



Citation: Sadni v. Allstate Canada, 2021 ONLAT 20-000670/AABS-PI

**Release date: 06/30/2021
File Number: 20-000670/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:

Anis Sadni

Applicant

and

Allstate Canada

Respondent

PRELIMINARY ISSUE DECISION

ADJUDICATOR: Jesse A. Boyce, Vice-Chair

APPEARANCES:

For the Applicant: Sunish R. Uppal, Counsel

For the Respondent: Jonathan B. Schrieder, Counsel

HEARD: By way of written submissions

OVERVIEW

- [1] The applicant was injured in a motorcycle accident on July 3, 2016, and sought benefits from the respondent, Allstate, pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010*¹ (the "Schedule"). Allstate has paid medical benefits, attendant care and an income replacement benefit ("IRB") to date. The applicant submitted an application to the Tribunal disputing the denial of the IRB and various medical benefits. Allstate then raised a preliminary issue of whether the motorcycle the applicant was driving at the time of the accident was insured by a motor vehicle insurance policy.

PRELIMINARY ISSUE

- [2] The sole preliminary issue in dispute is as follows:
- a. Was the applicant's motorcycle that he was driving at the time of the accident insured by a motor vehicle insurance policy on the date of loss?

RESULT

- [3] The applicant's motorcycle was not insured at the time of the accident and he knew or ought reasonably to have known that it was not insured. Pursuant to s. 31(1)(a)(i), Allstate is successful on the preliminary issue.

ANALYSIS

Section 31(1)(a)(i)

- [4] On July 3, 2016, at 23 years old, the applicant was injured in a motorcycle accident. At the time, the applicant's Porsche Panamera car was insured with Allstate for the term April 28, 2016 to April 28, 2017. This policy was renewed and later terminated on April 28, 2019. Allstate submits that this policy did not include any other vehicles, including the motorcycle involved in the accident. Notably, the applicant does not dispute this. When applying for accident benefits, the applicant listed the Porsche policy on his OCF-1.
- [5] The applicant asserts that, a few months prior to the accident, he purchased the motorcycle and the Porsche. He submits that when he purchased the motorcycle, he was told by the vendor—and purportedly continued to believe—that insurance would be placed on the motorcycle for him. At an examination under oath ("EUO"), the applicant testified that he did not notice that he was not paying

¹ O. Reg. 34/10, as amended.

insurance out of his bank account. Pursuant to s. 33, Allstate requested the sale records and the name of the motorcycle dealership, but its request remains unsatisfied.

- [6] It appears that this is something of a trend. In the Case Conference Order dated July 17, 2020, the applicant was ordered to provide “any documents evidencing insurance coverage on the motorcycle”, “documents regarding the purchase and sale of the motorcycle” and “any other documents provided by the dealership regarding insurance on the motorcycle.” To date, Allstate asserts that the applicant has failed to provide this documentation. Notably, the applicant did not refute this.
- [7] The parties also agreed that s. 31(1)(a)(i) of the *Schedule* provides that an insurer is not required to pay an IRB in respect of a person who was the driver of an automobile at the time of the accident if the driver knew or ought reasonably to have known that he or she was operating the automobile while it was not insured under a motor vehicle liability policy.
- [8] Finally, both parties wrestled with the Tribunal case *M.F. v. Belair Direct*, 2017 CanLII 19200 (ON LAT), which provided a two-step test for interpreting s. 31(1)(a)(i): First, was the vehicle insured under a motor vehicle liability policy at the time of the accident?; Second, if not, at the time of the accident, was it reasonable for the applicant to believe the vehicle was insured? While this case is not binding, the parties agree that it provides an appropriate framework for the analysis.

The positions of the parties

- [9] Allstate submits that the applicant has never provided proof of insurance or proof of ownership for the motorcycle since the accident and that it paid benefits in good faith. It submits that the applicant has not provided any evidence or clarification of when the motorcycle was purchased, that there is no evidence to support that he believed the motorcycle purchase fell under section 2.2.1 of the OAP-1 policy, that the applicant has never demonstrated that he provided registration information to the dealership or Service Ontario or took any steps to obtain motorcycle insurance.
- [10] In this vein, Allstate submits that the applicant, having obtained and paid insurance premiums on his Porsche for several years, was aware of the process to obtain insurance, so there is no reasonable basis on which he can claim that he believed the motorcycle was insured where he made no arrangements to obtain insurance, made no payments for insurance and did not receive—nor has

been able to provide—any insurance policy documents or a pink slip. In sum, Allstate submits that there is no evidence that the motorcycle was ever insured or that the applicant believed that it was insured and his claim that he “did not notice” that he was not paying premiums for same is absurd.

- [11] In response, the applicant concedes that the motorcycle was not included on the policy for the Porsche. Instead, as I understand it, his position is that he relied on the advice of the motorcycle vendor who purportedly told him that insurance was placed on the motorcycle by the vendor and that the premiums would be deducted from his bank account. He submits that there is “nothing nefarious” about the situation—that he was simply a “young man who purchased fast vehicles and suffered very serious injuries as a result”—and that his uncontroverted testimony is that he believed that the motorcycle was insured. The applicant submits that Allstate has failed to meet its burden of proof that the applicant knew or ought to have known that the vehicle was not insured at the time of the accident.

Allstate is not required to pay an IRB

- [12] On these facts, there can be no dispute that the motorcycle was not listed on an active insurance policy at the time of the accident as Allstate has no record of an active policy, the applicant has not produced evidence of an active policy nor has he produced evidence of steps he took to obtain an active policy in the nearly five years post-accident despite numerous requests, and a Tribunal Order, to do so. From this, I can only glean that a policy does not exist.
- [13] The parties agree, in line with *M.F. v. Belair Direct*, that the s. 31(1)(a)(i) analysis then turns to a consideration of whether the applicant knew or ought reasonably to have known that he was operating the motorcycle while it was not insured under a motor vehicle liability policy. On this issue, I agree with Allstate that it is disingenuous for the applicant to suggest that he was not aware that the motorcycle was not insured, that it was somehow reasonable to rely on the vendor’s purported insurance arrangement on his behalf or that he somehow did not notice that he was not paying for coverage at the time of the accident or in the months that preceded it.
- [14] There is no dispute that the applicant had an existing insurance policy with Allstate on his Porsche in effect at the time of the accident. In my view, this supports Allstate’s contention that the applicant was aware of the process for obtaining vehicle insurance because he applied for, received documentation for and paid premiums on a motor vehicle insurance policy. Indeed, the Porsche policy was in effect at the time of the motorcycle accident.

- [15] Further, given that he had secured motor vehicle insurance previously and was paying policy premiums, I find it difficult to accept that he was of the belief that his motorcycle vendor's alleged assurance to him that an insurance policy—either his existing policy or a new one—would somehow automatically attach to the motorcycle without the need for any documentation. That the applicant has been unable to produce any evidence of this purported arrangement in the nearly five years post-accident further whittles down the credibility of this claim.
- [16] Additionally, I agree that there is no air of reality to his claim that he did not notice that he was not paying insurance premiums on the motorcycle, which, as Allstate submits, would attract an average annual premium cost in the range of \$2,262 to \$3,665 per year and where he was already paying insurance premiums on a Porsche at the same time. Indeed, where the applicant had recently purchased both a Porsche and a motorcycle and was actively paying premiums on the Porsche and only earning \$500-\$700 per week as an uncertified mechanic, I find it difficult to accept as a reasonable excuse that he simply did not notice any withdrawals for motorcycle coverage from his bank account. I would also reject any assertion that it is somehow reasonable for the applicant to believe that motorcycle insurance coverage does not cost extra or that it attaches automatically to insurance on another vehicle.
- [17] Putting aside the fact that there is no evidence to support the purported arrangement, if the applicant was relying on the motorcycle vendors' purported assurance that insurance would somehow attach without documentation and that premiums would be deducted from his bank account, I find that it was unreasonable for the applicant to not follow up for seemingly several months after his purchase for the appropriate documentation or a pink slip to have on hand while operating the motorcycle in the event that he was pulled over or, as is the case here, in an accident. There remains no proof of insurance or proof of ownership of the motorcycle to date and it remains unclear if the motorcycle was properly registered with the province, a process requiring considerable documentation.
- [18] The applicant invites me to find that he believed the motorcycle was insured on the word of the vendor because at the time of the accident he was a young man, employed in an uncertified, physical job who suffered injuries and was then asked by Allstate to provide paperwork some two years after the accident.
- [19] To be clear, the applicant was an adult at the time of the accident. An adult who had previously gone through the steps to secure automobile insurance, register and pay premiums on his Porsche. Further, employment is not determinative in

the analysis but the fact that the applicant was employed as a mechanic at the time of the accident, in my view, further undermines any reasonable claim that he was somehow confused or unaware of the appropriate processes for securing insurance in Ontario. His injuries are irrelevant to the determination. The fact that Allstate asked for documentation to support his claim two years after the accident was not unreasonable. In my view, it is unreasonable that the applicant has been unable to produce anything to verify his purchase, to demonstrate that he had insurance or that he believed he had insurance. I agree with Allstate that none of these reasons are grounds for a reasonable person to believe a vehicle is insured.

The burden of proof

- [20] The applicant is correct that in bringing this preliminary issue, Allstate has the burden of proof. He submits that Allstate's position is based on speculation, "aspersions and innuendoes" and that it is unfair to assess the credibility of the applicant without an in-person evaluation. In his sur-reply, the applicant asserts that Allstate has reversed the onus of proof because it did not submit the transcript of the EUO for this written hearing and that the issue should be deferred until the end of the substantive hearing on the issues in dispute.
- [21] I disagree. While Allstate has the burden of proof, the applicant has done nothing to demonstrate that its position, or its description of his testimony from the EUO, is inaccurate. Indeed, Allstate has made s. 33 requests and the Tribunal has ordered the applicant to provide some semblance of evidence to support his claim. He has not done so, despite it being five years post-accident and having the benefit of a response and a sur-reply. If the EUO transcript was helpful to the applicant's claim or disproved Allstate's submissions, then it was open for the applicant to submit it or at least highlight portions that could possibly support the reasonableness of his claim. Instead, the applicant seems to be of the belief that in-person testimony will fill in the chasms in his explanation that Allstate has exposed. It is also unclear how deferring this threshold issue to a substantive hearing would be a wise use of the Tribunal's time and resources where the applicant has failed to produce evidence to support his claim over the past five years post-accident.
- [22] In any event, the crux of the applicant's case appears to be based on hearsay evidence from an unidentified motorcycle vendor that purportedly told him that motorcycle insurance coverage would be applied and deductions from his bank account would be made without any involvement of the applicant whatsoever or without any documentation to support it. The applicant has not provided any

evidence to support this claim. In turn, the applicant now asserts that Allstate has reversed the onus because it did not submit a transcript of the EUO, even though the applicant has not submitted any documentation, has not challenged any of Allstate's characterizations of his testimony and has not, in my view, presented a reasonable theory of his own case.

- [23] Accordingly, I find that the applicant's motorcycle was not insured on the date of the accident. Further, I find that the applicant knew or ought reasonably to have known that the motorcycle was not insured on the date of the accident. Pursuant to s. 31(1)(a)(i) of the *Schedule*, Allstate is successful on the preliminary issue and is not required to pay an IRB to the applicant.

ORDER

- [24] The applicant's motorcycle was not insured at the time of the accident and he knew or ought reasonably to have known that it was not insured. Pursuant to s. 31(1)(a)(i), Allstate is successful on the preliminary issue and is not required to pay an IRB to the applicant.
- [25] The parties shall contact the Tribunal to schedule a case conference to determine how to proceed on the substantive issues hearing.

Date of Issue: June 30, 2021



Jesse A. Boyce, Vice Chair