



Civil Resolution Tribunal

Date Issued: January 30, 2024

File: VI-2022-007400

Type: Accident Claims

Category: Minor Injury Determination

Civil Resolution Tribunal

Indexed as: *Christian v. Schroeder*, 2024 BCCRT 89

BETWEEN:

CAROLE CHRISTIAN

APPLICANT

AND:

BRETT SCHROEDER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a minor injury determination. The applicant, Carole Christian, and the respondent, Brett Schroeder, were involved in a motor vehicle accident on June 3, 2020 in Okanagan Falls, British Columbia. The applicant was injured in the

accident and argues her injuries are not “minor injuries” as defined by the *Insurance (Vehicle) Act* (IVA). The respondent disagrees. The applicant has filed a claim for personal injury damages at the British Columbia Supreme Court.

2. The applicant is represented by a lawyer, Jason Poon. 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

3. 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.
4. 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.
5. 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.
6. 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.

Affidavit evidence

7. The applicant and her husband both swore affidavits in this dispute providing evidence about the applicant's accident injuries and their impact on her life. The respondent argues the affidavits are "self-serving evidence" from interested individuals and should be given no weight. The applicant argues she would face an unfair and insurmountable hurdle if she and her husband were not permitted to provide evidence on the applicant's behalf. I agree. The affidavits are simply evidence of the applicant and her husband as witnesses, given in a different format than the submissions provided by the applicant's counsel. I accept the affidavits as testimony from the applicant and her husband, and have considered them in my decision below.

ISSUE

8. The issue in this dispute is whether the applicant'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 the applicant must prove her injuries are not minor on a balance of probabilities, meaning "more likely than not". While I have read all the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. As noted, the applicant was injured in a motor vehicle accident on June 3, 2020, when the respondent motorcyclist struck the right rear driver side of the applicant's vehicle. The applicant says she clenched tightly to the steering wheel and felt immediate pain in her right shoulder.
11. As a result of the accident, the applicant says she suffered recurrent nightmares, migraines, right sided neck pain that radiates into her right shoulder, arm and back,

injury to her right shoulder, pain in her right knee, leg and foot, anxiety, and poor sleep. She notes Dr. Shawn McCann, a physical medicine and rehabilitation specialist, has diagnosed her with central sensitization, chronic pain, right shoulder impingement, and probable mild tendinopathy. She argues her ongoing pain prevents her from being substantially able to perform her activities of daily living (ADLs), specifically her ability to perform housework, which has resulted in a serious impairment. So, she says her injuries are not minor.

12. Section 101 of the IVA and the MIR together provide a detailed definition of a minor injury. Section 101 describes a minor injury as a physical or mental injury, whether or not chronic, that does not result in a “serious impairment” and is an abrasion, contusion, laceration, sprain, strain, pain syndrome, psychological or psychiatric condition, or prescribed injury. Section 2 of the MIR says prescribed injuries include concussions that do not result in an incapacity, a temporomandibular joint (TMJ) disorder, and whiplash-associated (WAD) injuries.
13. There is no dispute the applicant’s injuries were caused by the accident. Although the respondent notes the applicant had some pre-existing health issues, including a previous rotator cuff surgery, there is no indication in the parties’ submissions or the medical evidence that any of the pre-existing issues contributed to the applicant’s current, ongoing complaints. Rather, the parties focus the majority of their arguments on whether the applicant’s ongoing neck and right shoulder injuries have resulted in a “substantial inability” to perform her ADLs.
14. As noted, in relation to her right shoulder, the applicant has been diagnosed with right shoulder impingement and probable mild tendinopathy of the right shoulder. The respondent says the applicant’s right shoulder diagnoses are best described as sprains or strains or WAD injuries, and fall squarely within the definition of minor injury.

15. Section 1 of the MIR provides these definitions:
- a. “sprain” means an injury to one or more ligaments unless all the fibres of at least one of the injured ligaments are torn,
 - b. “strain” means an injury to one or more muscles unless all the fibres of at least one of the injured muscles is torn,
 - c. “WAD injury” means a whiplash associated disorder, other than one that exhibits decreased or absent deep tendon reflexes, deep tendon weakness or sensory deficits, or other demonstrable and clinically relevant neurological symptoms.
16. The specific definitions of the minor injuries above do not, on their face, include impingements. The respondent did not further explain or provide any medical evidence supporting their argument that the applicant’s right shoulder impingement is allegedly a sprain, strain, or WAD injury. On a plain reading of the IVA and MIR, I find an impingement is not included in the definition of a “minor injury”.
17. As noted in *Louch v. DeCicco*, 2007 BCSC 393 at paragraph 54, where legislation is designed to limit a person’s rights, it must be read strictly. The legislated minor injury scheme limits a person’s rights in that it places a “cap” on the compensation an injured person would otherwise receive at common law. So, I must read it strictly. I find the legislated definition of “minor injury” does not include impingement. If the legislature had intended it to include impingements as a minor injury, I find it would have, as it specifically did with TMJ disorders. So, I find the applicant’s right shoulder injury is not a “minor injury” under the IVA.
18. What about the applicant’s other injuries? Section 5 of the MIR says that if a person suffers more than one injury, each injury must be diagnosed separately as to whether it is minor or not. Generally, the applicant argues her accident injuries prevent her from performing her ADLs, specifically housework. The applicant argues her most functionally limiting symptoms are her neck and right shoulder pain. Apart from her

shoulder and neck, I find the remainder of her accident injuries are minor, given she does not argue any of her other injuries are contributing to her current condition.

19. There is no dispute the applicant's neck injuries are considered a sprain, strain, or WAD injury. So, for the neck, I turn to the remainder of the definition of what constitutes a "minor injury". Section 101 of the IVA 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 these criteria:

- 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 be ongoing since the accident, and
- c. It must not be expected to improve substantially.

20. Specifically, the applicant says she has a substantial inability to complete almost all of her housekeeping tasks because those tasks increase her pain levels to an intolerable level. The applicant does not differentiate between shoulder pain or neck pain. The respondent argues the applicant has not established she is unable to substantially perform her ADLs such that her injuries meet the test for "serious impairment".

21. Section 1 of the MIR (as it was at the time of the accident) defines "activities of daily living" as including 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.
22. Apart from housework, the applicant does not allege she is substantially unable to perform any other ADLs.
23. I turn to the medical evidence. After the accident, the applicant's physiotherapist, kinesiologist, and massage therapist all noted the applicant had some difficulty with certain household tasks, including vacuuming, washing windows, and mopping. In November 2020, the applicant's kinesiologist noted the applicant was using a house cleaner or other helper for home chores. In an August 23, 2023 letter from her family physician, Dr. Nicolaas Walters, noted the applicant "finds it difficult" to do her daily chores at home, and that her ADLs are "impaired and reduced". Again, the medical evidence does not explain whether the applicant's housework difficulties lay with her right shoulder or her neck.
24. I find neither the applicant's own submissions nor the medical evidence state that she is unable, substantially or otherwise, to perform her housework as a result of her neck injuries. On balance, I find the applicant has not proven her neck injuries have resulted in a substantial inability to perform housework to maintain her place of residence in an acceptable, sanitary condition. So, I find her neck injuries are "minor injuries" under the IVA.

FEES, EXPENSES AND INTEREST

25. 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 the parties were each partially successful, I find they are each entitled to reimbursement of half of their paid tribunal fees. The net effect is that the applicant is entitled to reimbursement of \$60 for paid tribunal fees.

26. The applicant also claimed \$3,000 in dispute-related expenses for “disbursements for filing fees”. However, she did not provide any further submissions or evidence in support of this claim, so I dismiss it as unproven.

ORDERS

27. I order that:

- a. The applicant’s right shoulder injuries suffered in the June 3, 2020 accident are not “minor injuries” as defined by section 101 of the IVA,
- b. The applicant’s remaining injuries suffered in the June 3, 2020 accident are “minor injuries” as defined by section 101 of the IVA.

28. Within 21 days of the date of this decision, I order the respondent to pay the applicant \$60 as reimbursement for tribunal fees.

29. The applicant is also entitled to post-judgment interest under the *Court Order Interest Act*.

30. 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