Civil Resolution Tribunal

Date Issued: February 6, 2025

File: VI-2022-008391

Type: Accident Claims

Category: Minor Injury Determination
Liability and Damages

Civil Resolution Tribunal

Indexed as: *Sudbury v. ICBC*, 2025 BCCRT 176

B E T W E E N :

DAVID SUDBURY

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA and JOHN DOE

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Sarah Orr

INTRODUCTION

1. This dispute is about a hit-and-run motor vehicle accident that took place on November 5, 2020, in Burnaby. David Sudbury was in a motor vehicle that was hit from behind by another vehicle that drove away from the accident scene. The driver and owner of that vehicle are unidentified. Mr. Sudbury named the unidentified driver as John Doe in this dispute.

2. Mr. Sudbury says he was injured in the accident. He claims his accident-related injuries are not minor, as defined in the *Insurance (Vehicle) Act* (IVA) section 101. Although he does not expressly say so, based on his submissions I find Mr. Sudbury says the unidentified driver was negligent, so the Insurance Corporation of British Columbia (ICBC) is responsible for his injuries under the IVA section 24.

3. Mr. Sudbury claims $100,000 in damages for pain and suffering. He also claims $40,000 in future care costs, $30,000 in out-of-pocket expenses, and $40,000 in other damages, for a total of $210,000.

4. Mr. Sudbury initially asked the CRT to confirm ICBC's finding of fault but has since notified the CRT that he is no longer seeking this confirmation.

5. ICBC says any injuries Mr. Sudbury incurred from the accident are minor, and the maximum he is entitled to for pain and suffering damages is $5,627. It also says his claims should be dismissed under the IVA section 24(5) for failing to take reasonable steps to ascertain the other driver's identity.

6. Mr. Sudbury is represented by a lawyer, Colin Campbell. ICBC is represented by an authorized employee.

JURISDICTION AND PROCEDURE

7. 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 jurisdiction over the determination of whether an injury is a "minor injury" under the *Insurance (Vehicle) Act*. 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 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 witnesses and inform itself in any other way it considers appropriate.

11. Mr. Sudbury started a damages claim in the BC Supreme Court against ICBC and John Doe for his accident-related injuries. I asked the parties to provide submissions about the nature and status of the BCSC action, and how I should proceed if I determine that one or more of Mr. Sudbury's accident-related injuries are not minor.

12. In response, Mr. Sudbury said the BCSC action is on hold pending the outcome of this dispute. He asks that if the CRT determines any of his accident-related injuries are not minor, I refuse to resolve the remaining claims in this dispute under CRTA section 11(1)(a)(ii) as they would be more appropriately resolved in the BCSC action. ICBC did not provide any submissions about this issue despite having the opportunity to do so. Given my findings that some of Mr. Sudbury's accident-related

injuries are not minor, and the amount of his claimed damages, I refuse to resolve his damages claims under CRTA section 11(1)(a)(ii). Given that ICBC's defence about the sufficiency of Mr. Sudbury's efforts to identify the other driver under the IVA section 24(5) relate to the damages claim and not the minor injury determination, I refuse to resolve that issue as well.

ISSUES

13. The remaining issues in this dispute are:

    a. Should I rely on Dr. Waseem's IME report?

    b. Are Mr. Sudbury's injuries minor as defined in the IVA section 101?

BACKGROUND, EVIDENCE, AND ANALYSIS

14. Under section 4 of the *Minor Injury Regulation* (MIR), Mr. Sudbury has the burden of proving his injuries are not minor. He must prove this on a balance of probabilities, which means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what I find necessary to explain my decision.

15. On November 5, 2020, Mr. Sudbury's vehicle was hit from behind by another vehicle as he was exiting the highway. He says he was stopped at the time of impact. He pulled off to the roadside and got out of his vehicle, but the other vehicle did not stop. Mr. Sudbury did not call any emergency services to the scene, and there were no known witnesses. He did not require immediate medical care.

Should I rely on Dr. Waseem's IME report?

16. In support of his claims, Mr. Sudbury primarily relies on a May 31, 2024 independent medical examination (IME) report from Dr. Zeeshan Waseem, a physiatrist.

17. ICBC says I should not rely on Dr. Waseem's report for several reasons. First, it says Dr. Waseem was not provided with all of Mr. Sudbury's relevant medical

records. It says that despite a complex medical history, the only pre-accident records Dr. Waseem reviewed were from Mr. Sudbury's family doctor, Angela Hutchinson, and they only date back one year before the accident. I agree that Dr. Waseem appears to have been provided limited medical records from before Mr. Sudbury's accident. However, many of Mr. Sudbury's clinical records that ICBC submitted in evidence set out his medical history in detail. I find Mr. Sudbury's medical history as set out in Dr. Waseem's report is generally consistent with the medical history described in these clinical records. ICBC did not identify any specific information Dr. Waseem did not have that could have changed their opinion. Nor did ICBC provide its own expert report rebutting any of Dr. Waseem's opinions. So, I find this is not a sufficient basis not to rely on Dr. Waseem's report.

18. ICBC also says some of the records Dr. Waseem relied on for their report on are not in evidence, including a January 12, 2024 medical legal report from Dr. Hutchinson. It says Dr. Hutchinson's report reaches different conclusions about causation than Mr. Sudbury's, and so I should draw an adverse inference against Mr. Sudbury for not providing that report. While I agree Dr. Hutchinson's report is not in evidence, I note that under section 4 of the *Accident Benefit Regulation*, aside from an IME ordered by the CRT, a party may introduce only one expert report into evidence. I also find Dr. Waseem's diagnoses of Mr. Sudbury's clinical condition was primarily based on their own physical examination of him on May 7, 2024. While Dr. Waseem appears to draw slightly different conclusions about causation than Dr. Hutchinson, I find that is not a sufficient reason not to rely on Dr. Waseem's report.

19. On balance, I find I can rely on Dr. Waseem's report. I address the weight I give to the report as relevant below.

Are Mr. Sudbury's injuries minor as defined in the IVA section 101?

20. In the Dispute Notice, Mr. Sudbury claims he injured his neck, shoulders, back, arms, hands, legs, and knees in the accident, and that the accident caused him to experience depression. However, in submissions, Mr. Sudbury claims he suffered a

whiplash-associated disorder (WAD) injury from the accident. Dr. Waseem's report diagnosed Mr. Sudbury with chronic mechanical neck pain due to diffuse idiopathic skeletal hyperostosis (DISH) or calcification/ossification of ligaments, chronic lower back pain due to spinal stenosis, and chronic bilateral knee pain due to osteoarthritis. Dr. Waseem's report says these diagnoses pre-existed the accident, but the accident worsened Mr. Sudbury's pain and functionality related to the diagnoses. As noted above, I find Dr. Waseem's diagnoses are based primarily on their physical examination and assessment of Mr. Sudbury on May 7, 2024, so I give these diagnoses significant weight.

21. So, I find I must determine whether the following of Mr. Sudbury's injuries are minor:

    a. WAD injury,

    b. Chronic mechanical neck pain due to DISH or calcification/ossification of ligaments,

    c. Chronic lower back pain due to spinal stenosis, and

    d. Chronic bilateral knee pain due to osteoarthritis.

22. When determining whether an injury is minor, the starting place is the prescribed list of minor injuries in both the IVA section 101(1) and the MIR section 2. If an injury is listed in one of those two sections, it is presumed to be minor, unless the applicant proves the injury resulted in a serious impairment or permanent serious disfigurement. There is no allegation of any disfigurement in this dispute. MIR section 5(a) says if a person sustains more than one injury as a result of an accident, each injury must be diagnosed separately as to whether it is a minor injury.

23. The MIR section 2 lists a WAD injury as a minor injury. IVA section 101(1) lists a pain syndrome as a minor injury. The MIR section 1(3) defines a "pain syndrome" as a syndrome, disorder, or other clinical condition associated with pain, including pain that is not resolved within three months. Dr. Waseem did not expressly refer to

chronic pain as a “pain syndrome” in his report. However, I find his diagnoses of chronic mechanical neck pain, chronic lower back pain, and chronic bilateral knee pain based on his clinical assessment of Mr. Sudbury are clinical conditions associated with pain, and so they meet the definition of “pain syndrome” in the MIR section 1(3). This means that all four of the injuries Mr. Sudbury claims to have incurred in the accident are included in the prescribed list of minor injuries, and so they are presumed to be minor.

24. However, Mr. Sudbury argues that his injuries are not minor for two reasons. First, he says his WAD injury does not meet the definition of “WAD injury” in the MIR because it exhibits demonstrable and clinically relevant neurological symptoms, so it is not a minor injury. Second, he says his injuries resulted in a serious impairment, so they are not minor.

WAD injury definition

25. The MIR section 2 lists a “WAD injury” as a prescribed minor injury. However, according to the MIR section 1 definition of “WAD injury”, if a whiplash associated disorder exhibits “demonstrable and clinically relevant neurological symptoms”, it does not meet the definition of “WAD injury”, so it is not a minor injury.

26. Mr. Sudbury says his WAD injury exhibits demonstrable and clinically relevant neurological symptoms. However, he does not say what those clinically relevant neurological symptoms are.

27. In a November 12, 2020 report, Ryan Vincent, a physiotherapist, diagnosed Mr. Sudbury with with “WAD II” of his cervical spine, but there is no indication in the report of related neurological symptoms. Similarly, in an April 22, 2021 report, Hailey Perry, a physiotherapist, diagnosed Mr. Sudbury with bilateral WAD of his neck and cervical spine, but there is no indication in the report of related neurological symptoms. Dr. Waseem’s report does not diagnose Mr. Sudbury with a WAD injury.

28. Without more, I find Mr. Sudbury has failed to prove that he has a WAD injury that exhibits demonstrable and clinically relevant neurological symptoms. So, to the extent Mr. Sudbury has a WAD injury, I find it meets the definition of "WAD injury" in the MIR.

Serious impairment

29. Mr. Sudbury argues that his accident-related injuries are not minor because they resulted in a serious impairment that resulted in a substantial inability to perform his activities of daily living (ADLs). ICBC disagrees.

30. Under the IVA section 101 and the MIR section 3, a "serious impairment" is defined as a physical or mental impairment that is not resolved within 12 months of the accident, and that meets all of the following criteria relevant to Mr. Sudbury's claim:

    a. The impairment resulted in a substantial inability of the claimant to perform their ADLs,

    b. The impairment was primarily caused by the accident and has been ongoing since the accident, and

    c. The impairment is not expected to improve substantially.

31. With respect to Mr. Sudbury's WAD injury, there is no reference to it in the clinical records in evidence after the April 22, 2021 physiotherapy report noted above. I find there is insufficient evidence that Mr. Sudbury's WAD injury did not resolve within 12 months of the accident, or that it has been ongoing since the accident. I find Mr. Sudbury has failed to prove his WAD injury resulted in a serious impairment, so I find it is a minor injury.

32. At the time of the accident, MIR section 1 defined ADLs as 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.

33. This list of ADLs in MIR section 1 has since been repealed, but it was in force at the time of the accident, so I find it applies in this dispute.

34. Mr. Sudbury submitted an affidavit he swore on August 28, 2024, which sets out how the accident has affected his life and ability to perform his ADLs. ICBC says the affidavit is self-serving and does not explain Mr. Sudbury's functionality before the accident or the extent to which his accident-related injuries impacted his ability to do each of the ADLs. I agree. However, to the extent that the affidavit is consistent with the other documentary evidence and clinical records, I find it is helpful, and I rely on it, as explained below.

35. I find the evidence indicates that Mr. Sudbury's use of private transportation, his ability to perform housework and maintain his residence, and his ability to perform personal hygiene and self-care have been affected by his accident-related injuries.

36. With respect to personal transportation, an April 21, 2024 occupational therapy report and Dr. Waseem's report both indicate that before the accident Mr. Sudbury drove frequently and independently. The November 12, 2020 physiotherapy report indicates that within a week of the accident Mr. Sudbury had difficulty shoulder checking and experienced pain with extended sitting. The April 24, 2021 occupational therapy report said that Mr. Sudbury no longer drove frequently in the city, and he did not drive at rush hour. A January 28, 2022 occupational therapy report indicated that Mr. Sudbury continued to experience the same challenges with driving.

37. With respect to performing housework and maintaining a residence, Mr. Sudbury lives in Burnaby during the week and at his 5-acre hobby farm near Hope on weekends. The April 21, 2021 occupational therapy report and Dr. Waseem's report indicate that before the accident Mr. Sudbury maintained his hobby farm grounds by shoveling snow, using a lawn tractor to cut the grass, gardening, maintaining the fence and gate, cleaning the chicken house at least once per week, operating a ground rototiller, gathering items to bring to a burn pile, and power washing the exterior of his house and chicken house. The reports indicates that after the accident Mr. Sudbury was unable to complete most of these tasks, and he hired help to complete them. Mr. Sudbury's affidavit is consistent with this. A January 28, 2022 occupational therapy report indicated that Mr. Sudbury was still unable to complete his regular hobby farm activities. A June 3, 2023 occupational therapy report indicates that before the accident it took Mr. Sudbury 40 minutes to use the lawn mower, but at the time of the report it took him 2 hours.

38. ICBC argues that Mr. Sudbury has failed to prove he can no longer complete his hobby farm activities because he did not submit any documentary evidence showing he hired others to help him as he claims. While such evidence would have been helpful, I find the clinical records are consistent with Mr. Sudbury being unable to complete his hobby farm tasks, and ICBC does not point to any evidence to the contrary. I am not persuaded by ICBC's argument.

39. With respect to performing personal hygiene and self-care, Dr. Waseem's report indicates that before the accident Mr. Sudury was independent with respect to personal care. The April 22, 2021 physiotherapy report indicates that at the time he was unable to wipe himself or shave and had difficulty washing and dressing himself. Mr. Sudbury's affidavit indicates that he is unable to use bathtubs and cannot shower without grab bars. Dr. Waseem's report indicates that before the accident Mr. Sudbury could ambulate independently and only sometimes relied on a single-point cane for long walks. The evidence shows that since the accident Mr. Sudbury regularly relies on a walker.

40. I am cognizant that MIR section 5(a) requires me to determine whether each of Mr. Sudbury's alleged injuries meets the definition of minor injury, and that requires me to determine whether each of his injuries resulted in a substantial inability to perform his ADLs. However, given Mr. Sudbury's diagnoses of multiple chronic pain syndromes affecting his neck, lower back, and both knees, I recognize that it is not always possible to determine which of those pain syndromes affected which specific ADL. While not all of the clinical records in evidence refer to which specific injury affected Mr. Sudbury's inability to perform ADLs after the accident, a May 28, 2021 note in Dr. Hutchinsons' report in evidence indicated that Mr. Sudbury had difficulty managing his ADLs since the accident because of his collective soft tissue injuries. I find it is obvious from reviewing the clinical records and Dr. Waseem's report that all three of Mr. Sudbury's chronic pain syndromes affected his ability to perform his ADLs.

Substantial inability

41. The MIR section 3 requires that an accident-related impairment resulted in a substantial inability to perform ADLs. ICBC argues that Mr. Sudbury has failed to prove this element of the legal test. For the following reasons, I disagree.

42. The term "substantial inability" is not defined in the IVA or the MIR. In previous CRT decisions (see for example *Forward v. Van Hove*, 2024 BCCRT 853), the CRT has relied on *Sparrowhawk v. Zapoltinsky,* 2012 ABQB 34, which found that a "substantial inability" to the perform ADLs exists when an injury:

    a. Prevents an injured person from engaging in an ADL,

    b. Impedes an injured person's engaging in an ADL to a degree that is non-trivial for that person, or

    c. Does not impede an injured person from engaging in an ADL, but that activity is associated with pain or other discomforting effects such that engaging in the activity diminishes the injured person's enjoyment of life.

43. In *Forward*, the tribunal member found that although *Sparrowhawk* is an Alberta court decision, it considered Alberta's *Minor Injury Regulation* which includes definitions of "minor injury" and "serious impairment" that are substantially similar to the MIR.

44. ICBC argues that unlike in BC, Alberta's minor injury legislation does not include a pain syndrome or chronic pain as a minor injury. It says that if an applicant is only required to prove that they experience pain or discomfort when engaging in an ADL to establish a substantial inability to perform that ADL, then no pain syndrome would ever be considered minor. However, I find it is not necessary to determine whether or not the third criteria for establishing "substantial inability" in *Sparrowhawk* applies to BC's minor injury legislation. That is because here, I find the evidence shows that Mr. Sudbury's chronic pain syndromes not only caused him pain when performing ADLs but also impeded his ability to engage in those ADLs in a non-trivial way. I find a reduction in driving frequency in the city, no longer driving at rush hour, no longer being able to complete most maintenance tasks at his hobby farm, reduction of independence in personal hygiene, and increased reliance on walking aids are all non-trivial impediments to Mr. Sudbury's pre-accident ADLs.

Statutory Interpretation

45. ICBC argues that in order to prove a serious impairment, Mr. Sudbury must prove a substantial inability to perform all of the ADLs listed in the former MIR section 1 that he was regularly performing before the accident, not just one or some of them. The list of ADLs in the former MIR section 1 did not include an "and" or "or". In previous decisions the CRT has found that the lack of "and" or "or" in the former MIR section 1 made it unclear how many of the listed ADLs an applicant must be substantially unable to perform to meet the requirement of MIR section 3(a) (see for example *Guo v. Singh*, 2024 BCCRT 767 and *Ghavami v. Perez*, 2024 BCCRT 806). Those decisions determined that BC's minor injury legislation limits a person's rights by capping the compensation an injured person might otherwise receive at common law. Based on the principle that legislation limiting a person's rights must be read strictly, those decisions found that an applicant meets the requirement of MIR

section 3(a) if they can prove a substantial inability to perform at least one of the listed ADLs.

46. ICBC argues that the reasoning in *Guo* is flawed. It argues that the statutory principle of strict construction does not apply to BC's minor injury legislation. It argues that the CRT should take the modern approach to statutory interpretation as set out in *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, and should consider section 8 of the *Interpretation Act*.

47. In the non-binding CRT decision *Grainger v. Hotte*, 2025 BCCRT 138, the respondent made similar arguments to ICBC's in this dispute, although they were not specifically related to the list of ADLs in the former MIR section 1. The tribunal member in Grainger agreed that the CRT should apply the "modern rule" of statutory interpretation, which requires that the words of a statute be read in their entire context in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. She found that the presumption against interference applies when there remains real ambiguity in the statutory provision after applying the modern approach, and the provision falls within a category of statutes that were traditionally strictly construed.

48. I agree with the tribunal member in *Grainger's* reasoning, and I adopt it here. However, in *Grainger*, the tribunal member did not specifically address the list of ADLs in the former MIR section 1 and whether the absence of "and" or "or" in that provision resulted in any ambiguities. Rather, she found there is no ambiguity in the listed minor injuries in the legislation, so she was not required to strictly interpret those provisions.

49. I find the lack of an "and" or "or" in the list of ADLs is ambiguous. ICBC submitted excerpts from British Columbia, Legislative Assembly, *Official Report of Debates of the Legislative Assembly (Hansard)* from May 9, 2018, in which the Attorney General referred to ADLs in the plural in several instances. ICBC says this indicates a requirement for an applicant to prove a substantial inability to perform all listed ADLs after the accident. However, as ICBC acknowledges, this debate occurred

before the MIR was completed or passed. In any event, I find references to ADLs in the plural do not specifically indicate a requirement for an applicant to prove a substantial inability to perform all listed ADLs to prove a serious impairment.

50. ICBC argues that the legislature could have used "or" in the list of ADLs but chose not to. It says the legislature chose not to use "and" because if an applicant was not performing all of the listed ADLs before the accident, then it would be impossible for them to prove a serious impairment. I disagree. As noted in *Grainger*, it is a well-established principle of statutory interpretation that if the legislature intends to adversely affect a right, it must do so expressly (see *Gulkinson v. Vancouver Police Board*, 2014 BCSC 669).

51. On that point, ICBC argues that the minor injury scheme's limitation on compensation is not a "right" that this statutory principle applies to. I disagree. It is a long-standing and fundamental right under the common law that people injured by the tortious conduct of others are entitled to compensation that makes them whole. A statutory scheme that limits that compensation abrogates the related right.

52. As the tribunal member noted in *Ghavami*, if the legislature intended an applicant to be required to prove a substantial inability to perform all of the listed ADLs or a specific number of them, it could have said so but chose not to. I find this reasoning persuasive and I adopt it here.

53. In summary, I accept ICBC's argument that the CRT must use the modern approach to statutory interpretation. Using that approach, I find Mr. Sudbury can prove a serious impairment as long as he can prove his impairment resulted in his substantial inability to perform at least one of the listed ADLs. As explained above, I find he has done so.

Impairment primarily caused by the accident

54. ICBC argues that Mr. Sudbury's accident-related injuries are not the primary cause of his impairment. Rather, it says his pre-existing injuries and subsequent falls since

the accident are the primary cause of his impairment. For the following reasons, I disagree.

55. With respect to Mr. Sudbury's pre-accident condition, it is undisputed that his chronic pain due to DISH, spinal stenosis, and osteoarthritis pre-dated the accident. In Dr. Waseem's report they said these conditions are incurable and will persist once symptomatic, so without the accident Mr. Sudbury would have continued to experience neck, lower back, and bilateral knee pain indefinitely. They also acknowledged that even without the accident, the pain would likely have worsened over time with advancing age, frailty, and progression of degenerative changes.

56. However, Dr. Waseem's report and other clinical records in evidence indicate that immediately before the accident Mr. Sudbury's pain was manageable and his physical condition was stable. Dr. Waseem's report concludes that the accident likely contributed to Mr. Sudbury's worsening neck, lower back, and bilateral knee pain. They said the accident injured and destabilized the supporting structures of Mr. Sudbury's neck, lower back, and both knees which put greater strain on his joints and caused worsening pain. Dr. Waseem concluded that Mr. Sudbury's increased pain and deterioration in his function occurred at the time of the accident and have "lingered consistently since". They determined that these accident injuries caused his already vulnerable neuromuscular system to become unable to compensate, which led to a "precipitous decline in his physical faculties and functional abilities."

57. With respect to Mr. Sudbury's post-accident falls and injuries, Dr. Waseem's report indicates that some of these caused bodily contusions and superficial bruising which caused increased pain for a few days. However, they said the symptoms from these incidents resolved to pre-fall baseline levels without causing new injuries or lingering complaints. I this is consistent with the clinical records in evidence.

58. For example, a November 29, 2023 occupational therapy progress report indicates that a fall into a fire that burned Mr. Sudbury's hands and nose in November 2023 decreased some of his function. However, subsequent records indicate that once

these burns healed Mr. Sudbury's functioning generally returned to his baseline before the fall.

59. As explained above, ICBC notes that Dr. Waseem's report refers to excerpts from Dr. Hutchinson's medical legal report, which is not in evidence. ICBC argues that those excerpts indicate that Dr. Hutchinson was "not comfortable speaking to causation". However, the excerpt says only that Dr. Hutchinson did not believe the accident was the sole cause of Mr. Sudbury's musculoskeletal disabilities. The MIR section 3(b) does not require that the accident was the only cause of Mr. Sudbury's impairment, rather it requires the accident was the primary cause. I find the evidence before me establishes that it was.

Impairment not expected to improve substantially

60. ICBC argues that Mr. Sudbury failed to provide evidence that his impairments are not expected to improve substantially. I disagree. In their report, Dr. Waseem said that chronic pain related to DISH, spinal stenosis, and osteoarthritis are incurable and once symptomatic will persist. I find this is consistent with the clinical records in evidence which indicate that any improvements to Mr. Sudbury's functioning since the accident have generally plateaued.

61. In conclusion, I find Mr. Sudbury has established that the following injuries have resulted in a serious impairment and are not minor:

    a. Chronic mechanical neck pain due to DISH or calcification/ossification of ligaments,

    b. Chronic lower back pain due to spinal stenosis, and

    c. Chronic bilateral knee pain due to osteoarthritis.

62. As noted above, having found that some of Mr. Sudbury's injuries are not minor, I find his damages claim would be more appropriately resolved in the ongoing BCSC action. So, under CRTA section 11(1)(a)(ii), I refuse to resolve Mr. Sudbury's damages claim.

FEES, EXPENSES AND INTEREST

63. 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. Since Mr. Sudbury was successful in that I found most of his accident-related injuries are not minor, I find that he is entitled to reimbursement of the $125 he paid in CRT fees. Since ICBC was unsuccessful, I find it is not entitled to reimbursement of its CRT fees.

ORDERS

64. The following of Mr. Sudbury's injuries are not "minor injuries" as defined by IVA section 101:

    a. Chronic mechanical neck pain due to DISH or calcification/ossification of ligaments,

    b. Chronic lower back pain due to spinal stenosis, and

    c. Chronic bilateral knee pain due to osteoarthritis.

65. The remainder of Mr. Sudbury's injuries are "minor injuries" as defined by the IVA section 101.

66. I refuse to resolve Mr. Sudbury's claim for damages under CRTA section 11(1)(a).

67. Within 21 days of this decision, I order the respondents to pay Mr. Sudbury $125 for CRT fees.

68. Mr. Sudbury is entitled to post-judgment interest under the *Court Order Interest Act*.

69. This is a validated decision and order. 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.

Sarah Orr, Tribunal Member