



# Civil Resolution Tribunal

Date Issued: December 11, 2023

File: VI-2022-007060

Type: Accident Claims

Category: Minor Injury Determination

Civil Resolution Tribunal

Indexed as: *Shi v. Mavis*, 2023 BCCRT 1088

BETWEEN:

JIN XIAN SHI

**APPLICANT**

AND:

MICHAELA RAINE MAVIS

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This dispute is about a minor injury determination.

2. The applicant, Jin Xian Shi, and the respondent, Michaela Raine Mavis<sup>1</sup>, were involved in a motor vehicle accident on August 5, 2020, in Surrey, British Columbia. Mrs. Shi was undisputedly injured in the accident and argues her injuries are not “minor injuries” as defined by the *Insurance (Vehicle) Act* (IVA). The respondent disagrees. Mrs. Shi has filed a claim for damages at the British Columbia Supreme Court.
3. Mrs. Shi is represented by a lawyer, Ryan Kusuhara. The respondent is represented by an authorized employee of their insurer, Insurance Corporation of British Columbia (ICBC). ICBC is not a party to this proceeding.

## **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)(b) of the CRTA gives the CRT exclusive jurisdiction over the determination of whether an injury is a “minor injury” under the IVA.
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.
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

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<sup>1</sup> The CRT has a policy to use inclusive language that does not make assumptions about a person’s gender. As part of that commitment, the CRT asks parties to identify their pronouns and titles to ensure that the CRT respectfully addresses them throughout the process, including in published decisions. As mentioned, Michaela Raine Mavis is represented by ICBC. ICBC did not provide their pronouns or title. Because of this, I will refer to Michaela Raine Mavis as the respondent and will use gender neutral pronouns for them throughout this decision, intending no disrespect.

that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.

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.

## **ISSUE**

8. The issue in this dispute is whether Mrs. Shi's injuries are "minor injuries" as defined by section 101 of the IVA.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

9. Under section 4 of the *Minor Injury Regulation* (MIR), the party alleging that an injury is not minor has the burden of proving it. This means that Mrs. Shi must prove her injuries are not minor 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.
10. As noted, Mrs. Shi was injured in a motor vehicle accident on August 5, 2020. Mrs. Shi was a pedestrian who was knocked down by a vehicle driven by the respondent.
11. As a result of the accident, Mrs. Shi says she suffered myofascial low back pain, which has become chronic. Mrs. Shi argues her low back pain prevents her from being able to care for her young granddaughter and prepare meals for the entire family. Mrs. Shi admittedly can prepare meals for herself. Mrs. Shi says these limitations have resulted in a "serious impairment" of her life. So, she says her accident injuries are not minor.
12. The respondent argues that Mrs. Shi suffered from pre-existing low back pain. In any event, the respondent says even if the accident caused Mrs. Shi's current low back pain, and even if it is ongoing, her injuries still meet the definition of "minor injury" because her impairment has not met the prescribed criteria.

13. Section 101 of the IVA and the MIR together provide a detailed definition of a minor injury. Section 101 describes a minor injury, among other things, as a physical injury, including a chronic injury, that does not result in a “serious impairment”, and includes, among other things, sprains or strains, pain syndromes, and whiplash-associated disorder (WAD) injuries.
14. Section 101 further says that a “serious impairment” is a physical impairment that lasts more than 12 months and “meets prescribed criteria”. Section 3 of the MIR sets out the prescribed criteria that an impairment must to be considered serious:
  - a. It must result in a “substantial inability” to perform the essential tasks of their regular employment or education program, or their activities of daily living,
  - b. It must be primarily caused by the accident and ongoing since the accident, and
  - c. It must not be expected to improve substantially.
15. Mrs. Shi was not working or attending an education program at the time of the accident. She is retired. However, as noted, Mrs. Shi says her chronic low back pain prevents her from preparing large family meals and caring for her grandchild. She argues this is a substantial inability to perform her activities of daily living.
16. Dr. Deepak Grover, orthopaedic surgeon, performed an independent medical examination of Mrs. Shi and provided a medical legal report dated September 25, 2022. In that report, Dr. Grover explains Mrs. Shi initially suffered significant back pain, some neck pain, headaches, and left leg pain after the accident. Dr. Grover noted Mrs. Shi previously injured her low back in a fall in 2012, which she reinjured later, before the accident. Mrs. Shi undisputedly had some ongoing low back complaints at the time of the accident. She was also previously diagnosed with osteopenia/osteoporosis. The medical records indicate she fell again in December 2021, resulting in a T12 compression fracture.
17. After reviewing Mrs. Shi’s relevant medical records and performing his own examination of her, Dr. Grover said the accident caused myofascial injuries to Mrs.

Shi's neck and low back, aggravation of pre-existing low back pain, aggravation of pre-existing degenerative disc disease of her lumbar spine, and chronic pain. Dr. Grover expects that Mrs. Shi's injuries will remain permanent.

18. Dr. Grover says Mrs. Shi's injuries "impact some of her activities of daily living", but does not describe what those are, except that she struggles with "heavier household chores". Notably, Dr. Grover says she will not require any assistance for regular household work in the future, and "does not require any degree of ongoing care assistance for her activities of daily living".
19. Based on the evidence before me, including Dr. Grover's medical report, I accept that Mrs. Shi suffered a sprain/strain type injury to her low back due to the accident, which has led to chronic low back pain, which is ongoing to this day. I also accept that Mrs. Shi's injuries are unlikely to improve.
20. However, the issue for Mrs. Shi is the definition of "activities of daily living". Mrs. Shi's counsel argues that there is no definition of "activities of daily living" included within the MIR, so it should be defined as whether she is able to perform her daily activities in the same way that gives meaning to her life, as before the accident. Although "activities of daily living" is defined in the IVA, Mrs. Shi's lawyer argues it does not apply to the "minor injury" portion of the legislation. I disagree.
21. Section 1(1) of the IVA states "in this Act", "activities of daily living" means the following activities:
  - a. Preparing personal meals,
  - b. Managing personal finances,
  - c. Shopping for personal needs,
  - d. Using public or personal transportation,
  - e. Performing housework to maintain a place of residence in acceptable sanitary condition,

- f. Performing personal hygiene and self-care,
- g. Managing personal medication, and
- h. Any other prescribed activity.

22. Contrary to Mrs. Shi's argument, I find the IVA definition of "activities of daily living" is incorporated into section 101 of the IVA through the "prescribed criteria" listed in the MIR. Section 1 specifically notes the definition applies to the IVA, and the MIR is a regulation to the IVA that specifically addresses the "prescribed criteria" referenced in the IVA.
23. So, to succeed in her claim that her injuries are not minor, Mrs. Shi must prove on a balance of probabilities that she is substantially unable to perform her activities of daily living as defined in the IVA.
24. I find that Mrs. Shi's inability to care for her grandchild or make large family meals does not mean she is substantially unable to perform her activities of daily living. Neither activity is listed in the definition in the IVA, or in the expanded definition of "any other prescribed activity" set out in section 2 of the *Enhanced Accident Benefits Regulation*. Mrs. Shi's submissions and the medical evidence do not support a finding that Mrs. Shi is substantially unable to perform her activities of daily living as they are defined in the IVA.
25. I recognize Mrs. Shi's argument that "substantial inability" is not defined in the legislation. However, there is simply no evidence that Mrs. Shi is unable, substantially or otherwise, to perform the activities of daily living as defined in the IVA. In fact, Dr. Grover expects Mrs. Shi will not require any ongoing assistance with her activities of daily living. As a result, based on the submissions and evidence before me, I find Mrs. Shi's low back injuries are "minor injuries" as defined by section 101 of the IVA and the MIR.

## **FEES, EXPENSES, AND INTEREST**

26. 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 Mrs. Shi was not successful, I dismiss her claim for reimbursement of tribunal fees and dispute-related expenses.
27. As the respondent was successful, I order Mrs. Shi to reimburse them \$25 in paid tribunal fees. The respondent did not claim any disputed-related expenses.

## **ORDERS**

28. Within 30 days of the date of this decision, I order Mrs. Shi to pay the respondent a total of \$25 as reimbursement of tribunal fees.
29. The respondent is entitled to post-judgment interest under the *Court Order Interest Act*.
30. Mrs. Shi's claims are dismissed.
31. 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.

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Andrea Ritchie, Vice Chair

