

**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: ILG vs. Aviva General Insurance Company, 2019 ONLAT 18-
009010/AABS**

**Released Date: January 17, 2020
File Number: 18-009010/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:

I. L. G.

Applicant

and

Aviva General Insurance Company

Respondent

DECISION

ADJUDICATOR: Derek Grant

APPEARANCES:

For the Applicant: Rania Hafez, Paralegal

For the Respondent: Peter Durant, J.D., Counsel

HEARD: In Writing

July 8, 2019

OVERVIEW

- [1] The applicant (“I.L.G.”) was involved in an automobile accident on July 10, 2015 (“the accident”) and sought benefits pursuant to the Statutory Accident Benefits Schedule - Effective September 1, 2010 (the “Schedule”). I.L.G. was denied certain benefits by the respondent (“Aviva”) and applied to the Licence Application Tribunal - Automobile Accident Benefits Service (“the Tribunal”).
- [2] Aviva argues that I.L.G.’s injuries fit the definition of “minor injury” prescribed by s. 3(1) of the *Schedule* and, therefore, fall within the Minor Injury Guideline (“the MIG”).¹ I.L.G. disagrees.
- [3] If Aviva is correct, I.L.G. is then subject to the \$3,500.00 limit on benefits prescribed by s. 18(1) of the *Schedule* and, in turn, a determination of whether the claimed benefits are reasonable and necessary will not be needed as ILG has exhausted the \$3,500.00 maximum benefit for minor injuries.
- [4] I must, therefore, decide whether I.L.G.’s injuries are predominantly minor as defined by the *Schedule*. If they are not, I must then determine whether the disputed medical benefits, as well as the associated fees and expenses, are reasonable and necessary.

ISSUES

- [5] The issues in dispute were identified and agreed to as follows:
 - i Did I.L.G. sustain predominantly minor injuries as defined under the *Schedule*?
 - ii Is the cost of examination in the amount of \$2,000.00 for a chronic pain assessment recommended by Dr. Paul Bruni in a treatment plan (“OCF-18”) submitted on November 25, 2016, and denied on January 5, 2017, reasonable and necessary?
 - iii Is the cost of examination in the amount of \$2,000.00 for a neurological assessment recommended by Dr. Paul Bruni in an OCF-18 submitted on January 18, 2017, and denied on January 23, 2017, reasonable and necessary?

¹Minor Injury Guideline, Superintendent’s Guideline 01/14, issued pursuant to s. 268.3 (1.1) of the *Insurance Act*.

- iv Has I.L.G. provided proof of submission to the collateral benefits provider regarding the medical benefit in the amount of \$1,496.14 for assistive devices recommended by Dr. Paul Bruni in an OCF-18 submitted on November 25, 2016, and denied on December 7, 2016?
- v Is the cost of examination in the amount of \$2,000.00 for an orthopaedic assessment recommended by Dr. Paul Bruni in an OCF-18 submitted on November 25, 2016, and denied on December 7, 2016, reasonable and necessary?
- vi Is I.L.G. entitled to interest on any overdue payment of benefits?

RESULT

- [6] Based on a review of all the evidence put before me, I find that I.L.G.'s physical and psychological injuries meet the definition of "minor injury" under the *Schedule*. It is therefore unnecessary for me to consider whether the treatment plans are reasonable and necessary or determine whether interest is payable.

LAW

Minor Injury Guideline

- [7] The MIG establishes a framework for the treatment of minor injuries. The term "minor injury" is defined in subsection 3(1) of the *Schedule* 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." The terms "sprain", "strain", "subluxation", and "whiplash associated disorder" are also defined in subsection 3(1).
- [8] The onus is on I.L.G. to show that her injuries fall outside of the MIG.²
- [9] I.L.G. argues that her injuries go beyond the definition of "minor injury" because she has sustained physical and psychological impairments which remove her from the MIG.
- [10] I disagree with I.L.G.'s position for the following reasons. I acknowledge I.L.G. suffered injuries in the July 2015 accident. However, I find that the medical evidence demonstrates that those injuries are predominantly "minor injuries" and that it is the injuries she suffered later, as a result of the July 21, 2016 accident, that are more significant. Since this application is based on the July 2015

² *Scarlett v. Belair*, 2015 ONSC 3635 (CanLII) para. 24.

accident, I find that I.L.G. has not provided me with the evidence necessary to establish her entitlement to the disputed plans.

ANALYSIS

I.L.G. did not sustain physical injuries that remove her from the MIG

- [11] Although I.L.G. has provided medical evidence confirming she sustained injuries as a result of the July 2015 accident, none of this evidence shows that these injuries fall outside the MIG. To the contrary, the evidence submitted by Aviva confirms that I.L.G.'s physical injuries fall within the MIG.
- [12] My finding that I.L.G.'s physical injuries fall within the MIG is supported by the following evidence;
- (i) There is no OCF-3 for the July 2015 accident. Although a disability certificate ("OCF-3") was completed by Dr. Dennis Forrester, Family Physician, dated August 10, 2016, that OCF-18 is regarding the July 2016 accident;
 - (ii) The August 10, 2016 OCF-3 lists prior issues as, "Had MVA July 10, 2015. Had pain in neck, right shoulder & back from this accident which got worse after 2nd MVA ... ";
 - (iii) At the first post-accident visit on July 23, 2015, Dr. Forrester's clinical notes and records ("CNRs") listed the injuries as whiplash as well as cervical and lumbar spine strain, all of which are captured by the definition of "minor injury"; and
 - (iv) I.L.G. reported to Dr. Syed, Psychologist, that she took approximately 7-8 months off work due to the accident, but is currently back to working full-time and was able to return to her former work duties.
- [13] I.L.G. has not directed me to any report, treatment plan, or other evidence suggesting that the injuries she suffered as a result of the July 2015 accident are not "minor injuries." Further, I am not persuaded by any medical evidence that I.L.G. was not able to reach maximum medical recovery under the MIG limit for the injuries sustained in the July 2015 accident.
- [14] I.L.G. has therefore failed to persuade me that the physical injuries she sustained in the accident require treatment beyond that provided for in the MIG.

I.L.G. did not sustain psychological injuries that remove her from the MIG

[15] For the reasons that follow, I find that I.L.G.'s own evidence does not support the conclusion that her psychological impairments remove her from the MIG. My finding is based on the following:

- (i) At a November 19, 2015 visit to Family Physician Dr. Forrester, I.L.G. reported she "does not feel she needs to see a psychologist";
- (ii) At an October 11, 2016 visit to Dr. Forrester, I.L.G. made a request to see a psychologist. It should be noted that this visit took place after the second accident in July 2016;
- (iii) In the report³ of Dr. Syed, on behalf of Aviva, I.L.G. reported that her emotional symptoms were not significantly affecting her ability to function and feels that she is 5% disabled due to the accident;
- (iv) Dr. Syed noted that, from a cognitive perspective, I.L.G.'s reaction time and multitasking ability were affected by the accident. However, I.L.G. noted that these cognitive symptoms are "not significantly affecting her ability to function effectively in her social, occupational or other important areas of functioning";
- (v) I.L.G. noted that her psychological symptoms are "not significantly affecting her ability to function effectively in her social, occupational or other important areas of functioning"; and
- (vi) Based on I.L.G.'s subjective complaints and the objective testing results, Dr. Syed concluded that I.L.G. does not suffer from any psychological impairment that would warrant a diagnosis as per the DSM-V as a result of the accident. I agree.

[16] Although I.L.G. alleges that she sustained a psychological impairment as a result of the accident, she has not provided any medical evidence demonstrating that any psychological impairment was not sequelae of the "minor injuries" suffered as a result of the July 2015 accident. Therefore, she has not met the onus of establishing her entitlement to psychological treatment beyond the MIG limits.

³ Psychology Report dated April 5, 2016

Deduction of collateral benefits

- [17] Aviva submits that the OCF-18 (for assistive devices) submitted on November 25, 2016 was approved subject to I.L.G. submitting the treatment plan to her collateral benefits provider. Aviva agreed to pay the remaining balance.
- [18] Section 47 (2) of the *Schedule* allows an insurer to deduct payment that is reasonably available under any insurance plan or law.
- [19] Aviva submits that, to date, I.L.G. has not provided evidence that the OCF-18 was submitted to the collateral benefits provider. Aviva contends that, as a result, it is not able to determine the amount payable.
- [20] I.L.G. has not directed me to any evidence that the OCF-18 was submitted to her collateral benefits provider. As such, I find that Aviva is not required to pay any amount of the treatment plan until I.L.G. has provided Aviva with proof of submission to the collateral benefits provider.

CONCLUSION

- [21] I.L.G. sustained predominantly minor physical and psychological injuries that fall within the MIG. Accordingly,
- a. I.L.G. is not entitled to payment for the treatment plans claimed in this application;
 - b. I.L.G. is not entitled to payment for remaining assistive devices treatment plan until proof of submission to her collateral benefits provider is given to Aviva; and
 - c. Her application is dismissed.

Released: January 17, 2019



**Derek Grant
Adjudicator**