

**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**

**Citation: Ming Ngar Tang vs. Certas Direct Insurance Company, 2020 ONLAT 19-000031/AABS**

**Released Date: 03/19/2020 File Number: 19-000031/AABS**

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

Between:

**Ming Ngar Tang**

**Applicant**

and

**Certas Direct Insurance Company**

**Respondent**

**DECISION**

**ADJUDICATOR:**

**Monica Chakravarti**

**APPEARANCES:**

For the Applicant:

Yu Jiang, Paralegal

For the Respondent:

Paul Irish, Counsel

**HEARD: In Writing**

**November 18, 2019**

## REASONS FOR DECISION

### OVERVIEW

- [1] The applicant was involved in a motor vehicle accident on June 30, 2016 (the "Accident").
- [2] As a result of the Accident, the applicant sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010* (the "Schedule"). Specifically, the applicant sought non-earner benefits (NEBs), which the respondent denied, leading to applicant applying to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the "Tribunal") to dispute the denial of the NEBs.

### ISSUES IN DISPUTE

- [3] As per the Tribunal's Order of June 24, 2019, the issues in dispute to be decided at this hearing are:
  - i. Is the applicant entitled to NEBs?
  - ii. Is the applicant entitled to interest on any overdue payment of benefits?
- [4] The applicant in her submissions included two additional issues, namely her status under the minor injury guideline and her entitlement to a medical rehabilitation benefit.
- [5] The respondent points out that, while the additional issues may have been on the original application, they were resolved,<sup>1</sup> leaving the applicant's entitlement to NEBs and interest as the only remaining issues.
- [6] Based on the Case Conference Report and Order, I agree that the additional issues were resolved and the only issues in dispute at this hearing are the NEBs and interest.
- [7] Further, I note that the applicant brought a motion on October 1, 2019 to vary the Order with respect to the format of the hearing, but that she did not seek to vary the issues in dispute. At no time prior to the submissions did the applicant seek to add back the additional issues.
- [8] Therefore, I find that the issues in dispute for this hearing are the issues noted above and the issues in the Order of June 24, 2019, those being NEBs and interest.

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<sup>1</sup> Tab 1 of the Respondent's Book of Documents, Case Conference Report date June 24, 2019.

## RESULT

- [9] Based on the evidence and submissions I find that the applicant is not entitled to NEBs, nor is she entitled to interest as there are no overdue payment of benefits owing to the applicant.

## REASONS

- [10] The onus is on the applicant to prove on a balance of probabilities that she is entitled to NEBs. The applicant has failed to discharge that onus.
- [11] Section 12(1) of the *Schedule* states that the insurer shall pay a non-earner benefit to an insured person who sustains an impairment as a result of an accident, provided that one of the conditions listed in 12(1) is satisfied, one of those being that the person suffers a complete inability to carry on a normal life.
- [12] Section 3(7)(a) of the *Schedule* provides “a person suffers a complete inability to carry on a normal life as a result of an accident if, as a result of the accident, the person sustains an impairment that continuously prevents the person from engaging in substantially all of the activities in which the person ordinarily engaged before the accident”.
- [13] Both the applicant and the respondent agree that the Court of Appeal for Ontario’s decision of *Heath v Economical*<sup>2</sup> provides the six guiding principles with respect to the analysis of “complete inability”.
- [14] Before I can apply the principles in *Heath*, I must determine if there are in fact impairments sustained by the applicant as a result of the accident.
- [15] The applicant has not pointed to any evidence that she sustained an impairment as a result of the accident. The applicant provided the physiotherapy records consisting of one page of an initial assessment dated sometime in November of 2016 a treatment session on November 11, 2016 and a partial note from November 17, 2016. The applicant further provided a treatment plan and an OCF-3, both dated November 11, 2016. None of these records note any impairment(s) as a result of the accident.
- [16] Put simply, there is no evidence before me to establish that the applicant sustained an impairment as a result of the accident, let alone to prove that as a result she suffers a complete inability to carry on a normal life. Therefore, the applicant is not entitled to NEBs.
- [17] Since no benefits are owing to the applicant there is no interest owing to the applicant.

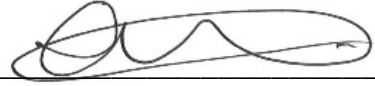
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<sup>2</sup> (2009). 5 O.R. (3d) 785 (C.A.).

**CONCLUSION**

[18] The application is dismissed.

**Released: March 19, 2020**

A handwritten signature in black ink, appearing to read 'Monica Chakravarti', written over a horizontal line.

**Monica Chakravarti  
Adjudicator**