



Civil Resolution Tribunal

Date Issued: June 14, 2024

File: VI-2022-004282

Type: Accident Claims

Category: Minor Injury Determination

Civil Resolution Tribunal

Indexed as: *Robinson v. Porras*, 2024 BCCRT 552

B E T W E E N :

ROBERT ROBINSON

APPLICANT

A N D :

ALDIN SIMPAS PORRAS

RESPONDENT

REASONS FOR DECISION

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place in Vancouver on March 17, 2020, when the applicant, Robert Robinson, was rear-ended by the respondent, Aldin Simpas Porras.

2. Mr. Robinson says he suffered injuries to his right shoulder, left shoulder, neck, and back, as well as headaches secondary to his neck pain. Among other injuries, he says he sustained full thickness tears to each of his right and left shoulder's supraspinatus. He also says he suffered a vestibular injury. He argues his injuries are not minor as defined by the *Insurance (Vehicle) Act* (IVA) and asks for an order to that end. He is represented by a lawyer, Regina Fang.
3. Mr. Porras admits Mr. Robinson's left and right shoulder injuries and vestibular injury are not minor injuries, as defined in the IVA and *Minor Injury Regulation* (MIR), but disputes whether they were caused by the accident. Mr. Porras says Mr. Robinson's neck and back injuries are minor. Mr. Porras denies liability for the accident but does not make submissions on that issue and it is not before me. Mr. Porras is represented by a lawyer, Donny Ahn.
4. For the reasons that follow, I find Mr. Robinson's shoulder and vestibular injuries are not minor injuries under the IVA. I find his neck and back injuries, and headaches secondary to his neck injury, are minor injuries.

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 *Civil Resolution Tribunal Act* (CRTA) section 133. CRTA section 133(1)(b) gives the CRT jurisdiction over the determination of whether an injury is a minor injury under the IVA.
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. There is detailed medical evidence about Mr. Robinson's injuries and there are no issues of credibility that impact my decision. Further, bearing in mind the CRT's mandate that requires 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 court.
9. Under Accident Claims Regulation (ACR) section 4, other than an independent medical examination ordered by the CRT, a party may introduce evidence from one expert. If the CRT considers additional expert evidence to be reasonably necessary and proportionate to the accident claim, a party may be allowed to introduce evidence from up to 2 additional experts. The ACR provides no discretion to allow expert evidence beyond these 3 reports.

Expert Evidence

10. Mr. Robinson provided expert evidence from 4 witnesses:
 - a. Dr. Nairn Stewart, a specialist in physical medicine and rehabilitation,
 - b. Dr. Eytan David, a specialist in otolaryngology,
 - c. Mr. Matt Gregson, an occupational therapist, and
 - d. Mr. Derek Nordin, a vocational evaluator.
11. Mr. Porras did not object to any of Mr. Robinson's expert witnesses. I find given the distinct nature of Mr. Robinson's injuries, it was necessary and proportionate for Mr. Robinson to provide evidence from both Dr. Stewart and Dr. David. Similarly, I find Mr. Gregson's evidence was helpful in determining whether or not Mr. Robinson's neck and back pain syndromes caused substantial impairment. I have considered this expert evidence in my decision.

12. But I must reject one expert report. From the 4 experts' reports, I find Mr. Nordin's evidence is the least relevant. Since Mr. Robinson is limited to 3 experts, I do not allow Mr. Nordin's report and have not considered it in my decision.
13. I also note that Mr. Porras first received evidence of Mr. Robinson's full thickness left shoulder supraspinatus tear on April 25, which was after Mr. Robinson's deadline to provide evidence and submissions.
14. From late April to mid-May, Mr. Porras requested additional time to provide evidence and submissions on 3 separate occasions. In part, he argued that he had received medical records showing the left shoulder tear on April 25 and needed time to arrange for an expert response. After twice receiving extensions from CRT staff, he made a final request for an extension from May 14 to May 24.
15. In a May 21 preliminary decision, a CRT Vice Chair denied Mr. Porras' request for additional time. However, since the May 14 deadline had already passed, she imposed a new final deadline of May 22. In that decision, the Vice Chair wrote that whether the late MRI evidence should be admitted was a matter for me to address in this decision.
16. Mr. Porras did not raise any issues of late evidence in his submissions despite being told he could in the preliminary decision. While he argued in his April 26 request for an extension that he would not have time to arrange for an expert to review the evidence, he did not raise that argument again on his 2 later requests. I note his actual deadline to file evidence and submissions was only 2 days short of his requested deadline.
17. CRT rule 8-3(1) says a party may only rely on an expert opinion if it provides it to the CRT prior to the deadline. Dr. Stewart provided the majority of her evidence in a March 6 report and then provided a May 1 supplement report, after receiving the left shoulder MRI. Mr. Porras, not Mr. Robinson, provided the CRT a copy of Dr. Stewart's May 1 report.

18. However, Mr. Porras' submissions seeking an extension show he was aware of the left shoulder tear by no later than April 25. He had until May 22 to file his response. He did not provide any evidence to support his earlier argument that he was unable to obtain a response in the time available, and he had only 2 days less than he asked for. As noted, Mr. Porras does not dispute that Mr. Robinson's left shoulder has a full thickness supraspinatus tear.
19. So, given the CRT's mandate, which requires flexible and efficient processes, I waive the strict application of CRT rule 8-3(1) and allow Mr. Robinson to depend upon the May 1 report.
20. I also note CRT rule 8-3(8) requires a party challenging expert evidence to provide reasons for why they are doing so in their arguments. Mr. Porras did not, so I find he chose to not challenge the report's content.

ISSUE

21. The issue in this dispute is whether some or all of Mr. Robinson's injuries are minor injuries as defined by IVA section 101.

BACKGROUND

22. Under MIR section 4, the party alleging that an injury is not minor has the burden of proving it. This means that Mr. Robinson must prove his 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 only refer to what is necessary to explain my decision.
23. IVA section 101 and the MIR together provide a detailed definition of a minor injury. The relevant parts of IVA section 101 describe a minor injury 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. The word "and" means an injury must meet both parts of

the test to be considered minor. In other words, if an injury is not one of the prescribed injuries, it is not minor.

24. The list of prescribed injuries under IVA section 101 and MIR section 2 includes sprains, strains, pain syndromes, and whiplash-associated disorder (WAD) injuries. MIR section 1 defines a strain as an injury to one or more muscles **unless** all of the fibres of at least one of the injured muscles is torn.
25. Where legislation is designed to limit a person's rights, it must be read strictly.¹ 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 the list of prescribed injuries strictly.
26. As noted above, Mr. Porras disputes that the accident caused all of Mr. Robinson's claimed injuries. The only place in the minor injury test that causation is an issue is in the definition of "serious impairment" in MIR section 3(b). This means it is only necessary for me to consider causation if an injury is a prescribed injury.
27. Under MIR section 5, if a person has more than injury because of an accident, such as in this case, I must separately determine whether each injury is minor.
28. At the time of the accident, Mr. Robinson was 54 years old and employed as a commercial insulator. Since liability is not an issue before me, I have not provided a detailed description of the accident but, as I set out above, it occurred when Mr. Porras' vehicle struck Mr. Robinson's vehicle from behind.

Shoulder and Vestibular Injuries

29. The first question is whether Mr. Robinson's shoulder and vestibular injuries are captured by the prescribed list of minor injuries under the IVA and MIR. Mr. Porras does not explicitly argue this point.

¹ See, eg: *Christian v. Schroeder*, 2024 BCCRT 89, citing *Louch v. DeCicco*, 2007 BCSC 393.

30. The March 6, 2024 medical-legal report from Dr. Stewart states an MRI of Mr. Robinson's **right** shoulder showed a full thickness tear and retraction of the supraspinatus tendon and partial thickness tears of the subscapularis and infraspinatus.
31. The May 1, 2024 supplementary report from Dr. Stewart states an April 18, 2024 MRI of Mr. Robinson's **left** shoulder showed a full thickness tear of Mr. Robinson's supraspinatus.
32. Mr. Robinson's full thickness supraspinatus tears are complete tears of the muscle fibers. Under the MIR definition of a strain, these are **not** minor injuries. In his submissions, Mr. Porras concedes Mr. Robinson's shoulder tears do not meet the definition of minor injury.
33. Dr. Stewart's March 6 report states that given Mr. Robinson's dizziness and imbalance arising on the day of the accident, he likely sustained a vestibular injury.
34. An April 17, 2024 report from Dr. Eytan David, a specialist in otolaryngology, concludes Mr. Robinson sustained a posttraumatic inner ear balance injury called right lateral semicircular canal variant of benign paroxysmal positional vertigo (BPPV). I refer to this throughout as a vestibular injury.
35. In their report, Dr. David specifically includes the list of minor injuries set out in the IVA and MIR, including concussions and WAD injuries. They conclude Mr. Robinson's vestibular injury is not captured by the list.
36. Again, Mr. Porras concedes that Mr. Robinson's vestibular injury falls outside the definition of minor injury.
37. So, I find Mr. Robinson's shoulder and vestibular injuries are not prescribed minor injuries, under the IVA and MIR. On that basis alone, I find that these 3 injuries are not minor injuries. It is therefore unnecessary for me to consider the parties' arguments about causation.

Neck Pain, Headaches, and Back Pain

38. Under IVA section 101(1), pain syndromes and WAD are considered minor injuries unless they result in a serious impairment. Here, Mr. Robinson acknowledges these injuries are minor unless he can show they have resulted in serious impairment. He says they have, while Mr. Porras says they have not.
39. IVA section 101(1) and MIR section 3 define serious impairment as a physical or mental impairment that has not resolved within 12 months and (a) results in a substantial inability of the claimant to perform essential tasks of their employment or daily living, (b) is primarily caused by the accident, and (c) is not expected to substantially improve. For an injury to cause a serious impairment, it must meet all 3 parts of this test.
40. I find Mr. Robinson's remaining injuries have not resulted in a substantial inability to perform essential tasks of his employment or daily living and so are minor injuries. Given this conclusion, I do not need to consider the questions of primary cause or substantial improvement. I explain below.
41. Mr. Robinson provided a Functional Capacity Evaluation prepared by occupational therapist Matt Gregson. In it, Mr. Gregson details Mr. Robinson's restrictions and limitations and their impact on his ability to perform essential tasks of employment and daily living.
42. Mr. Gregson opines that Mr. Robinson is limited in performing his employment activities, including working above his shoulder, working at heights, and rotating his shoulders.
43. However, I find these limitations are the result of Mr. Robinson's shoulder and vestibular injuries and not pain in his neck or back. While Mr. Gregson notes Mr. Robinson's neck extension limitations prevent him from performing overhead work, I find he links this to dizziness arising from the vestibular injury and not to neck pain.

44. Mr. Robinson also relies on Dr. Bentley's report to support an argument that his neck and back pain result in a serious impairment. However, as Mr. Robinson notes, Dr. Bentley says Mr. Robinson should avoid "prolonged static head and trunk postures." I find this narrow limitation does not equate to a substantial inability to perform essential tasks of his employment or daily living. There is no suggestion that it is Mr. Robinson's inability to hold a static head or trunk posture that prevents him from performing these tasks.
45. Dr. Stewart writes that Mr. Robinson's "injuries" have left him unable to do his work as a commercial insulator and have interfered with his household activities, but she does not explain whether she is referring to his neck and back injuries or how those injuries have substantially impaired him.
46. So, I find Mr. Robinson has not proved that he is substantially unable to perform employment or household activities because of his neck and back pain. So, I find his neck and back pain are minor injuries as defined by the IVA and MIR.
47. Finally, the medical evidence does not suggest Mr. Robinson's headaches secondary to neck pain render him substantially unable to perform employment or household activities, so I find they are also minor injuries as defined by the IVA and MIR.

FEES, EXPENSES, AND INTEREST

48. Under CRTA section 49, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. Here, I find the parties had divided success. So, I consider this an appropriate circumstance for each party to bear their own CRT fees.
49. Under ACR section 5, a party is limited to \$5,000 in recovery for fees and expenses, including a maximum of \$2,000 for expenses and charges for each expert. Here, Mr. Robinson claims \$14,000 in dispute-related expenses as "disbursements" and Mr. Porras claims \$10,000.

50. However, neither party provided any evidence to support their claims for dispute-related expenses, such as invoices or receipts. So, I was unable to determine the nature or amounts of their disbursements and I find neither has proved their claim for disputed-related expenses. I dismiss both.

ORDERS

51. Mr. Robinson's left and right shoulder injuries and vestibular injuries are not minor injuries as defined by IVA section 101. Mr. Robinson's neck and back injuries, and headaches (secondary to his neck injury), are minor injuries as defined by IVA section 101.

52. I dismiss both parties' claims for CRT fees and dispute-related expenses.

53. This is a validated decision and order. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the court.

Christopher C. Rivers, Tribunal Member