



Civil Resolution Tribunal

Date Issued: September 22, 2021

File: VI-2021-000892

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *McNaughton v. Chauhan*, 2021 BCCRT 1017

BETWEEN:

SHERINE MCNAUGHTON

APPLICANT

AND:

SANJAY CHAUHAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on November 17, 2020 in Burnaby, BC, between the applicant Sherine McNaughton and the respondent Sanjay Chauhan. Mr. Chauhan has admitted liability for the accident.

2. Ms. McNaughton claims \$5,627 in damages for non-pecuniary (pain and suffering) damages. Mr. Chauhan agrees that this is appropriate compensation for Ms. McNaughton's pain and suffering.
3. The remaining issue in this dispute is for wage loss. Ms. McNaughton claims that she depleted 110 hours from her sick bank, which she had earned with her employer over time. She wants Mr. Chauhan to pay \$6,057.90, the amount of sick pay she received. Mr. Chauhan says that Ms. McNaughton cannot recover benefits that her employer paid because of sections 83(1)(b)(v), 83(7) and 84 of the *Insurance (Vehicle) Act* (IVA), which I discuss in more detail below.
4. This dispute is linked to another Civil Resolution Tribunal (CRT) dispute, VI-2020-009512. In that dispute, Ms. McNaughton claims wage loss benefits from her insurer, the Insurance Corporation of British Columbia (ICBC). Ms. McNaughton brought separate claims against Mr. Chauhan and ICBC because she was unsure who to make the wage loss claim against. I wrote a separate decision for that dispute because the disputes have different parties.
5. The applicant is self-represented. An ICBC employee represents Mr. Chauhan.

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)(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March 2, 2021, the BC Supreme Court ordered that sections 133(1)(b) and 133(1)(c) of the CRTA were unconstitutional and no longer in effect.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 Ms. McNaughton with information about the BC Supreme Court's decision and the BC Court of Appeal's partial stay. The CRT asked Ms. McNaughton whether she wanted to continue with the CRT dispute or file a court proceeding instead. She 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 dispute is whether Ms. McNaughton is entitled to reimbursement for her lost sick time from Mr. Chauhan.

EVIDENCE AND ANALYSIS

13. In a civil claim such as this, Ms. McNaughton as the applicant must prove her case 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. The facts are undisputed. As mentioned above, the parties were in an accident on November 17, 2020 in Burnaby, BC. Ms. McNaughton was injured. The parties agree that Ms. McNaughton is entitled to \$5,627 in non-pecuniary damages for pain and suffering. I order Mr. Chauhan to pay Ms. McNaughton this amount.
15. Ms. McNaughton is a nurse, and a member of the British Columbia Nurses Union. She was unable to work from November 17, 2020, through December 14, 2020, due to her injuries. She missed 110 hours of work. Her employer paid \$6,057.90 in gross wages for that missed time, which came out of Ms. McNaughton's sick bank. Ms. McNaughton earns time for her sick bank through time worked. Again, none of this is disputed.
16. Ms. McNaughton argues that she should be reimbursed for this lost sick time. She says that she earns sick time by working and is not afforded it automatically. She says that this makes her situation different than workers who get paid sick time that is not based on the number of hours they work. She argues that she should not suffer a loss because of an accident that was not her fault.
17. Mr. Chauhan argues that section 83 of the IVA prevents Ms. McNaughton from recovering the value of her sick days. Ms. McNaughton does not say anything specifically about section 83 of the IVA.
18. Section 83(2) of the IVA says that a person who receives "benefits" respecting a loss the person suffered because of a motor vehicle accident is deemed to have released their claim for the value of those benefits. This means that if an injured person receives "benefits", they cannot claim those benefits from another person in a motor vehicle claim.

19. Section 83(1)(v) of the IVA defines “benefits” as including “amounts paid under terms or conditions of employment or an agreement for collective bargaining”.
20. Before May 17, 2018, section 83 did not apply to employment or collective bargaining agreements, and in some circumstances the court awarded injured people the value of lost sick time. There have been no court cases about the new version of section 83 of the IVA, but in *Sahota v. Splupskyy*, 2019 BCSC 2215, the court noted that the new provisions “radically change” the previous regime (see paragraph 132). I therefore find that any previous cases assessing whether an injured person could recover the value of lost sick time in a motor vehicle case do not apply to this dispute. Ms. McNaughton says that ICBC made these changes to “suit its needs”. I disagree because ICBC as a Crown corporation does not have the power to change legislation like the IVA, only the legislature does. I find that the legislature’s intentions are irrelevant to whether section 83 applies to Ms. McNaughton.
21. I find that the sick bank payments Ms. McNaughton received are “benefits” as defined in section 83 of the IVA because they are amounts paid under a collective bargaining agreement. There is nothing in section 83 that treats employees who earn sick time through hours worked, like Ms. McNaughton does, differently than other employees who receive sick pay. I therefore find that under section 83(2) of the IVA, she is deemed to have waived her claim to recover the value of those benefits from Mr. Chauhan. This means that Ms. McNaughton cannot recover the value of her lost sick time from Mr. Chauhan. I dismiss this claim.

FEES, EXPENSES, AND INTEREST

22. 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.
23. 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. There is no evidence that Mr. Chauhan agreed to pay Ms. McNaughton’s non-pecuniary damages claim before she filed the Dispute Notice. I

therefore find that she was partially successful in this dispute. I find that Ms. McNaughton is entitled to reimbursement of half of her \$50 in CRT fees, which is \$25. I also find that Mr. Chauhan is entitled to reimbursement of half of his \$25 in CRT fees, which is \$12.50. The net effect is that Mr. Chauhan must pay Ms. McNaughton \$12.50 in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

24. Within 30 days of the date of this decision, I order Mr. Chauhan to pay Ms. McNaughton a total of \$5,639.50, broken down as follows:
 - a. \$5,627 in non-pecuniary damages, and
 - b. \$12.50 for CRT fees.
25. Ms. McNaughton is also entitled to post-judgment interest under the *Court Order Interest Act*.
26. Ms. McNaughton's remaining claim is dismissed.
27. 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