

Car Insurance In BC

A lot of people have difficulty understanding how personal injury claims work in BC. Everyone knows that the provincial government has granted ICBC a monopoly in the automobile insurance field but a lot of folks aren't really sure how it works. This article will, hopefully, provide a bit of information and clear up any misunderstandings.

There are always two aspects to every claim for personal injury – the first is liability and the second is quantum. The judge will ask, firstly, if the plaintiff can prove that the defendant caused these injuries (without a valid reason or defence). If the answer is yes, the plaintiff must then prove how much the injuries are worth.

Just because you are injured in a car accident doesn't mean that you automatically have a claim against ICBC under your policy of insurance. If you were employed at the time of the injury you may well have a claim for income replacement payments under Part VII of the Insurance (Motor Vehicle) Act, the legislation that governs ICBC, but that is quite a separate matter from a claim for damages. A claim for personal injury is not to be brought against ICBC directly except in certain special situations, such as ones that involve a hit-and-run or unknown drivers.

Most personal injury claims are brought under the umbrella of the law of negligence. Generally speaking, the injured person does not sue their own insurer (ICBC) but, rather, they sue the person or person whose negligence they allege caused the injuries. Then ICBC, as the other driver's insurer, conducts the defence that they are required to do under the other guy's contract of insurance. It sounds like the same thing but it isn't. Well, the result is the same but the way you get there is significantly different.

The negligence alleged in automobile accidents usually, though not always, involves a claim that the other driver committed one or more breaches of the rules of the road. Rarely does the claim involve non-driving behavior, such as failure to properly maintain brakes, but it can.

Going through a stop sign or stop light, making an unsafe left turn, driving with undue care and attention, trying to park in someone else's back seat instead of slowing down (commonly called "rear ending"), that's the sort of negligence that is normally involved. Most of it is common sense.

The term "damages" refers to any foreseeable losses that are determined to result (or "flow") from the negligence. Damages are to compensate the injured party for whatever losses are endured as a result of the negligent party's actions. Those of us who do plaintiffs' personal injury claims tend to define compensation as "that which does not quite compensate". ICBC (like all insurance companies) takes a different view.

Damages come under many different categories (or "heads") and include out of pocket expenses (special damages), pain and suffering from your injuries (general damages), past loss of income, future loss of income, future economic loss, costs of future care and other losses sustained.

The concept of foreseeability is somewhat more difficult to explain. It often takes law students months or years to come to grips with it. Some lawyers never do figure it out and have to settle for criminal law, the business world, solicitor's practices or politics instead.

A simple example is if you rear-end someone. It is obviously foreseeable that they could end up with a pain in their neck. It is somewhat harder to convince a judge that the injured party was on his way to play his favorite lotto numbers, which just happened to come up while he was being treated in emergency. One is foreseeable, the other isn't – you can likely recover the \$15,000 for your soft tissue injuries but you will never likely talk a judge into giving you a couple of million for your lost lotto winnings. The lotto numbers scenario may also call the plaintiff's credibility into question.

All damages must be proven if they are to be recoverable. Although ICBC claims not to be a government bureaucracy, they certainly act like one when it comes to demanding proof in the way of receipts. In fairness, they are no better or worse than other insurers in that respect. That is why it is very important to keep accurate records and original receipts of all

expenses (and to keep them in proper order).

It is also important for you to prove what happened. As you may be called on to do so a few years after the event, it is generally a good idea to get a scribbler and record all of your recollections. Write down everything you can remember about how the accident occurred, what happened right after, when you first felt pain or discomfort, where you went, who you spoke to what they said, what you spent, what opportunities you missed out on, etc., etc.. Memory fades over time. It is important to make notes ASAP to help you recall later on.

It is also real handy if you take lots of pictures (from different aspects, especially the relative directions of travel) of where it happened ASAP. Take pictures of any bruises and car damages as well. They really are worth a thousand words. Memories and physical locations tend to change over time and pictures are not only accurate historically, they are also particularly persuasive.

In fact, if you really want to prepare yourself (God forbid but better safe than sorry) leave a disposable camera in your trunk. Put it in with your emergency flares and candles. Check the battery annually. Then when that idiot does bash into you, you can take a couple of polaroids that will help nail his negligent butt to the wall. Remember, if he is stupid enough to try to run a red light, he may not have a very good memory either or, worse yet, he may not be too concerned about a little bit of perjury.

It is also a good idea to keep notes of ongoing expenses (such as mileage to and from doctor's offices, physiotherapists, pharmacies, etc, for example). Some folks even keep a pain diary to help them remember how bad it was. Human beings tend to forget about their past pain (if they didn't, no one would have more than one child). You might also want to call your pain diary "Privileged Notes to my lawyer made in anticipation of litigation" if you don't want ICBC's lawyer to be flipping through it.

Of course, it is always a good idea to consult a personal injury lawyer as soon as possible. In any situation where your legal rights are involved it is prudent to obtain the advice of experienced and knowledgeable counsel. That is particularly true in this area as it is important to nail down witness statements, physical evidence at the scene and things like that

at the first available opportunity.

Acting as your own legal advisor is about as wise as doing your own surgery and ultimately more painful. It is also likely to result in a settlement about one-third as large as if you are represented. In fact, that is one of the main reasons ICBC would prefer to deal with you directly.

But lawyers are useful for other reasons, too. Negligence claims must be brought within certain very specific time limits and, if you wait too long, you might find your claim statute barred. Often, it is necessary to obtain witness statements, apply for Part VII benefits or preserve evidence. Sometimes it is just nice to talk to someone who can show you what needs to be done.

Once you have retained counsel (most personal injury lawyers will work on contingency - charging about a third of whatever is collected as fees), then you can concentrate on getting better. If you let the lawyer figure out how you (and he or she) are going to get paid, you can go about recovering.