



Civil Resolution Tribunal

Date Issued: December 14, 2022

File: VI-2022-002064
and VI-2022-002065

Type: Motor Vehicle Injury

Category: Minor Injury Determination
and Fault & Damages

Civil Resolution Tribunal

Indexed as: *Gill v. Khan*, 2022 BCCRT 1337

BETWEEN:

AMRITDEEP KAUR CRYSTAL GILL

APPLICANT

AND:

ATIF KHAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This decision is about a motor vehicle accident on February 7, 2020 involving the applicant, Amritdeep Kaur Crystal Gill, and the respondent, Atif Khan.

2. The applicant filed three related motor vehicle disputes with the Civil Resolution Tribunal (CRT): (1) a request for accident benefits from the applicant's insurer, Insurance Corporation of British Columbia (ICBC) (dispute VI-2022-000975), (2) a request that the CRT determine whether the applicant's injuries are "minor injuries" under the *Insurance (Vehicle) Act* (dispute VI-2022-002065), and (3) a claim for personal injury damages (dispute VI-2022-002064). The dispute about accident benefits is the subject of a separate decision.
3. ICBC insures both parties. ICBC is not a party to either of the disputes that are the subject of this decision
4. The applicant argues their injuries are not minor, and seeks \$50,308 in personal injury damages. The CRT's monetary limit for liability and damages claims within its accident claims jurisdiction is \$50,000. The applicant was informed about this limit, and I find that by continuing dispute VI-2022-002064 for damages, they agreed to abandon their claim over the monetary limit.
5. The respondent says the applicant's injuries are "minor injuries", and argues the applicant is not entitled to the damages they claim. The respondent asks that these disputes be dismissed.
6. The applicant is self-represented. The respondent is represented by an authorized ICBC employee.

JURISDICTION AND PROCEDURE

7. 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 exclusive jurisdiction over the determination of whether an injury is a "minor injury" under the *Insurance (Vehicle) Act* (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.

8. At the time the applicant filed their CRT dispute, there was an ongoing legal challenge about whether sections 133(1)(b) and (c) of the CRTA were constitutional. The British Columbia Supreme Court (BCSC) had ordered that those sections were unconstitutional and no longer in effect. The British Columbia Court of Appeal (BCCA) then granted a partial stay of the BCSC decision, which allowed the CRT to continue resolving claims under these CRTA sections while the challenge was heard at the BCCA.
9. On May 12, 2022, the BCCA overturned the BCSC's decision. This means that the CRT retains jurisdiction to resolve claims under section 133(1)(c) of the CRTA, and exclusive jurisdiction to resolve claims under section 133(1)(b). However, given the applicant already consented to continuing their dispute at the CRT, nothing turns on the BCCA's decision.
10. 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.
11. 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.
12. 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.

Limitation Act

13. In their Dispute Response, the respondent argued the applicant's claim for liability and damages was out of time under the *Limitation Act*. The respondent did not pursue this defence in their submissions. I also note the applicant first filed their application for dispute resolution on February 7, 2022, exactly 2 years after the accident. I find the applicant filed their claim within the applicable limitation period. So, I address the merits of the two disputes below.

Deductions

14. During the CRT's tribunal decision process, ICBC, on the respondent's behalf, advised CRT staff that it intended to claim a deduction from the applicant's damages award under section 83 of the IVA. The IVA prohibits a party from telling the tribunal member details about any deduction until after the tribunal member has assessed damages. CRT staff informed me that the respondent intended to claim a deduction, but not the type of deduction or the amount. Given my conclusions below, I find it unnecessary to make any findings about potential deductions, so I did not ask the parties for submissions on deductions before making this final decision.

ISSUES

15. The issues in this dispute are:

- a. Whether the applicant's injuries are "minor injuries" as defined by section 101 of the IVA, and
- b. To what extent, if any, the applicant is entitled to their claimed damages.

BACKGROUND, EVIDENCE AND ANALYSIS

16. 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. I note the applicant chose not to provide any evidence or submissions in support of their claims, other than what the applicant said in the Dispute Notices that started these proceedings, despite the opportunity to do so.

17. As noted, the applicant was involved in a motor vehicle accident on February 7, 2020. The respondent was held 100% responsible for the accident, which is not disputed. It is also undisputed the applicant was injured as a result of the accident. They argue their injuries are not minor and seek \$50,000 in non-pecuniary (pain and suffering) damages, plus \$308 in special damages (out-of-pocket expenses) for fuel costs going to and from their various medical treatments. As noted, I find that by continuing their damages dispute at the CRT, the applicant agrees to limit their claim to \$50,000.
18. The respondent says the applicant's injuries fall within the definition of a "minor injury", and that the applicant has failed to prove their entitlement to any claimed damages.

Minor Injury Determination

19. For the minor injury determination dispute, section 101 of the IVA says that a "minor injury" includes a physical or mental injury that does not result in a "serious impairment" or "a permanent serious disfigurement".
20. A "permanent serious disfigurement" means something that significantly detracts from the applicant's physical appearance. There is no indication the applicant claims a permanent serious disfigurement from the February 7, 2020 accident.
21. A "serious impairment" means a physical or mental impairment that is not resolved within 12 months after the date of the accident, and "meets prescribed criteria".
22. *Minor Injury Regulation* section 3 sets out the "prescribed criteria" for a serious impairment. It says that the impairment must result in a "substantial inability" to perform the essential tasks of the applicant's regular employment or education

program, or their activities of daily living. The impairment must be caused by the accident, be ongoing since the accident, and not expected to improve substantially.

23. In the Dispute Notice, the applicant says they have had “significant pain” in their shoulders, chest, ribs, upper abdomen, neck, gluteal area, legs, hips, arms, pelvis, groin, tailbone, as well as a TMJ disorder, all of which started after the February 7, 2020 accident. However, as noted, the applicant did not provide any evidence or submissions in support of their claims. The applicant was undisputedly a law student when the accident occurred. Yet, there is no argument or indication in the provided evidence that the applicant was unable to perform their studies.
24. The respondent provided a February 26, 2020 chiropractic initial report and a March 11, 2020 physiotherapy initial report. This is the only medical evidence before me. Both reports indicate that the applicant was able to fully participate in their school studies. The March 11, 2020 report said the applicant complained of “difficulty” in dressing, cooking, driving, and drying their hair, but stated the applicant had returned to their activities of daily living.
25. Based on the evidence before me, I find the applicant has not proven their injuries have resulted in a substantial inability to perform their schoolwork or their activities of daily living. Additionally, apart from the applicant’s own assertion in the Dispute Notices that their injuries have been ongoing since the accident, there is no supporting medical evidence to suggest any injury beyond March 2020. As a result, I find the applicant’s injuries are, in fact, “minor injuries” as defined by section 101 of the IVA and the *Minor Injury Regulation*.

Damages

26. As noted, in the Dispute Notice for VI-2022-002064, the applicant claims \$50,000 for non-pecuniary damages and \$308 for special damages. As I have found the applicant’s injuries were minor, section 103(1) of the IVA and section 6 of the *Minor Injury Regulation* say any non-pecuniary damages are limited. For accidents between April 1, 2019 and March 31, 2020, which includes this accident, the applicable limit is

\$5,500. So, I find the applicant's claim for non-pecuniary damages is limited to that "minor injury cap". However, in this dispute the applicant must still prove their entitlement to any non-pecuniary damages, within that \$5,500 limit.

27. The respondent says their insurer, ICBC, already paid the applicant \$5,500 by cheque as a pre-litigation payment. Section 108 allows ICBC to offer pre-litigation payments, which must be made in writing and contain a statement that the offer is made under Part 9 of the IVA. The offer must also be made before the recipient files an action (or CRT dispute) about the accident.
28. I find ICBC offered the applicant \$5,500 in a December 18, 2020 email. The email stated the offer was made under Part 9 of the IVA, and that the payment would be deducted from any higher award made through a lawsuit or CRT dispute, and if the applicant was awarded less, that no repayment was required. The evidence shows ICBC sent the applicant a \$5,500 cheque on December 23, 2020. Although the applicant declined settling at that time, the respondent says the applicant cashed the cheque. As the applicant did not deny this, I accept it.
29. Therefore, I find the applicant has already been paid \$5,500, which is the highest amount they could be awarded for non-pecuniary damages in the circumstances. So, I find the applicant is not entitled to further compensation for pain and suffering. I dismiss their claim for this head of damages.
30. Next, the applicant's claim for special damages. In the Dispute Notice, they claimed \$308 as special damages for "fuel costs" traveling to and from health appointments. Again, the applicant provided no submissions or evidence about the mileage, such as the number of appointments they claim for, or to which locations. I dismiss this aspect of the applicant's claim for damages as unproven.

SUMMARY

31. In summary, I find the applicant's injuries are "minor injuries" as defined by section 101 of the IVA.
32. I dismiss the applicant's claims for personal injury damages.

FEES, EXPENSES AND INTEREST

33. 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. The respondent was successful and paid \$25 for each of disputes VI-2022-002064 and VI-2022-002065. I find the applicant must reimburse the respondent \$50 in paid tribunal fees. The applicant was unsuccessful, so I dismiss their claim for fee reimbursement. Neither party claimed dispute-related expenses.

ORDERS

34. Within 21 days of the date of this decision, I order the applicant to pay the respondent a total of \$50 as reimbursement of tribunal fees.
35. The respondent is also entitled to post-judgment interest under the *Court Order Interest Act*.
36. I dismiss the applicant's claims in both disputes VI-2022-002064 and VI-2022-002065.

37. 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