



Civil Resolution Tribunal

Date Issued: January 11, 2023

File: VI-2021-005871

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Grandmaison v. ICBC*, 2023 BCCRT 29

B E T W E E N :

JOSEPH GRANDMAISON

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. Joseph Grandmaison was in a motor vehicle accident on July 27, 2019. He undisputedly suffered significant injuries. His insurer, the Insurance Corporation of British Columbia (ICBC), did not approve housekeeping and attendant care benefits

until September 2020. ICBC refused to reimburse Mr. Grandmaison for any homemaker and attendant care expenses he incurred before September 2020. ICBC has also refused to pay any disability benefits. In his Dispute Notice, Mr. Grandmaison makes the following claims:

- a. \$14,560 for homemaker benefits from August 2019 to August 2020,
 - b. \$18,000 for attendant care from August 2019 to August 2020, and
 - c. \$79,760 in disability benefits from August 2019 to August 2021.
2. In submissions, Mr. Grandmaison asked for greater amounts for homemaker benefits (\$15,680) and attendant care (\$36,383). I address this requested amendment below.
3. In its Dispute Response, ICBC denied liability for any of the claimed amounts, but did not say why. As discussed below, ICBC agreed in submissions to pay a portion of the claimed homemaker benefits and attendant care. ICBC maintains that Mr. Grandmaison has not proven an entitlement to disability benefits.
4. Mr. Grandmaison is represented by a lawyer, Pei Yeh. ICBC 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 motor vehicle injury disputes, or “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.

7. 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.
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. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. How much is Mr. Grandmaison entitled to for homemaker benefits between August 2019 and August 2020?
 - b. How much is Mr. Grandmaison entitled to for attendant care between August 2019 and August 2020?
 - c. Is Mr. Grandmaison entitled to disability benefits from August 2019 to August 2021? If so, how much?

BACKGROUND

10. In a civil claim such as this, Mr. Grandmaison as the applicant must prove his claims on a balance of probabilities, which means "more likely than not". While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

11. Mr. Grandmaison was 73 years old at the time of the accident. It is undisputed that before the accident, Mr. Grandmaison had health challenges but was living independently. He was also working full-time managing rentals in several buildings he owned through Grand Maison Beef Farm Ltd. (GMBF). He is the sole shareholder and directing mind of GMBF. Mr. Grandmaison's friend and neighbour, NB, worked for Mr. Grandmaison as a personal assistant, helping him manage his rental portfolio.
12. On the morning of July 27, 2019, Mr. Grandmaison was in the front passenger seat of a vehicle in Langley, BC. The vehicle went off the road and into a ditch. It took 30 minutes to extract Mr. Grandmaison from the vehicle. He was taken to Royal Columbian Hospital, where he stayed for 5 days.
13. The nature and severity of Mr. Grandmaison's injuries are not in dispute. Most significantly, he suffered a lacerated spleen, fractured humerus, and fractured lumbar vertebrae. He achieved some improvement in his condition in the first year after the accident but remains significantly disabled from his injuries. According to a February 1, 2021 medical-legal report from Dr. Jordan Leith, an orthopaedic surgeon, Mr. Grandmaison is unlikely to achieve any meaningful further recovery from his current state.
14. After his release from hospital, Mr. Grandmaison hired NB to assist him with daily living, including cooking, cleaning, transportation, and personal care. Mr. Grandmaison first requested that ICBC fund NB's work on September 14, 2019. For reasons that are ultimately not important to the outcome of this dispute, ICBC did not approve any homemaker or attendant care benefits until September 2020. At that time, ICBC agreed to pay NB \$27 per hour for up to 4 hours a day of attendant care. However, ICBC refused to reimburse Mr. Grandmaison for services NB provided before September 2020, which amounted to \$52,063. ICBC also refused to provide any disability benefits.
15. I note that the accident benefits scheme changed considerably for accidents after May 1, 2021. All references to legislation in this decision are to the regulations as they existed on July 27, 2019.

EVIDENCE AND ANALYSIS

Homemaker Benefits

16. Section 84 of the *Insurance (Vehicle) Regulation* (IVR) says that if a person who was responsible for most of a household's tasks before an accident is disabled from regularly performing those tasks, they are entitled to compensation for reasonable expenses to hire someone else to perform them. These are known as homemaker benefits. Under section 2 of Schedule 3 of the IVR, the maximum homemaker benefit at the relevant times was \$280 per week.
17. As mentioned above, Mr. Grandmaison's initial claim was for \$14,560 in homemaker benefits, which is 52 weeks of benefits at the maximum amount. In his submissions, Mr. Grandmaison increased his claim to \$15,680, which is 56 weeks of benefits. In its response submissions, ICBC agreed to pay for 52 weeks.
18. I find that by increasing his claim in submissions, Mr. Grandmaison is effectively seeking an amendment to the Dispute Notice. CRT rule 1.19(3) allows for amendments to a Dispute Notice during the decision process in extraordinary circumstances. As always, the CRT's rules must be interpreted in a manner consistent with the CRT's mandate, which includes proportionality, flexibility, and informality. Here, I allow Mr. Grandmaison's amendment request. Notably, ICBC did not object to the increase. Also, I find that the parties' past correspondence shows that ICBC has been aware of the amount of Mr. Grandmaison's total claim for homemaking and attendant care claims since at least December 2020. So, I find that ICBC was not taken by surprise by the increased claim amount in submissions. In light of this background, I find that it would be unfair to Mr. Grandmaison and contrary to the CRT's mandate to refuse to amend his claim.
19. As mentioned above, ICBC no longer disputes Mr. Grandmaison's entitlement to homemaker benefits before September 2020. Rather, it seeks to limit those benefits to 52 weeks. ICBC approved homemaker benefits effective September 1, 2020, which is just over 57 weeks after the accident. ICBC does not explain why it believes he should only be compensated for 52 weeks. Section 85(2) of the IVR says that there

are no homemaker benefits payable in the first 7 days of a disability, which explains why Mr. Grandmaison claimed 56 weeks of benefits.

20. In submissions, ICBC referred to the 104-week limit on homemaker benefits in section 84 of the IVR. However, ICBC did not argue that this limitation disentitles Mr. Grandmaison to the full 56 weeks of homemaker benefits. In the absence of any argument from ICBC about how the limit applies to Mr. Grandmaison (he argues that it does not apply at all because of his age), I am not prepared to make any deductions based on the 104-week limit.
21. In summary, I find that Mr. Grandmaison is entitled to 56 weeks of disability benefits as claimed, which again is \$15,680. I order ICBC to pay this amount.

Attendant Care Benefits

22. Section 88(2)(c) of the IVR provides for full indemnity of attendant care costs, subject only to a maximum benefit equal to the cost of living in a long-term care facility (ICBC does not argue that this maximum applies). So, find that Mr. Grandmaison is entitled to be reimbursed for NB's time spent on attendant care.
23. It is undisputed that Mr. Grandmaison paid NB \$52,063 between August 4, 2019, and August 31, 2020. Mr. Grandmaison argues that between homemaker benefits and attendant care benefits, he should be fully indemnified for this amount. Given my \$15,680 order for homemaker benefits, I find that Mr. Grandmaison's attendant care claim is \$36,383.
24. Again, this is more than Mr. Grandmaison initially claimed. So, it is effectively another request to amend the Dispute Notice during the decision process. ICBC not object to the increase. In fact, as discussed below, it offered to pay more than the claimed amount in the Dispute Notice. I also note that Mr. Grandmaison said expressly in the Dispute Notice that the \$18,000 claim was an estimate. With that, I permit the amendment for the same reasons as outlined above.

25. ICBC argues that NB's time should be divided between "attendant care" and "homemaking", and Mr. Grandmaison should only receive compensation for NB's time that was spent on attendant care. So, ICBC's submissions focus on breaking NB's time down into each category. To that end, ICBC notes that NB spent "on average" 4 hours a day assisting Mr. Grandmaison between August 2019 and September 2020. This works out to \$108 per day. ICBC then argues that I should "assume" that NB's time was split equally between homemaking and attendant care. ICBC says that "attendant care at 50% would be \$378 per week for a period of 52 weeks. That works out to \$19,656 for attendant care". I note that unlike with the homemaker benefits, ICBC does not explicitly offer to pay anything for attendant care. However, when taken in context, I find that ICBC's above calculation is clearly meant as an admission of liability for \$19,656 for attendant care.
26. I find that ICBC's approach creates a sharp distinction between homemaker and attendant care services that does not exist in the IVR. Neither term is defined in the IVR, and ICBC does not say what services were homemaking and what services were attendant care. I find that the scheme of the IVR shows that homemaker benefits and attendant care benefits serve different purposes and apply in different situations. Notably, homemaker benefits are only available for people who did most of the housework. Attendant care does not have that limitation. Also, attendant care is only available when it will further an insured's rehabilitation. Homemaker benefits do not need to be rehabilitative. So, some people (like Mr. Grandmaison) may be entitled to both, while others may be entitled to only one of them. In that context, I find that it makes no logical sense that a service must be one or the other.
27. Rather, I find that there is overlap between attendant care and homemaker benefits. In other words, I find that some services, like meal preparation and housekeeping, are captured by homemaker benefits and attendant care benefits. I find that this conclusion is consistent with the court's reasoning in *Blackburn v. Lattimore*, 2022 BCSC 719, at paragraphs 25 to 32. I therefore do not agree that ICBC has set out the proper approach to determine how much Mr. Grandmaison is entitled to for attendant care.

28. Having reviewed NB's timesheets, I am satisfied that the services he provided are attendant care. This is consistent with ICBC's own decision in September 2020 to pay NB for 4 hours a day of attendant care (which ICBC knew included meal preparation and housekeeping) while denying homemaker benefits.
29. I agree with Mr. Grandmaison that section 88(3) of the IVR entitles him to full reimbursement of his attendant care costs. Mr. Grandmaison properly concedes that he would be overcompensated if he received \$52,063 in attendant care benefits in addition to homemaker benefits. I find that Mr. Grandmaison is entitled to the \$36,383 difference for attendant care, as claimed.

Disability Benefits

30. Mr. Grandmaison says that at the time of the accident, he maintained a busy work schedule mostly taken up by managing rental properties owned by GMBF. He says that he collected rent, managed finances, supervised contractors, and performed minor repairs. He also says that he was "far along" in the process of setting up a tow truck business with NB, although it never began operating. While Mr. Grandmaison had previously argued in emails to ICBC that he was entitled to disability benefits based on this business's failure to launch, his submissions in this dispute focus solely on his income from GMBF.
31. Section 80 of the IVR provides for benefits for employed persons who are totally disabled from engaging in their occupation. ICBC does not specifically dispute that Mr. Grandmaison was disabled from working after the accident. I find that he likely was totally disabled, based on the clinical records before me and Dr. Leith's report.
32. Section 80 of the IVR says that an eligible insured is entitled to 75% of their gross earnings from the previous 12 months or a prescribed amount (\$780 per week), whichever is less. This means that people who earned more than around \$55,000 in gross income are only entitled to the \$780 per week maximum. Mr. Grandmaison says that his gross income over the 12 months was well above this threshold.

According to his tax returns, his gross income in 2018 was \$214,431 and his gross income in 2019 tax return was \$939,698.

33. Mr. Grandmaison says a plain reading of section 80 of the IVR only requires him to prove a total disability and his gross income. Mr. Grandmaison urges me to take an “expansive” view of entitlement given the purpose of the IVR of conferring benefits on injured people.
34. It is true that there is nothing explicit in section 80 of the IVR that requires an insured to prove a loss in income or profits because of a disability. However, ICBC points to the reasoning in *Bradley v. Insurance Corp. of British Columbia* (1989), 42 B.C.L.R. (2d) 323 (CA) and *Prato v. Insurance Corp. of British Columbia*, 2003 BCSC 76. The facts of those cases are not relevant because they are about very different employment situations. However, in *Bradley*, the court found that the IVR “does not contemplate recovery for persons who lost neither wages nor profits”. Along similar lines, in *Prato*, the court found that the IVR “requires the insured to demonstrate both disability and actual loss”. I agree with ICBC that these cases establish that Mr. Grandmaison must prove that he suffered a loss of earnings or profits because of his disability. For the reasons that follow, I find that he has not done so.
35. Mr. Grandmaison provided little evidence about his finances. He only provided personal tax returns from 2016 to 2020.
36. His 2016 tax return shows that he sold a rental property that he had co-owned in his personal capacity. The remaining tax returns show that from 2017 to 2020, all his personal income came from GMBF (other than some income from public sources, namely CPP, OAS, and CERB). I infer from Mr. Grandmaison’s submissions that all GMBF’s revenues are from real estate rentals.
37. In 2017, Mr. Grandmaison’s gross income was \$103,476, of which \$85,093 was a shareholder loan from GMBF. In 2018, his gross income was \$214,431, of which \$197,334 was a shareholder loan from GMBF. In 2019, his gross income was \$939,698, of which \$897,101 was dividends from GMBF. He also repaid \$1,196,684

in shareholder loans. In 2020, his gross income was \$23,763. He received no income from GMBF that year.

38. Crucially, Mr. Grandmaison did not provide any financial records from GMBF. In reply submissions, he says that he instructed GMBF to sell “properties he thought he would be unable to look after or maintain”. I infer from context that he claims to have sold all his properties. It is unclear why his disability required him to sell off his real estate instead of hiring someone else to manage the rentals.
39. Shareholder loans and dividends are both legitimate and common ways to move money in and out of a corporation for personal use. However, they both reflect choices made by those who control the corporations, which may be influenced by personal circumstances and a desire to legitimately avoid or defer taxes. With that, I find that Mr. Grandmaison’s personal tax returns on their own provide little information about the impact of his disability on GMBF’s revenues or profits. Rather, they reflect decisions Mr. Grandmaison made about moving money between GMBF and his personal accounts and what to do with GMBF’s assets. Notably, there is no evidence about whether GMBF had (or has) any retained earnings.
40. It may be true that Mr. Grandmaison suffered a loss as alleged. I find that Mr. Grandmaison asks me to infer a loss based on unsubstantiated assertions that he could have easily proven with GMBF’s financial records. In the circumstances, I draw an adverse inference against Mr. Grandmaison for failing to provide clearly relevant evidence without explanation. I find that the limited evidence before me does not establish that Mr. Grandmaison suffered a loss as a result of his disability. On that basis, I dismiss his claim for disability benefits.

FEES, EXPENSES AND INTEREST

41. The *Court Order Interest Act* (COIA) applies to the CRT. Under section 1(2) of the COIA, interest on special damages must be calculated from the end of each 6-month period after the cause of action arose, which I find is September 11, 2019, the date

Mr. Grandmaison first requested homemaking and attendant care benefits. I find that this equals \$763.11.

42. Under section 49 of the CRTA, and the CRT rules, a successful party is entitled to be reimbursed for CRT fees and reasonable dispute-related expenses. Mr. Grandmaison was partially successful, so I find he is entitled to reimbursement of half of his \$225 in CRT fees, which is \$112.50. I find that ICBC was also partially successful, so I find that it is entitled to half of its \$25 in CRT fees, which is \$12.50. The net effect is that Mr. Grandmaison is entitled to \$100 in CRT fees.
43. Mr. Grandmaison also claims \$12,844.46 in dispute-related expenses. ICBC argues that I should dismiss this claim because there is an ongoing BC Supreme Court tort action about the same accident. ICBC does not otherwise say why I should decline to reimburse expenses that Mr. Grandmaison incurred that are reasonably connected to the CRT dispute (even if they may also be connected to the ongoing court action). I find that Mr. Grandmaison is entitled to half of any reasonable dispute-related expenses that were incurred in connection with this CRT dispute.
44. I start with the cost of Dr. Leith's expert report, which was \$5,976. Even though ICBC did not ultimately dispute Mr. Grandmaison's level of disability, I find that this expense is reasonably connected to this dispute given ICBC's initial position. However, under section 5 of the Accident Claims Regulation, there is a \$2,000 limit on recovery for fees and expenses for an expert report. I order ICBC to reimburse Mr. Grandmaison \$1,000 for Dr. Leith's report. Mr. Grandmaison also claims \$4,000 for a "no show" appointment with Dr. Leith. He does not explain why ICBC should reimburse him for this or explain why he missed this appointment. I dismiss this claim.
45. Mr. Grandmaison also claimed the cost of obtaining clinical records from various sources (\$1,312.15), a courier to NB (\$168.16), long distances charges for a telephone call with an occupational therapist (\$12.60), faxes (\$34.65), postage (\$17.89), and a company search (\$7). I find these expenses were reasonably incurred in connection with the CRT dispute. These expenses total \$1,552.45. I order ICBC to pay half, which is \$776.23.

46. Mr. Grandmaison also claimed reimbursement for expenses that are clearly associated only with the court action, namely skip tracing one of the defendants in that action, serving the defendants in that action, skip tracing potential witnesses of the accident, and filing court documents. Mr. Grandmaison did not explain why the CRT should order reimbursement of expenses unrelated to this dispute. I dismiss these claims.
47. I note that CRT rule 9.5(3) allows the CRT to order a party to pay another party's legal fees if the dispute is in the CRT's accident claims jurisdiction. However, Mr. Grandmaison did not claim reimbursement of any legal fees, so I order none.

ORDERS

48. Within 30 days of the date of this decision, I order ICBC to pay Mr. Grandmaison a total of \$54,702.34, broken down as follows:
- a. \$15,680 in homemaker benefits,
 - b. \$36,383 in attendant care benefits,
 - c. \$763.11 in court ordered interest,
 - d. \$100 in CRT fees, and
 - e. \$1,776.23 in dispute-related expenses.
49. Mr. Grandmaison is also entitled to post-judgment interest under the COIA.
50. I dismiss Mr. Grandmaison's remaining claims.

51. 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