



Civil Resolution Tribunal

Date Issued: May 9, 2024

File: VI-2022-006504

Type: Accident Claims

Category: Minor Injury Determination

Civil Resolution Tribunal

Indexed as: *Delroio v. Allard*, 2024 BCCRT 439

B E T W E E N :

SILVANO DELROIO

APPLICANT

A N D :

LETTESHA CECILE ALLARD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on September 14, 2020, between the applicant, Silvano Delroio, and the respondent, Lettesha Cecile Allard.

Mr. Delroio asks for a declaration that his injuries are not “minor injuries” under the *Insurance (Vehicle) Act* (IVA). Mr. Delroio is self-represented.

2. The respondent is represented by an adjuster from the Insurance Corporation of British Columbia (ICBC). The respondent argues that that Mr. Delroio’s injuries are minor injuries and asks me to dismiss his claim.

JURISDICTION AND PROCEDURE

3. These are the Civil Resolution Tribunal’s (CRT) 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 IVA.
4. CRTA section 2 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. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I have considered the potential benefits of an oral hearing. Here, I am properly able to assess and weigh the documentary evidence and submissions before me because I find the detailed medical evidence is determinative. So, any potential benefit of an oral hearing is outweighed by the CRT’s mandate to provide proportional and speedy dispute resolution. 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 court.

ISSUE

7. The issue in this dispute is whether Mr. Delroio’s injuries are minor injuries.

EVIDENCE AND ANALYSIS

8. Under section 4 of the *Minor Injury Regulation* (MIR), the party alleging that an injury is not minor bears the burden of proof. In this dispute, that means Mr. Delroio must prove that his injuries are not minor.
9. As noted above, the accident occurred on September 14, 2020, in Langley, BC. The respondent rear-ended Mr. Delroio. Liability for the accident is not before me. Mr. Delroio was 63 years old on the accident date. He was retired. Before discussing his injuries, I will set out the applicable law.
10. IVA section 101 and the MIR together provide a detailed definition of a minor injury. Section 101 describes a minor injury, in part, as a physical injury, including a chronic injury, that does not result in a “serious impairment” and is one of a list of prescribed injuries. Relevant to this dispute, the list of prescribed injuries includes strains.
11. IVA section 101 says, in part, that a “serious impairment” is a physical impairment that lasts more than 12 months and meets certain criteria, which are set out in MIR section 3. Under that section, an impairment must meet three criteria to be considered serious:
 - a. It must render the injured person substantially unable to perform (i) the essential tasks of their regular employment, (ii) their training or education program, or (iii) their activities of daily living.
 - b. It must be primarily caused by the accident and ongoing since the accident.
 - c. It must not be expected to improve substantially.
12. Mr. Delroio was not employed and not enrolled in a training or education program on the accident date. So, to prove a serious impairment, he must prove that he was substantially unable to perform his activities of daily living.
13. At the time of the accident, MIR section 1 defined “activities of daily living” as meaning:

- a. Preparing own meals.
 - b. Managing personal finances.
 - c. Shopping for personal needs.
 - d. Using public or private 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.
14. Because the definition of “activities of daily living” uses the word “means” before the list of activities, the list is exhaustive. This means I may only consider the seven activities above and nothing else when deciding whether the accident substantially impaired Mr. Delroio’s ability to perform his activities of daily living.
15. I recognize Mr. Delroio’s evidence that his injuries have affected other meaningful areas of his life. He says he has stopped doing his hobbies like fishing and gardening. He says he struggles to play with his grandchildren. He says he sleeps poorly. These undoubtedly impacted Mr. Delroio’s quality of life. However, as noted, the MIR restricts what I can consider. Based on the above definition, these other activities are not relevant.
16. Mr. Delroio’s brief submissions do not say much about these specific activities of daily living. Mr. Delroio generally says that he has not experienced much improvement or progress in his recovery since the accident. He describes his symptoms as including “endless pain and mental stress”. He says he cannot do “day to day activities” without frequent breaks.
17. Based on the medical evidence before me, I find that Mr. Delroio is not substantially unable to perform the listed activities of daily living. I find instead that Mr. Delroio’s is able to do them, but must do them slower than before, with breaks, and sometimes

with pain. Without wishing to minimize the impact this has had on Mr. Delroio, I find that this means his back injury is “minor” under the IVA. My reasons follow.

18. Mr. Delroio’s general practitioner, Dr. Bernice Brits, filled out ICBC’s Standard Medical Report on September 23, 2020. At that time, Mr. Delroio reported pain and stiffness in his neck and lower back, radiating down to his knee. Dr. Brits diagnosed with a neck strain and a back strain.
19. In an October 2, 2020 initial report from a physiotherapist, Mr. Delroio reported it was difficult to get in and out of bed and vehicles. Despite not listing any other issues with activities of daily living, the physiotherapist answered “no” to the question “Has the client returned to ADLs?”
20. Along similar lines, a December 13, 2021 report from Dr. Richard Ho, a physical medicine and rehabilitation physician, said that Mr. Delroio was independent with “basic self care”. Dr. Ho also noted that Mr. Delroio’s pain was worse with activity.
21. A kinesiologist’s report from February 9, 2022, indicates that Mr. Delroio continued to suffer limitations from his back injury. The kinesiologist reported that Mr. Delroio had “reduced tolerance for chores” and had to frequently lie down.
22. Mr. Delroio went to a new physiotherapist on August 11, 2022. The physiotherapist noted “difficulty” with tasks such as grooming, bathing, dressing, sleeping, household chores, and meal preparation. The physiotherapist noted that Mr. Delroio was able to do these things, but slower than before and with breaks. The physiotherapist answered “yes” to the question “Has the client returned to ADLs?”
23. Finally, in a January 30, 2023 report, Dr. Ho, noted that Mr. Delroio “continues to do pretty much everything and actually reports that while moving around, his pain is not too bad. His pain is worse with prolonged static positions”.
24. I find that this evidence shows gradual, if limited, improvement in Mr. Delroio’s symptoms such that he is now substantially able to perform the activities of daily

living. This means that his back injury did not result in a serious impairment as that term is defined above.

25. I note that the respondent makes other arguments about why Mr. Delroio's injury meets the definition of a minor injury, including a pre-existing shoulder injury. Given my conclusion, I find it unnecessary to address those arguments.

FEES AND EXPENSES

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. Mr. Delroio was unsuccessful, so I dismiss his claim for CRT fees and order him to pay the respondent's \$25 in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

27. I dismiss Mr. Delroio's claims.
28. I order Mr. Delroio to pay the respondent \$25 in CRT fees.
29. The respondent is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
30. This is a validated decision. Under CRTA section 58.1, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Eric Regehr, Vice Chair