Civil Resolution Tribunal

Original Decision Issued: January 10, 2024

Amended Decision Issued: January 15, 2024

Files: VI-2022-006073
and VI-2022-006074

Type: Accident Claims

Category: Minor Injury Determination
and Fault & Damages

Civil Resolution Tribunal

Indexed as: *Fredericks v. Ingram*, 2024 BCCRT 23

B E T W E E N :

LISA FREDERICKS

APPLICANT

A N D :

ALFRED INGRAM

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member: Kristin Gardner

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on August 4, 2020 between the applicant, Lisa Fredericks, and the respondent, Alfred Ingram.[1] The parties agree that the respondent was 100% responsible for the accident.

2. Ms. Fredericks filed 2 related accident claims disputes with the Civil Resolution Tribunal (CRT): (1) a request that the CRT determine whether her injuries from the accident are "minor injuries" under the *Insurance (Vehicle) Act* (IVA) (dispute VI-2022-006074), and (2) a claim for personal injury damages (dispute VI-2022-006073).

3. ICBC insures both parties. ICBC is not a party to either of the disputes that are the subject of this decision.

4. Ms. Fredericks says her injuries are not minor, and seeks $50,000 in personal injury damages, including $20,000 in non-pecuniary (pain and suffering) damages, and $30,000 for future care costs.

5. The respondent says Ms. Fredericks' injuries are "minor injuries" and argues her non-pecuniary damages are therefore limited to $5,627, the applicable "minor injury cap". The respondent also says Ms. Fredericks has not proven any entitlement to future care costs. Finally, in submissions, the respondent says Ms. Fredericks' claims may be out of time under the *Limitation Act*.

6. The applicant is self-represented. An ICBC employee represents the respondent.

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*

[1] The CRT has a policy to use inclusive language that does no 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 noted, Alfred Ingram is represented by ICBC. ICBC did not provide their pronouns or title. Because of this, I will refer to Alfred Ingram at the respondent and will use gender neutral pronouns for them throughout this decision, intending no disrespect.

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. 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. 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.

9. 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.

10. 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 inform itself in any other way it considers appropriate.

Limitation issue

11. As noted, the respondent raised in submissions the possibility that Ms. Fredericks started these claims out of time under the *Limitation Act*. Generally, a person must commence a claim within 2 years of the day on which the claim is discovered. I find Ms. Fredericks discovered or ought to have discovered her claims on August 4, 2020, the date of the accident.

12. The CRT created the Dispute Notices for these 2 disputes on August 29, 2022 [2]. However, Ms. Fredericks made her initial application for CRT dispute resolution on

[2] Amended under section 64(a) of the CRTA to correct a typographical error.

June 9, 2022, which included her request for the CRT to determine whether her injuries were minor and her claim for personal injury damages. It was the CRT's internal administrative process that delayed the creation of the separate Dispute Notices. So, I find that Ms. Fredericks started her claims less than 2 years after the accident date, and they were therefore brought in time.

ISSUES

13. The issues in this dispute are:

    a. Whether Ms. Fredericks' injuries are "minor injuries" as defined by section 101 of the IVA, and

    b. To what extent Ms. Fredericks is entitled to her claimed damages.

BACKGROUND, EVIDENCE AND ANALYSIS

14. In a civil claim like this one, the applicant Ms. Fredericks must prove her claims on a balance of probabilities, meaning "more likely than not". I have reviewed all of the parties' evidence and submissions, but I address only what I find is necessary to explain my decision.

15. As noted, Ms. Fredericks was involved in a motor vehicle accident on August 4, 2020. She was driving in the curb lane when the respondent, who was driving in the lane directly beside her, changed lanes into the curb lane. The respondent's vehicle collided with Ms. Fredericks' left rear door and pushed her vehicle into the curb. The respondent was undisputedly held 100% responsible for the accident.

16. It is also undisputed that Ms. Fredericks was injured in the accident. As noted, she argues that her injuries are not minor and seeks $20,000 in non-pecuniary damages and $30,000 in future care costs.

17. The respondent says Ms. Fredericks' injuries fall within the definition of a "minor injury", and that her non-pecuniary damages are limited to the applicable legislated

"minor injury cap" of $5,627. The respondent also argues Ms. Fredericks has not proven she is entitled to future care costs.

Minor Injury Determination

18. Section 101 of the IVA and section 2 of the *Minor Injury Regulation* (MIR) define a "minor injury" as including, among other things, sprains or strains, pain syndromes, a concussion that does not result in an incapacity, and whiplash-associated disorder (WAD) injuries, even if the injury is chronic.

19. Section 101 of the IVA further says that a "minor injury" is a physical or mental injury that does not result in a "serious impairment". A "serious impairment" is defined as a physical or mental impairment that is not resolved within 12 months of the date of the accident **and** "meets prescribed criteria".

20. Section 3 of the MIR 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 injured person'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 be expected to improve substantially.

21. Section 4 of the MIR says the burden of proving that an injury is not minor is on the party alleging the injury is not minor. Here, that is Ms. Fredericks.

22. I turn first to Ms. Fredericks' injuries.

23. Ms. Fredericks was transported to hospital in an ambulance following the accident. The emergency room visit notes state she complained of left-sided neck pain, and the attending doctor diagnosed her with a neck strain.

24. The medical records show that Ms. Fredericks pursued physiotherapy treatment for her injuries. An August 15, 2020 physiotherapy initial report by Anke Smit at Pro Physio Clinic indicated that Anke Smit diagnosed Ms. Fredericks with a moderate whiplash soft tissue strain to her cervical (neck) and lumbar (lower back) areas. Ms.

Fredericks attended physiotherapy treatments twice per week for the first 7 months after the accident.

25. Ms. Fredericks' family doctor then referred her to the Bill Nelems Pain & Research Centre for her chronic pain. A March 1, 2021 report by Dr. Roderick Finlayson noted that Ms. Fredericks reported intermittent right-sided neck pain and left-sided low back pain, which Ms. Fredericks said was constant. Dr. Finlayson administered a left-sided lumbar facet block injection. The medical records indicate Ms. Fredericks reported pain relief for only 4 days after the injection.

26. Ms. Fredericks says that her neck pain eventually largely subsided, which I find is consistent with the medical records. However, she says her low back and hip area pain has been ongoing. The records before me show that Ms. Fredericks continued with physiotherapy treatments to her low back and hip area 2 to 4 times per month between March 2021 and at least August 2023.

27. Ms. Fredericks' other physiotherapist, Heather Adams, referred her to Dr. Allen Hooper for prolotherapy injections. Dr. Hooper's September 14, 2022 report stated that Ms. Frederick described having 7/10 pain in her left hip area, which became worse with prolonged sitting, standing, and bending. Dr. Hooper's report stated that the mechanism of injury, pain pattern, functional limitations, and objective findings were all consistent with a ligament sprain in the low back and left sacroiliac joint (hip area) due to the accident.

28. Based on the medical evidence before me, I find that Ms. Fredericks likely suffered a WAD injury to her neck and a sprain or strain type injury to her low back and hip area. As noted above, Ms. Fredericks' neck pain was only intermittent by March 2021, and the records show it was substantially resolved within 12 months of the accident date. So, I find Ms. Fredericks' neck injury did not result in a serious impairment, and it was therefore a "minor injury" under section 101 of the IVA and the MIR.

29. However, I accept that Ms. Fredericks' low back and hip injuries have led to chronic pain in those areas, which is ongoing to this day. So, I will consider whether the

impairment from these injuries was caused by the accident and resulted in a substantial inability for Ms. Fredericks to perform the essential tasks of her regular employment or activities of daily living.

30. The respondent argues that Ms. Fredericks' low back pain pre-dated the subject accident, and so her injuries were not caused by the accident but merely exacerbated by it. I find the evidence does not support that submission.

31. Ms. Fredericks was undisputedly involved in 2 previous motor vehicle accidents in February 2008 and February 2020. Following the 2008 accident, Ms. Fredericks had an independent medical examination with Dr. Maryana Apel, a physical medicine and rehabilitation specialist. Dr. Apel's November 15, 2010 report is in evidence. It stated that Ms. Fredericks' main complaint after the 2008 accident was upper back pain, particularly between her shoulder blades. Other symptoms, including knee pain and headaches, had returned to their pre-accident condition by the time of the report. Dr. Apel's report does not refer to any complaints of low back or hip pain from the 2008 accident.

32. There is no medical evidence before me suggesting Ms. Fredericks was injured in the February 2020 accident, or that she had otherwise previously injured her low back or hip areas. Ms. Fredericks says she was not experiencing lower back pain before the subject August 2020 accident, which I accept, as there is no evidence before me showing otherwise. Therefore, I find the August 2020 accident is responsible for Ms. Fredericks' low back and hip sprain or strain injuries.

33. I also note that Ms. Fredericks provided evidence she has a condition called "hypermobility syndrome". Dr. Apel first diagnosed her with this syndrome, which is more commonly known as being double jointed. Dr. Apel noted that for people with this condition, stretching increases flexibility in already loose soft tissues, while tight areas become even more tight. So, Dr. Apel recommended obtaining professional advice about appropriate rehabilitation exercises. In their August 5, 2022 clinical record, Heather Adams also noted that hypermobility appeared to be impairing Ms.

Fredericks' ability to progress in recovery. The record stated Heather Adams made the referral for prolotherapy treatment to help stabilize the low back and hip region.

34. I agree with the respondent that the hypermobility syndrome diagnosis itself does not take Ms. Fredericks' low back and hip injuries outside the minor injury definition. Rather, I find it provides an explanation for why Ms. Fredericks may have been more susceptible to a sprain or strain injury and why those injuries might have taken longer to resolve and ultimately became chronic.

35. As noted, a "minor injury" includes chronic sprain or strain injuries such as Ms. Fredericks' injuries, so long as the injuries do not result in a serious impairment. So, the question is whether Ms. Fredericks' low back and hip injuries resulted in a substantial inability to perform the essential tasks of her regular employment or her activities of daily living.

36. Ms. Fredericks says that her pain has affected her employment opportunities because she has difficulty with sitting and desk work for long periods.

37. Ms. Fredericks relies on an August 31, 2023 functional capacity evaluation (FCE) from Mike Slack, an occupational therapist. I accept the FCE as expert evidence under the CRT's rules, as the writer's qualifications are set out in their report and establish their expertise in occupational therapy assessments. Also, the respondent does not dispute the FCE's admissibility as expert evidence.

38. The FCE contains conflicting information about Ms. Fredericks' employment history. Initially, it stated she was working as a legal secretary at the time of the accident, but later stated she was working full-time in marketing. While the evidence before me is inconclusive about her job title, I accept Ms. Fredericks' evidence that she was working in an office setting, which required prolonged sitting at a desk for most of the workday. The FCE also stated that Ms. Fredericks attempted 2 other office or administrative-type jobs after the accident, but she reported she was unable to maintain those positions due to the prolonged sitting required.

39. During the FCE, Ms. Fredericks reported that she could sit for up to 2 hours before she required a standing or movement break. The FCE writer stated her report was consistent with their observations of Ms. Fredericks' sitting tolerance. The FCE also stated the physical testing results showed Ms. Fredericks was capable of physical functioning within the sedentary strength category, though she could also perform some tasks within the lower end of the light strength category.

40. I generally accept that sitting for long periods aggravated Ms. Fredericks' low back and hip pain. Ms. Fredericks has consistently reported this limitation to her medical practitioners since the accident. However, I find that alone is insufficient to find Ms. Fredericks had a substantial inability to perform the essential tasks of her regular employment. The physiotherapy records consistently indicated she did not miss any work and continued to work full-time hours at full duties.

41. Section 3(a)(i) of the MIR also says the serious impairment must exist despite reasonable efforts to accommodate the impairment. Ms. Fredericks did not provide any employment records. I agree with the respondent that in the absence of such records, it is impossible to determine whether Ms. Fredericks' employer made reasonable efforts to accommodate her. Notably, the FCE stated that items such as a standing desk, ergonomic chair with lumbar support, screen and foot risers, and an external keyboard might improve her work-day tolerance.

42. I acknowledge Ms. Fredericks' submission that she was a single mother at the time of the accident, and as a result, she says she had no choice but to push through the pain and continue working. However, I am bound by the legislation, which requires her to have been substantially unable to complete her employment duties for more than 12 months. The evidence indicates that she was fully capable of performing her employment duties, albeit with pain. Ms. Fredericks says that in March 2023, she left her full-time employment to start her own business from home, which limits the need for prolonged sitting and allows her to take more frequent movement breaks. In other words, she did not suggest that her injuries are preventing her from completing any

tasks in her current employment. Overall, I find Ms. Fredericks has not proven a serious impairment as it relates to her regular employment.

43. As for activities of daily living, Ms. Fredericks says that simple tasks such as unloading the dishwasher, doing laundry, bending and crouching, carrying groceries, pushing a shopping cart, and driving more than 30 minutes still cause pain, over 3 years after the accident.

44. Section 1(1) of the IVA says “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.

45. Section 2 of the *Enhanced Accident Benefits Regulation* sets out additional prescribed activities that fall within the definition of “activities of daily living”, including performing yard work, using stairs, and undertaking community outings, among others.

46. Ms. Fredericks provided a statement from her spouse, JP, which said Ms. Fredericks is unable to assist with household duties such as yard work, and activities requiring heavy lifting, being bent over, or significant time hunched or on her knees. JP did not describe what type of yard they have or what yard work is required, and he did not

provide any specific chores that Ms. Fredericks cannot do. So, I find JP's statement is of limited assistance.

47. The August 15, 2020 physiotherapy initial report referenced above stated that Ms. Fredericks was able to do her activities of daily living, though pain prevented her from lifting heavy weights. In a March 9, 2022 physiotherapy treatment plan, Heather Adams noted that Ms. Fredericks was capable of most activities of daily living, other than lifting more than 20 pounds. Finally, a June 3, 2021 physiotherapy treatment plan stated Ms. Fredericks had been able to do her activities of daily living all along but had consistent back muscle tightness during those activities and at the end of the day.

48. The FCE stated that Ms. Fredericks reported no issues or concerns with her personal care, and that she was independent with all homemaking and food preparation tasks. However, she noted difficulty with more physical chores such as vacuuming, sweeping, and carrying laundry up and down the stairs, and that she seeks help from family members for difficult tasks.

49. I generally accept that Ms. Fredericks has difficulty with heavier household tasks and yard work, and that tasks involving certain postures likely aggravate her symptoms. However, I find there is insufficient evidence that her limitations constitute a serious impairment under section 101 of the IVA. Ms. Fredericks says she started living with JP in May 2021. Before then, there is no evidence that Ms. Fredericks had any outside assistance with her household chores or that she failed to keep her residence in an acceptable sanitary condition after the accident. She may now accept help from family with some heavier tasks to avoid aggravating her injuries. However, overall, I find that Ms. Fredericks was and likely continues to be substantially capable of performing her activities of daily living, as that term is defined in the IVA.

50. I note that the evidence, including JP's statement, suggests that the most significant impact Ms. Fredericks' injuries have had on her functioning is with recreational activities, particularly with her family. She says she can no longer ride a bike, go horseback riding, ice skating, or downhill skiing, and she cannot hike longer than

about 3.5 kilometers or on steep grades. I accept that Ms. Fredericks' inability to partake in these activities that she previously enjoyed has had a significant impact on her quality of life. However, the ability to participate in such recreational sports is not listed in the definition of activities of daily living in the IVA.

51. For the above reasons, I find Ms. Fredericks has not established that the impairment from her injuries has resulted in a substantial inability to perform her regular employment or her activities of daily living. As a result, based on the evidence before me, I find Ms. Fredericks' low back and hip injuries are "minor injuries" as defined by section 101 of the IVA and the MIR.

Damages

52. As noted, in dispute VI-2023-006073, Ms. Fredericks claims $20,000 for non-pecuniary damages and $30,000 for future care costs. As I have found Ms. Fredericks' injuries were minor injuries, section 103(1) of the IVA and section 6 of the MIR say any non-pecuniary damages are limited. For accidents that occurred between April 1, 2020 and March 31, 2021, which includes this accident, the applicable limit is $5,627. So, I find Ms. Fredericks' claim for non-pecuniary damages is limited to that "minor injury cap".

53. The respondent agrees Ms. Fredericks is entitled to the cap, so I award her that amount.

54. Ms. Fredericks also claims future care costs. An award for cost of future care is usually based on evidence about the various anticipated costs of providing adequate care for an injured party over their lifetime (see: *Townsend v. Kroppmanns & Currie*, 2002 BCCA 365 at paragraph 33).

55. Ms. Fredericks says her claim is based on her own knowledge that she will need active rehabilitation, continued physiotherapy, and potentially prolotherapy or other injection therapy, should she decide to explore such treatments. She says that her active rehabilitation program will require working with a kinesiologist and a gym membership for at least 3 months. She also says she will need a gym membership to

continue the active rehabilitation for the remainder of her life. However, in Ms. Fredericks' final reply submissions, she says that ICBC recently agreed to fund recommended kinesiology sessions and continued physiotherapy treatment.

56. To receive an award for future care costs, Ms. Fredericks must establish what costs are reasonably necessary, and must provide medical evidence to support her claim (see: *Aberdeen v. Zanatta*, 2008 BCCA 420 at paragraphs 41 and 42). Ms. Fredericks did not provide a report from her doctor or physiotherapist, or any other medical professional about further recommended treatment or its estimated costs. She provided a journal article on treatment options for patients with sacroiliac joint pain. However, I place no weight on that article as there is no expert evidence before me that the journal is authoritative on the subject, and there is no medical evidence that the treatments discussed are specifically recommended for Ms. Fredericks.

57. I find Ms. Fredericks' view about what treatment she will require in the future is insufficient to base an award for future cost of care. I dismiss this aspect of her claim.

SUMMARY

58. In summary, I find Ms. Fredericks' accident injuries are "minor injuries" as defined by section 101 of the IVA.

59. I award Ms. Fredericks $5,627 in non-pecuniary damages. I dismiss Ms. Fredericks' claim for cost of future care.

FEES, EXPENSES AND INTEREST

60. 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, or on costs (CRT fees and dispute-related expenses). So, I make no award for pre-judgment interest.

61. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recovery of their CRT fees and reasonable dispute-related expenses.

62. ICBC, on the respondent's behalf, submitted that Ms. Fredericks was entitled to the maximum "minor injury cap" for non-pecuniary damages, and undisputedly offered Ms. Fredericks that amount before she started this CRT dispute. So, I find Ms. Fredericks was ultimately unsuccessful in her claims for a minor injury determination and damages. As a result, I dismiss her claim for reimbursement of CRT fees and dispute-related expenses.

63. As the successful party, the respondent did not pay any CRT fees for these 2 disputes or claim dispute-related expenses.

ORDERS

64. The injuries Ms. Fredericks suffered in the August 4, 2020 accident are "minor injuries" as defined by section 101 of the IVA.

65. Within 21 days of the date of this decision, I order the respondent to pay Ms. Fredericks a total of $5,627 in damages.

66. Ms. Fredericks is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

67. 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.

Kristin Gardner, Tribunal Member