



Citation: Thind v. Certas Home and Auto Insurance Company, 2021 ONLAT /AABS

**Released Date: 10/29/2021
File Number: 20-000488/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:

Gurpreet Thind

Applicant

and

Certas Home and Auto Insurance Company

Respondent

DECISION

ADJUDICATOR: Theresa McGee, Vice-Chair

APPEARANCES:

For the Applicant: Marc Golding, Paralegal

For the Respondent: Alexander Dos Reis, Counsel

HEARD: By way of written submissions

REASONS FOR DECISION

BACKGROUND

- [1] The applicant, Gurpreet Thind, was involved in an automobile accident on October 11, 2017, and sought benefits from the respondent, Certas Home and Auto Insurance Company, pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010*¹ (the “*Schedule*”).
- [2] The respondent determined that the applicant’s injuries fell within the Minor Injury Guideline and denied him medical benefits outside the \$3,500.00 funding limit available under the *Schedule*. The applicant then applied to the Licence Appeal Tribunal (“Tribunal”) for resolution of the dispute.

ISSUES

- [3] The issues to be decided in the hearing are:
- a. Are the applicant’s injuries predominantly minor as defined in s. 3 of the *Schedule* and therefore subject to treatment within the \$3,500.00 limit and in the Minor Injury Guideline?
 - b. Is the applicant entitled to the treatments recommended by Inline Rehabilitation Centre, as follows:
 - i. \$1,920.53 for psychological services, in a treatment plan submitted on January 10, 2018 and denied on January 29, 2018;
 - ii. \$3,948.91 for chiropractic services, in a treatment plan submitted on February 28, 2018 and denied on March 14, 2018;
 - iii. \$3,191.25 for chiropractic services, in a treatment plan submitted on May 14, 2018 and denied on May 25, 2018; and
 - iv. \$3,865.52 for psychological services, in a treatment plan submitted on February 28, 2018 and denied on June 5, 2018?
 - c. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [4] The applicant has failed to prove entitlement to treatment outside the Minor Injury Guideline. It is therefore unnecessary to consider whether the test for

¹ O. Reg. 34/10.

entitlement to the individual medical benefits in dispute has been met. No benefits are payable, and no interest is owing. The application is dismissed.

ANALYSIS

- [5] To be eligible for the medical benefits he seeks in this application, the applicant has the onus of proving, on a balance of probabilities, that his accident-related injuries are not predominantly “minor” as defined in the *Schedule*. The term “minor injury” is defined in s. 3(1) as “one or more of a sprain, strain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and includes any clinically associated sequelae to such an injury.”
- [6] If the applicant’s injuries are predominantly minor, the Minor Injury Guideline will apply. As s. 18(1) of the *Schedule* provides, funding for treatment under the Minor Injury Guideline is capped at \$3,500.00. Where the Minor Injury Guideline applies and the funding limit has been exhausted, it is generally not necessary to examine whether individual treatment and assessment plans are reasonable and necessary as a result of the accident.
- [7] Section 18(2) of the *Schedule* provides that the \$3,500.00 limit “does not apply to an insured person if his or her health practitioner determines and provides compelling evidence that the insured person has a pre-existing medical condition that was documented by a health practitioner before the accident and that will prevent the insured person from achieving maximal recovery from the minor injury if the insured person is subject to the limit or is limited to the goods and services authorized under the Minor Injury Guideline.”
- [8] The applicant submits that he should be removed from the Minor Injury Guideline. He submits that as a result of the accident, he sustained a serious and ongoing psychological impairment. He also submits that he has chronic pain. Psychological issues and chronic pain can be grounds for removal from the Minor Injury Guideline, and the applicant submits that these grounds exist in his case. He also makes passing reference in his submissions to his recovery being hampered by pre-existing conditions.

The evidence establishes minor, soft tissue accident-related injuries

- [9] The evidence clearly establishes that the applicant’s accident-related injuries were minor, soft tissue injuries and their clinically associated sequelae. The post-accident clinical notes and records of the applicant’s family physician, Dr. Nicole English, document a diagnosis of mild whiplash. Dr. English prescribed Naproxen, an anti-inflammatory, in response to the applicant’s pain complaints.

- [10] Dr. English records a complaint of right shoulder pain on November 28, 2017 and notes a possible rotator cuff impingement. However, no diagnostic imaging was ordered and there is no confirmation of nerve impingement, let alone a suggestion that the accident caused this condition. No further pain complaints were reported until February 13, 2018, Dr. English noted “mechanical back pain”.
- [11] The applicant submits he sustained a serious and ongoing psychological impairment as a result of the accident. He relies on the February 8, 2018 Psychological Assessment Report of Ms. Noga Lutzky-Cohen, supervised by psychologist Dr. Valery Kleiman, for a description of his accident-related injuries. The physical injuries identified in this report – soft tissue pain and headaches - all fall within the definition of a minor injury. Ms. Lutzky-Cohen and Dr. Kleiman diagnose adjustment disorder with depressed mood and specific phobia, situational.
- [12] I attach limited evidentiary weight to the psychological diagnoses in this report for the following reasons. First, the report is based solely on the applicant’s self-reported symptoms, and not on any review of the applicant’s medical records. This may explain why the report’s conclusions appear inconsistent with those records. To reiterate, Dr. English’s clinical notes and records make no reference to psychological complaints of any kind following the accident. No psychiatric diagnoses are made, and no treatment is recommended.
- [13] Second, the report’s conclusions do not appear to flow from the minor symptoms reported. Those symptoms, including nervousness, avoidance behaviours, irritability, “feeling down”, and worrying more, form the basis of three clinical diagnoses. Notably, the applicant *denies* suicidality, though the report lists passive suicidal ideation in its description of applicant’s clinical presentation.
- [14] Third, in contrast to the report of Ms. Lutzky-Cohen and Dr. Kleiman, Dr. Sherri Mackay, a psychologist who conducted an Insurer’s Examination on April 3, 2018, found no objective indication of accident-related psychological impairment. Dr. Mackay’s report was based on an extensive review of the applicant’s medical records, and its conclusions align with the evidence of Dr. English.
- [15] Balancing these considerations, I find the opinion of Dr. English more persuasive than those of Ms. Lutzky-Cohen and Dr. Kleiman.
- [16] The applicant also relies on an October 26, 2017 report by Dr. Erin Madonia, a chiropractor, who purports to diagnose him with post-traumatic stress disorder, depressed mood, adjustment disorder, and specific phobia. I attach no weight to these diagnoses as it is not within a chiropractor’s scope of practice to diagnose

psychological conditions. Again, the applicant's primary care physician, who saw him routinely in the months and years after the accident, documented no psychological complaints and made no clinical observations of the same.

- [17] To be clear, the Minor Injury Guideline framework considers that individuals may face psychosocial issues as the clinically associated consequences of their soft tissue injuries. Treatment of those consequences, or sequelae, is already provided for within the \$3,500.00 funding allowance. On balance, I find that the applicant's psychological concerns constitute clinically associated sequelae of his minor injuries and are subject to the Minor Injury Guideline limit.
- [18] The applicant submits that he has chronic pain, but he presents no evidence of ever having received a formal diagnosis of this condition by a medical doctor. He has failed to establish chronic pain, and has failed to show that his injuries exceed the definition of a minor injury as set out in s. 3 of the *Schedule*.

No pre-existing conditions warranting removal from the Minor Injury Guideline

- [19] The applicant's submissions make only passing reference to pre-existing medical conditions hampering his recovery from his accident-related injuries. He does not make persuasive submissions – and presents no compelling medical evidence – to show how his pre-existing diagnoses would prevent him from achieving maximal recovery from his minor injuries if he is held to the Minor Injury Guideline limit. Therefore, he has not satisfied the test set out in s. 18(2) of the *Schedule* for entitlement to medical benefits beyond \$3,500.00. The Minor Injury Guideline applies.

CONCLUSION

- [20] The applicant has not satisfied his evidentiary onus in establishing that his accident-related injuries are more than predominantly minor, soft tissue injuries. The Minor Injury Guideline applies. It is unnecessary to engage in an analysis of whether the individual treatment plans in dispute are reasonable and necessary as a result of the accident. No benefits are payable, and no interest is owing. The application is dismissed.

Released: October 29, 2021



**Theresa McGee
Vice-Chair**