

Deductions Of ICBC Part 7 Benefits In BC Tort Claims

November 13th, 2008

[Reasons for judgement were released today](#) addressing the deductions of ICBC Part 7 benefits from a tort award.

If you are injured in a BC car crash and are insured with ICBC you have the right to apply for your [ICBC No-Fault Benefits](#). These include certain rehabilitation and wage loss benefits. Whether or not you are at fault for the collision you should apply for these part 7 benefits.

In your tort claim (your claim for compensation against the at fault motorist) the defendant can argue that any amount he/she needs to pay you in damages should be reduced by the amount of Part 7 benefits you are entitled to. Whether or not you actually received these benefits is irrelevant!

In today's case the trial judge awarded various damages including \$10,000 for the cost of future medical care. The defendant argued that the \$10,000 award should be deducted because the Plaintiff could receive payment from ICBC directly for those future medical expenses.

The court dismissed this defence argument finding as follows:

[22] *In this case, I am persuaded that there is an issue about whether the plaintiff's medication is covered by Part 7 at all, given that it not only provides benefits incurred by the insured as a result of the injury but also from conditions exacerbated by the accident.*

[23] *I find that the amount awarded for the cost of future care, particularly medication, is not to be deducted from the judgment.*

This case summarized the law of Part 7 benefit deductions very well, particularly the court held that:

1. *When considering a s. 25 deduction, the central question is whether the plaintiff is a person who is or would have been entitled to Part 7 benefits. If the answer to that question is affirmative, the court must estimate the value of further payments that the Corporation is authorized or required to make under the **Regulation**, and deduct that amount from the judgment: **Sovani v. Jin**, 2005 BCSC 1285, 47 B.C.L.R. (4th) 97.*
2. *Issues between the plaintiff and ICBC over delivery of Part 7 benefits are not relevant considerations in determining a s. 25 deduction: **Sovani**.*
3. *The court has no discretion to reduce an estimate of future s. 88(1) benefits for the purposes of a s. 25 deduction: **Ayles (Guardian of) v. Talastasin**, 2000 BCCA 87, 73 B.C.L.R. (3d) 60.*
4. *Medication is an expense that falls under the mandatory or non-discretionary provision of s.88(1) of the **Regulation**: **Ayles**.*
5. *Section 88(1) requires the Corporation to pay benefits for all reasonable expenses incurred by the insured as a result of the injury.*
6. *The plaintiff may have had a pre-accident underlying "disease" entitling the Corporation to invoke an exemption from liability contained in s. 96(f) of the **Regulation**: **Mawji v. Insurance Corporation of British Columbia**, 2001 BCSC 1610.*

7. *Trial judges must be cautious in estimating s. 25 deductions and any uncertainty as to entitlement must be resolved in favour of the plaintiff: **Schmitt v. Thomson**, 18 B.C.L.R. (3d) 153, 132 D.L.R. (4th) 310 (C.A.); **Lynne v. Pearson**, 55 B.C.L.R. (3d) 401, 111 B.C.A.C. 139.*

If you are insured with ICBC and are injured by another in a BC car crash make sure you apply for your Part 7 Benefits. If you don't it can take money right out of your pocket in your tort claim and cases such as this one are a stark reminder that ICBC often makes such an argument in tort claims.

Tags: [deduction of no fault benefits in tort claim](#), [ICBC claims](#), [icbc no fault benefits](#), [icbc tort claims](#)

Posted in [Uncategorized](#) | [Direct Link](#) | [Edit](#) | [No Comments »](#) | [top ^](#)