LICENCE APPEAL TRIBUNAL

TRIBUNAL D'APPEL EN MATIÈRE DE PERMIS

Safety, Licensing Appeals and Standards Tribunals Ontario

Tribunaux de la sécurité, des appels en matière de permis et des normes Ontario

Ontario

Date: 2017-11-21
Tribunal File Number: 17-003304/AABS
Case Name: 17-003304 v Allstate Insurance Company

In the matter of an pursuant to subsection 280(2) of the *Insurance Act,* RSO 1990, c I.8., in relation to statutory accident benefits.

Between:

I.R.

Applicant

and

Allstate Insurance Company

Respondent

DECISION

ADJUDICATOR: **Christopher A. Ferguson**

APPEARANCES

For the Applicant: Michael Salerno, Counsel

For the Respondent: Andrew McKague, Counsel

HEARD in Writing on September 20, 2017

OVERVIEW

[1] This is an Application to the Licence Appeal Tribunal (the “Tribunal”) in respect of an insured person’s entitlement to statutory accident benefits or in respect of the amount of statutory accident benefits to which an insured person is entitled.

[2] IR (“the applicant”) was involved in an automobile accident on July 19, 2015, and sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010*[1] (the "*Schedule*").

[3] The applicant alleges that a settlement offer on the terms described in the issue was made by the respondent’s representative, in telephone conversations, and that it accepted the offer, forming a binding settlement. The respondent denies making such an offer, and contends that no settlement was concluded.

[4] A case settlement conference held on July 19, 2017 failed to resolve the issue in dispute.

DISPUTED BENEFITS

[5] The sole substantive issue to be decided by the Tribunal is whether the settlement claimed by the applicant regarding the July 19, 2015 automobile accident for the amount of $12,500.00 plus payment of incurred and approved treatment is binding on the respondent, pursuant to s.9 of the Regulation[2].

[6] The applicant raises two issues that turn on my determination of the primary dispute:

i. Is the respondent liable to pay an award under s.10 of the Regulation because it unreasonably withheld or delayed payment to the applicant?

ii. Is the applicant entitled to interest on overdue payments from the respondent?

FINDINGS

[7] The applicant has not proven that a binding settlement agreement was reached with the respondent. The application is denied.

[8] As a result of my finding on the substantive issue, the respondent is not liable to pay either an award or interest on the amount claimed by the applicant.

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[1] O.Reg. 34/10

[2] All references to “the Regulation” mean *Regulation 664, Automobile Insurance* R.R.O. 1990, Reg. 664

REASONS

[8] The applicant bears the onus of proving on a balance of probabilities that his claim is valid and payable.[3]

Evidence of Agreement – Settlement Disclosure Notice

[9] Section 9.1(2) of the Regulation requires a settlement agreement to be set out in a written settlement disclosure notice ("SDN") by the insurer addressed to the insured person. Under s. 9.1(3), the SDN must include, among other things:

i. the insurer's offer with respect to settlement;

ii. a description of the consequences of settlement on the insured person's right of appeal to the Tribunal;

iii. a statement of the insured person's right to rescind the settlement;

iv. a statement advising the insured person to consider seeking independent legal, medical and financial advice before entering into the agreement.

[10] Section 9.1(3)6 prescribes that the SDN must include a statement for signature by the insured person acknowledging that he or she had read the disclosure statement and has considered seeking independent legal, medical and financial advice before entering into the settlement.

[11] Section 9.1(4) gives the insured person a rescission, or 'cooling off' period of two business days from the later of the date he or she signs the SDN or the date he or she signs the release. A rescission must be delivered to the respondent in writing, and any money received in consideration of accepting the agreement must be refunded under s.9.1(7).

[12] The applicant contends that the SDN prescribed by s.9.1 is "a mere formality, which is required solely to confirm the intentions of the insured". His argument that this is so "as it is only the insured who may rescind settlement" is unconvincing. He offers no legal analysis or authority to back this bald assertion. I reject it.

[13] The respondent argues that the SDN is required to form a binding settlement agreement and that without one, there is no enforceable agreement. It cites two cases in support of its position:

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[3] *Scarlett v. Belair,* 2015 ONSC 3635

i. *Rahman v. TD General Insurance*, in which the SDN is characterized as a prerequisite for an insured party to settle his or her entitlement to statutory accident benefits.[4]

ii. *Ali v. Dominion of Canada General Insurance*, which states that it is mandatory for the insurer to produce the SDN to the insured person, properly completed, for any and every full and final settlement to be binding pursuant to the terms of the Regulation. [5]

[14] I find that the cases cited by the respondent are persuasive that the prescribed SDN is required to establish a binding settlement agreement between the parties.

[15] This finding is reinforced for me by the contents of the SDN form itself, which are approved by the Superintendent of Insurance under s.121.2(1) of the Act.[6] Addressed to claimants, the form states that for a settlement to be binding, the claimant must sign the SDN and a release.[7] It is clear from the text that the respondent is not bound by a settlement agreement until the SDN and release are signed.

[16] The parties agree that no SDN was provided by the insurer. Accordingly, no binding settlement agreement was formed.

Request for Interest

[17] Section 51 of the *Schedule* sets out the criteria for assessing and awarding interest on overdue payments.

[18] The applicant is not entitled to interest on denied claims, because I have concluded that no payment is due from the insurer.

Award

[19] Section 10 of the Regulation permits the Tribunal to award a lump sum of up to 50% of the amount to which the insured person (i.e. the applicant) was entitled at the time of the award together with interest on all amounts then owing (including unpaid interest) if it finds that that an insurer (i.e. the respondent) has "unreasonably" withheld or delayed payments.

[20] My finding that the applicant failed to furnish sufficient proof of a binding settlement agreement means that no award is warranted.

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[4] *Rahman v. TD General Insurance Company*, FSCO 2008, P-07-00008, see para. 14
[5] *Ali v. Dominion of Canada General Insurance Company,* 2017 FSCO 13-012046, para. 8
[6] *Insurance Act*, RSO 1990. C.I.8
[7] FSCO (1222E.3) Effective (2016-04-01)

CONCLUSIONS

[21] The applicant has not proven that a binding settlement agreement was reached with the respondent.

[22] The respondent is not liable to pay the amount claimed by the applicant. Accordingly:

i. No award under s.10 of the Regulation is warranted.

ii. There is no interest due on overdue payments.

Released: November 21, 2017

Christopher A. Ferguson, Adjudicator