



Civil Resolution Tribunal

Date Issued: November 7, 2024

File: VI-2023-004370

Type: Accident Claims

Category: Minor Injury Determination
and Fault & Damages

Civil Resolution Tribunal

Indexed as: *Jivraj v. Del Palaganas*, 2024 BCCRT 1132

BETWEEN:

AMIN JIVRAJ

APPLICANT

AND:

GILBERT DEL PALAGANAS

RESPONDENT

REASONS FOR DECISION

INTRODUCTION

1. This decision is about a February 13, 2021 motor vehicle accident between the applicant, Amin Jivraj, and the respondent, Gilbert del Palaganas.¹

2. Mr. Jivraj filed 2 disputes with the Civil Resolution Tribunal (CRT) about the same motor vehicle accident. In dispute VI-2023-001612, they claim accident benefits from the respondent, Insurance Corporation of British Columbia (ICBC). In dispute VI-2023-004370, they ask the CRT to determine whether their injuries are “minor injuries” under the *Insurance (Vehicle) Act* (IVA), and also ask for damages for personal injury and confirmation of the insurer’s liability finding.
3. Mr. Jivraj says they were injured in the accident, sustaining a concussion, whiplash, pain in their neck, shoulder, and back, and a cognitive disorder. Mr. Jivraj says their injuries are not minor. They ask for \$750,000 in damages, including \$150,000 in non-pecuniary (pain and suffering) damages, \$75,000 for past income loss, \$250,000 for future income loss, \$25,000 for future care costs, and \$250,000 for retraining or education costs. They also ask that I confirm the insurer’s liability finding.
4. Gilbert Del Palaganas says Mr. Jivraj’s injuries are minor and argues any entitlement to non-pecuniary damages is limited to \$5,672, the “minor injury cap.” Gilbert Del Palaganas also says Mr. Jivraj has not proved their injuries or entitlement to income loss benefits. They say that any medical and rehabilitation costs are ICBC’s responsibility.
5. Mr. Jivraj represents themselves. An employee of the respondent’s insurer, ICBC, represents Gilbert Del Palaganas.

JURISDICTION AND PROCEDURE

6. 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 the *Civil Resolution Tribunal Act* (CRTA) section 133. The CRTA Section 133(1)(b) gives the CRT jurisdiction over the determination of whether an injury is a “minor injury” under the *Insurance (Vehicle) Act*. CRTA section 133(1)(c) and *Accident Claims Regulation* (ACR) section 7 give the CRT jurisdiction over the determination of liability and damages in an accident claim, up to \$50,000.

7. 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, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
8. CRTA section 39 says the CRT has discretion to decide the hearing's format, including by writing, telephone, videoconferencing, email, or a combination of these.
9. CRTA section 42 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.

Liability

10. Mr. Jivraj asks that I confirm ICBC's liability finding. ICBC is not a party to this dispute. Gilbert Del Palaganas does not dispute they are responsible for the accident. ICBC determined Mr. Jivraj was not liable for the accident. So, to the extent that Mr. Jivraj is asking for a finding that Gilbert Del Palaganas is responsible for the accident, I find this claim is moot, meaning there is no present live controversy between the parties, and I dismiss it.

ISSUES

11. The issues in this dispute are:
 - a. Are Mr. Jivraj's injuries "minor injuries" as defined by IVA section 101 and the *Minor Injury Regulation (MIR)*?
 - b. Is Mr. Jivraj entitled to damages for non-pecuniary loss, past and/or future loss of earning capacity, future care costs, or retraining or education?

BACKGROUND, EVIDENCE and ANALYSIS

12. Under MIR section 4, the party alleging that an injury is not minor has the burden of proving it. This means that Mr. Jivraj must prove their injuries are not minor on a balance of probabilities, meaning “more likely than not.” Mr. Jivraj must also prove entitlement to the damages they have claimed.
13. The problem for Mr. Jivraj is that they provided no evidence, submissions, or argument for these claims. Parties are told during the CRT process to submit all relevant evidence. On March 21, 2024, CRT staff requested submissions and evidence from Mr. Jivraj. On April 2, Mr. Jivraj requested a 2-week extension, which CRT staff granted. On May 3, after Mr. Jivraj failed to meet the April 16 deadline, they requested a further extension, which CRT staff granted. On May 21, after Mr. Jivraj did not meet the May 20 deadline, they requested a further 3-day extension, which CRT staff granted. On May 27, after Mr. Jivraj did not meet the May 24 deadline, they requested another extension, this time for 6 months. A tribunal member granted a 1-month extension. Mr. Jivraj did not meet the July 12 deadline and, the same day, requested a 4-day extension. Instead, CRT staff granted them a 1-week extension. Mr. Jivraj did not meet the July 19 deadline. On July 17 and 19, Mr. Jivraj requested further extensions, which were denied.
14. So, despite being given numerous opportunities, Mr. Jivraj did not provide any documentary evidence or written submissions other than those in the Dispute Notice. Gilbert Del Palaganas did not provide any documentary evidence. I have read and relied on the Dispute Notice, the Dispute Response, and Gilbert Del Palaganas’s submissions. However, I refer only to information I find necessary to explain my decision.

Minor Injury Determination

15. As I note above, Mr. Jivraj says they suffered a concussion, whiplash, neck, shoulder and back pain, and a cognitive disorder in the accident. They say the symptoms have affected their ability to work and go to school.

16. Together, IVA section 101 and the MIR provide a detailed definition of a minor injury. The relevant parts of IVA section 101 describe a minor injury as a physical or mental injury, including a chronic injury, which 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.
17. To meet their burden of proof, Mr. Jivraj must provide medical evidence that proves the nature and extent of their injuries. However, Mr. Jivraj provided no supporting evidence of any of their injuries, or of any medical treatment. To determine if an injury is not minor, as a threshold issue, they must prove it exists. Without evidence of the nature and extent of each injury, I cannot determine whether it is minor or not.
18. As noted above, Mr. Jivraj as the applicant must prove their claim. I find Mr. Jivraj has not proved their injuries are not minor.

Damages

19. The CRT’s monetary limit for damages claims within its accident claims jurisdiction is \$50,000. I find Mr. Jivraj’s claim is over the monetary limit. But for the reasons below, it does not matter.

Future care costs

20. Mr. Jivraj claims \$25,000 for future care costs. To prove entitlement to future care costs, Mr. Jivraj needs to establish the costs are reasonably necessary and provide medical evidence in support of their claim.²
21. Mr. Jivraj has not provided any medical evidence recommending further treatments. They do not set out any treatments they need. They have not provided any evidence to show the costs of future care. So, I find they have not proved this aspect of their claim, and I dismiss it.

Past loss of earning capacity

22. Mr. Jivraj claims \$75,000 for past income loss. They say the symptoms of their injuries and the care they required impacted their ability to work.
23. To prove entitlement to past loss of earning capacity Mr. Jivraj needs to show the value of the work that they would have done but were unable to do because of the injury.³ Mr. Jivraj did not provide any evidence of their work prior to the injury, or their income from that employment. They did not show they would continue to be employed if they had not been injured. They provided no evidence of what alternate work they had looked for since the accident.
24. On the evidence, Mr. Jivraj has not proved they were not able to work because of their injuries, or that the accident caused them to lose income.
25. So, I find Mr. Jivraj has not proved this aspect of their claim, and I dismiss it.

Non-pecuniary damages

26. As noted above, Mr. Jivraj provided no information about their injuries other than saying they existed. As Mr. Jivraj has not proved their injuries are not minor, IVA section 103 and the MIR say that any non-pecuniary damages are limited. For accidents between April 1, 2020, and April 30, 2021, which includes this accident, the applicable limit is \$5,627.
27. So, I find that Mr. Jivraj's claim for non-pecuniary damages is limited to that amount. In the Dispute Response, Gilbert Del Palaganas admits ICBC offered Mr. Jivraj \$5,627 for non-pecuniary damages, and says Mr. Jivraj rejected that offer. In submissions, Gilbert Del Palaganas asks I dismiss Mr. Jivraj's claim.
28. An admission is an agreement by the other party that a fact or issue is not disputed. It can be written, oral, or implied by the actions of the parties.⁴ I find that by explaining ICBC's offer of \$5,627, Gilbert Del Palaganas admitted that Mr. Jivraj was injured in the accident, even if it does not assist me in determining what their injuries were.

29. Neither party provided evidence about the extent of Mr. Jivraj's injuries, their age, or the injuries' impact on Mr. Jivraj's life. However, Mr. Jivraj does not need to prove a fact that is admitted.⁵ I find that by disclosing the offer in their pleadings, Gilbert Del Palaganas admitted Mr. Jivraj was entitled to non-pecuniary damages.
30. Considering ICBC's offer to Mr. Jivraj of \$5,627, I find it is more likely than not that \$5,627 is appropriate compensation to Mr. Jivraj for their pain and suffering as a result of the accident.
31. So, I award Mr. Jivraj \$5,627 in non-pecuniary damages.

Future income loss, retraining or education

32. Mr. Jivraj also claims damages of \$250,000 for future income loss and \$250,000 for retraining or education costs.
33. Damages for future income loss are available where a party proves a real and substantial possibility that their future income will be lower because of their accident injuries. Mr. Jivraj provided no evidence of their employment or education, or the impact of their injuries on their future employment. They did not provide evidence of the need for or cost of occupational retraining or education.
34. So, I find that Mr. Jivraj has not proved that their injuries may cause a loss of future income, or that they require retraining.
35. I dismiss Mr. Jivraj's claim for future income loss, retraining and education.

FEES AND EXPENSES

36. 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. As Mr. Jivraj was not successful, I find that they are not entitled to reimbursement of their tribunal fees. As Gilbert Del Palaganas was mostly successful, I find Mr. Jivraj must reimburse them \$25 for tribunal fees.

37. Neither party claimed dispute-related expenses.

ORDERS

38. Within 30 days of the date of this decision, I order Gilbert Del Palaganas to pay Mr. Jivraj a total of \$5,602, being:

- a. \$5,627 in non-pecuniary damages, less
- b. \$25 as reimbursement of CRT fees.

39. I dismiss Mr. Jivraj's remaining claims.

40. Mr. Jivraj is also entitled to post-judgment interest under the *Court Order Interest Act*.

41. This is a validated decision and order. Under section CRTA section 57 and 58, 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 in which it is filed.

Deanna Rivers, Tribunal Member

¹ The CRT has a policy to use inclusive language that does not make assumptions about a person's gender. As part of that commitment, CRT asks parties to identify their pronouns and titles to ensure that CRT respectfully addresses them throughout the process, including in published decisions. Gilbert Del Palaganas did not provide their title or pronouns so I will refer to them by their full name and with gender neutral pronouns throughout this decision, intending no disrespect.

² *Aberdeen v. Zanatta*, 2008 BCCA 420, paragraph 42.

³ *Brown v. Raffan*, 2013 BCSC 114, paragraphs 144 and 145.

⁴ *Tunner v. Novak*, (1993) 24 BCAC 43, paragraph 20.

⁵ *Aujla v. Yellow Cab Company Ltd.*, 2002 BCSC 88, paragraph 9.