



Civil Resolution Tribunal

Date Issued: October 29, 2024

File: AB-2022-009551

Type: Accident Claims

Category: Accident Benefits

Civil Resolution Tribunal

Indexed as: *JU v. ICBC*, 2024 BCCRT 1084

BETWEEN:

JU

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This dispute is about entitlement to income replacement benefits (IRB) and permanent impairment compensation (PIC).

2. JU was in a motor vehicle accident on August 11, 2021. He missed work because of his accident-related injuries, and the Insurance Corporation of British Columbia (ICBC) paid him \$1,794.07 in IRB.
3. JU says ICBC failed to pay him IRB for the first 10 days after his accident, and he claims \$3,352.60 in additional IRB. He also says his sex life has been ruined by his accident-related injuries and he claims \$1,000,000 in PIC.
4. ICBC says it properly determined JU's income and IRB entitlement based on the *Insurance (Vehicle) Act (IVA)* and associated regulations. It says it has paid JU what he is entitled to for IRB, and it owes him nothing more. It also says JU has failed to establish that he has a permanent impairment caused by the accident, so he is not entitled to PIC. ICBC says this claim should be dismissed.
5. JU represents himself. ICBC is represented by an authorized employee.
6. Although neither of the parties requested it, given the personal nature of the medical issue raised in this dispute, I decided to anonymize the published version of this decision. I find there is no public interest in having JU's name published in relation to this dispute.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over accident claims brought under section 133 of the *Civil Resolution Tribunal Act (CRTA)*. CRTA section 133(1)(a) gives the CRT jurisdiction over the determination of entitlement to accident benefits.
8. 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.

9. CRTA section 39 says that the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In his submissions JU says he was promised an oral hearing but did not receive one. It is unclear who he says promised him an oral hearing, and there is no record that he formally requested an oral hearing at the CRT. However, based on his submissions, I considered whether an oral hearing was necessary.
10. JU says he wants an oral hearing to better explain his side of the story. He says an oral hearing would allow me to “see sadness” in his eyes and see the pain he is in. I acknowledge JU says he is experiencing sadness and pain from his accident-related injuries. However, credibility is not a significant issue in this dispute, which I find largely turns on the documentary evidence. An oral hearing would not change the sufficiency of the documentary evidence before me.
11. I also note that JU did not take advantage of the procedures available to him to prove his claims. JU provided only one piece of evidence. Despite ICBC’s detailed and clear submissions, JU did not provide final reply submissions to respond to ICBC’s arguments.
12. Overall, I find that 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.
13. 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 a court of law.
14. JU says that because of ICBC’s “no-fault” system he will not be compensated at all for his injuries. To the extent JU is claiming tort damages related to bodily injuries he sustained in a motor vehicle accident, ICBC says the claim is statute-barred because the accident occurred after May 1, 2021. I agree. IVA section 115 prohibits such claims. Instead, IVA section 114 says enhanced accident benefits apply to accidents that occurred after May 1, 2021.

15. JU says an ICBC representative gave him a “highly unsatisfactory adjudicative analysis” about his claim for accident benefits over the phone while she was working from home and preparing dinner. He says it was difficult to hear her over the sound of pots and pans clanging, and that it was an unprofessional phone call. ICBC says this allegation is outside the scope of JU’s claim. It relies on *Oloumi v. ICBC*, 2022 BCCRT 1342, which says CRTA section 133(1)(a) is narrow in scope and a dispute initiated under this section can only deal with entitlements to enhanced accident benefits. I agree. I also note that JU did not request any remedies related to this allegation. For these reasons, I do not address the merits of this allegation in this decision.
16. In the Dispute Notice, JU asks for a review of his injury claim. However, the only remedies he requests are for additional IRB and PIC. In submissions JU says ICBC has refused to pay for his counselling sessions with Dr. Russell King, a registered psychologist. He also says he is unable to perform some housekeeping duties, and says he was forced to switch to an inferior medical provider because of ICBC’s allegedly flawed billing system. However, JU does not specifically raise these allegations in the Dispute Notice or claim any remedy related to them. I find these claims are not properly before me and I decline to address them in this decision.

ISSUES

17. The issues in this dispute are:
- a. Is JU entitled to additional IRB?
 - b. Is JU entitled to PIC?

BACKGROUND, EVIDENCE AND ANALYSIS

18. In this civil claim, JU must prove his claims on a balance of probabilities, meaning “more likely than not”. While I have read all of the parties’ evidence and submissions, I refer only to the evidence and submissions I find relevant to explain my decision.

19. On August 11, 2021, JU was driving a vehicle that was rear-ended by a third party driver. JU undisputedly sustained injuries that caused him to miss work. At the time of the accident, JU worked full-time as a secretary and treasurer for his local International Longshore and Warehouse Union.
20. JU was in a previous motor vehicle accident on May 7, 2016. He was also in another motor vehicle accident on June 17, 2023. JU's claims in this dispute are only about his entitlement to accident benefits in relation to injuries he sustained in the August 11, 2021 accident.

Is JU entitled to additional IRB?

21. Entitlement to IRB is determined under IVA Part 10, Division 6, and the *Income Replacement and Retirement Benefits and Benefits for Students and Minors Regulation* (IRR). IVA Division 6 provides that full-time earners are entitled to income replacement benefits if they meet the required criteria.
22. ICBC determined that at the time of the accident, JU was a full-time earner, so it calculated his IRB entitlement under IVA section 131. ICBC also determined that JU was a salaried worker, so it calculated his IRB entitlement under IRR section 4(1)(a). JU does not dispute either of these determinations. Based on IRR sections 2, 3, 4, and 28, ICBC determined that JU's weekly IRB entitlement was \$1,288.28.
23. Under IVA section 122, ICBC must not pay JU IRB if he is entitled to other compensation for the same accident, except to the extent that the IRB payable exceeds the value of the other compensation. JU received a \$425 weekly indemnity benefit through his employer, so ICBC deducted \$425 from the IRB payable to JU in the weeks he received that indemnity benefit. ICBC says it failed to deduct \$425 from the IRB payable for September 3 and 7, 2021, but it is not seeking reimbursement for the overpayment.
24. Under IVA section 147 and IRR section 12, if an insured works while receiving IRB, and the income they receive is less than the gross yearly employment income used

to calculate their IRB entitlement, IRB is reduced by 75% of the income the insured earns. ICBC determined that JU worked while receiving IRB and it reduced his IRB entitlement based on these provisions.

25. ICBC set out its detailed calculations of JU's IRB entitlement in an August 27, 2024 letter and email, and in its submissions. It determined he was entitled to \$1,794.07 in IRB for the period of August 19, 2021 to June 3, 2022, and paid him that amount.
26. Based on his submissions, I find JU does not dispute ICBC's mathematical calculations. Rather, he argues that he should be entitled to IRB for the 10 days following his accident. He provided no documentary evidence to support his claim for additional IRB payments.
27. ICBC refers to the IRR section 35(2) which says that no IRB are payable for the first 7 days after the accident date. ICBC says that since the accident was on August 11, 2021, it did not fund IRB for work JU missed on August 12, 13, and 16, 2021. The evidence shows ICBC paid JU IRB for work he missed on August 19, 2021. There is no evidence he missed any further work in August 2021.
28. Without more, I find JU has failed to establish that he is entitled to additional IRB. I dismiss this claim.

Is JU entitled to PIC?

29. Entitlement to PIC is determined under the IVA and the *Permanent Impairment Regulation* (PIR). IVA section 129(1) says that if a person suffers a permanent impairment from an accident, they are entitled to a lump sum payment for that impairment, calculated under the PIR.
30. PIR section 10(2) says PIC is not payable until an impairment is permanent. To meet the definition of "permanent" in PIR section 10(1), there are two requirements. First, following a period of time sufficient for optimal tissue repair, the impairment must have either become static or stabilized. Second, the impairment must be unlikely to change significantly with further therapy.

31. JU says that because of his chronic back pain he is unable to have a sexual relationship with his wife, and it has affected his self-esteem. He says he is seeing a registered psychologist, Dr. Russell King, to deal with his sexual dysfunction. He claims \$1,000,000 in PIC but does not explain how he calculated this amount.
32. The only piece of evidence JU submitted in this dispute is a February 15, 2024 letter from Dr. King, which refers to a communication they sent ICBC on December 15, 2022. In that communication Dr. King said they had provided psychotherapy services to JU regarding chronic pain following his accident. Dr. King said JU's pain had "completely interfered" with his sexual function. They said this had caused JU considerable psychological and emotional distress. Dr. King said treatment in that area is outside their scope of practice, and they recommended that ICBC approve JU to see Dr. Jason Winters at West Coast Sex Therapy.
33. ICBC argues that JU's alleged sexual dysfunction has not been medically diagnosed, and even if it was, he has not proven that his alleged sexual dysfunction meets the definition of "permanent" in PIR section 10. ICBC also argues that JU has failed to prove that his alleged sexual dysfunction was caused by the accident. It says JU has been experiencing back pain since his first accident in 2016, and there is no medical evidence stating that any exacerbation of his back pain from the 2021 accident caused or created the alleged sexual dysfunction. It also argues that JU's sexual health was a concern well before the accident.
34. As noted, JU did not reply to ICBC's submissions. For the following reasons, I agree with ICBC, and I dismiss JU's claim for PIC.
35. First, I find JU has failed to prove that any sexual dysfunction was caused by the accident. The clinical records in evidence show that on July 17, 2020, more than a year before the accident, JU requested Viagra from his doctor. A clinical note from September 15, 2020 says JU mentioned episodes of erectile dysfunction. In an April 18, 2021 medical report, several months before the accident, JU's doctor diagnosed him as having chronic mechanical neck and back pain from the 2016 accident. I find this evidence indicates that JU was experiencing issues with chronic back pain and

sexual dysfunction before the accident. In Dr. King's letter they said JU's pain completely interfered with his sexual function, but they did not specify whether that pain and interference was specifically caused by the August 2021 accident.

36. Even if Dr. King's letter can be considered a diagnosis of sexual dysfunction caused by the accident, I find the evidence does not indicate that the sexual dysfunction was permanent. Rather, I find Dr. King's recommendation of further therapy suggests that any dysfunction could potentially be improved. There is also a March 22, 2023 note in Mr. King's clinical records indicating that JU's doctor had prescribed medicine for sexual dysfunction. Again, I find this indicates the potential for his condition to change with further therapy. There is no medical opinion evidence indicating that JU suffers from permanent sexual dysfunction.

37. I find JU has failed to establish that he is entitled to PIC. I dismiss this claim.

FEES AND EXPENSES

38. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their CRT fees and dispute-related expenses. Since JU was unsuccessful, I find he is not entitled to reimbursement of the \$125 he paid in CRT fees. Since ICBC was successful, I find it is entitled to reimbursement of the \$25 it paid in CRT fees. Neither party claims any dispute-related expenses.

ORDERS

39. I dismiss JU's claims.

40. Within 14 days of the date of the decision, I order JU to pay ICBC \$25 in CRT fees.

Sarah Orr, Tribunal Member