficulty. Under section 101 of the IVA and section 3 of the *Minor Injury Regulation*, an injury is a minor injury if it does not substantially interfere with work or activities of daily living for more than 12 months. By July 23, 2019, just over 2 months after the accident, the only objective information GJ had was that Mr. Vaidyanathan's injuries did not appear to substantially interfere with his activities of daily living. Therefore, I find that there was nothing to suggest that GJ's decision to settle the claim on the basis of Mr. Vaidyanathan's injuries being minor was contrary to community standards of morality.
28. Mr. Vaidyanathan also alleges that he has been unable to work. There is no evidence that he was working before the accident, or that he told GJ that he was working. In fact, the physiotherapist's report said that Mr. Vaidyanathan was retired. So, again, I find nothing wrong with GJ's decision to offer the maximum for minor injuries.
29. With that, I find that it was not unfair, unjust, or unreasonable for ICBC to offer to settle based on Mr. Vaidyanathan's injuries being minor. Even if Mr. Vaidyanathan's

injuries ended up being worse than they expected, I find that he is bound by the settlement agreement and release. I find that the release is a full defence to Mr. Vaidyanathan's claims, so they must be dismissed.

## **FEES AND 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. Vaidyanathan was not successful, I find that he is not entitled to reimbursement of his CRT fees. Mr. Kaye was successful so I find Mr. Vaidyanathan must reimburse him \$25 in CRT fees for each dispute, which totals \$50. Neither party claimed any dispute-related expenses.

## **ORDERS**

31. Within 30 days of the date of this decision, I order Mr. Vaidyanathan to pay Mr. Kaye \$50 for CRT fees.
32. Mr. Kaye is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
33. I dismiss Mr. Vaidyanathan's claims.
34. 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, Tribunal Member