



**Licence Appeal Tribunal File Number: 20-010308/AABS
23-004899/AABS**

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

Between:

Harpreet Grewal

Applicant

and

Peel Mutual Insurance Company

Respondent

MOTION ORDER

ADJUDICATOR:

Ludmilla Jarda

APPEARANCES:

For the Applicant:

Eric Winkworth, Counsel

For the Respondent:

Maia Abbas, Counsel

**Motion heard by
Teleconference:**

July 10, 2023

BACKGROUND

- [1] The applicant was injured in an automobile accident on **November 7, 2016** and sought benefits pursuant to the Statutory Accident Benefits Schedule – Effective September 1, 2010 (“Schedule”).
- [2] The applicant was denied certain benefits and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service (“Tribunal”). This application bears Tribunal File Number 20-010308/AABS.
- [3] A case conference took place on **February 4, 2021** before Adjudicator Robert Watt. The issues in dispute were whether the applicant sustained predominantly minor injuries as a result of the accident, medical and rehabilitation benefits, an award, and interest. The respondent also raised a preliminary issue due to the applicant’s alleged failure to attend section 44 insurer examinations. A 3-day videoconference hearing was scheduled for October 18-20, 2021.
- [4] Following the case conference, the parties brought various procedural motions, and the October 2021 hearing was adjourned pending a Divisional Court decision.
- [5] As per Adjudicator Craig Mazerolle’s Motion Order dated November 3, 2022, the applicant filed a notice of motion on October 27, 2022 seeking to reinstate the proceeding, to add issues in dispute, and to schedule a case conference. Adjudicator Mazerolle ordered that a case conference be scheduled, and the remaining relief sought by the applicant were to be decided at the case conference.
- [6] A second case conference took place on **December 21, 2022** before Adjudicator John. At the case conference, the parties identified the issues in dispute and further medical and rehabilitation benefits were added to the dispute. However, the applicant’s request to add the issue of a catastrophic impairment determination to the dispute was denied. The parties also agreed to the timelines for the disclosure and exchange of productions, hearing briefs, and final list of witnesses.
- [7] As per the Amended Notice of Videoconference Hearing dated March 10, 2023, a 5-day videoconference hearing was scheduled for July 31, August 1, 2, 3, and 4, 2023.
- [8] On April 28, 2023, the applicant filed a second application (Tribunal File Number 23-004899/AABS). The proposed issues in dispute in the second application are whether the applicant sustained a catastrophic impairment as defined by the Schedule, medical and rehabilitation benefits, an award, and interest. Further, the respondent raised a preliminary issue due to the applicant’s alleged failure to attend section 44 insurer examinations. A case conference has yet to take place, and one is scheduled for November 15, 2023.

MOTION

- [9] On June 23, 2023, the applicant filed a Notice of Motion requesting the following relief:
- a. An order combining Tribunal File Number 20-010308/AABS and 23-004899/AABS and to proceed at the same time during the hearing scheduled to commence on July 31, 2023.
- [10] The applicant submitted that the issues in dispute in the two applications overlap. Further, both applications arise from the same accident, and they involve the same parties, the same evidence, and the same witnesses. The applicant indicated that it would not be efficient or a proportional use of the Tribunal's or the parties' time and resources to hear a dispute from the same facts in two separate hearing. The applicant noted that joining the two applications would reduce the risk of inconsistent factual findings.
- [11] In response, the respondent opposed the applicant's motion. First, the respondent argued that the Tribunal previously refused to add the issue of a catastrophic impairment determination as an issue in dispute at the case conference held on December 21, 2022, and therefore the matter is *res judicata*. The respondent indicated that it remained unfair and premature to add the issue of a catastrophic impairment determination as an issue in dispute. The respondent noted that the request to combine the two applications was made after the parties had already exchanged productions for the upcoming hearing. Further, the respondent's catastrophic impairment assessments had not yet been completed. The respondent submitted that this was a blatant and unfair attempt to re-litigate the applicant's previous motion to add the issue of catastrophic impairment determination as an issue in dispute and that nothing had changed since the case conference regarding the issue of a catastrophic impairment determination.
- [12] Less than an hour prior to the motion hearing, the applicant filed reply submissions on the basis that the respondent's submissions contained incomplete, incorrect, or misleading information. First, the applicant submitted that *res judicata* was a discretionary remedy that applied to a final judgment and noted that case conferences and pre-hearing motions are interlocutory decisions and not final. Since Adjudicator John's decision did not finally dispose of the application, *res judicata* does not apply to the issue of adding a catastrophic impairment determination to the dispute. Second, the applicant indicated that the respondent made a number of bald allegations without supporting evidence as it relates to the delay in conducting section 44 insurer examinations and obtaining the corresponding reports.
- [13] During the motion hearing, the applicant made lengthy submissions on the insufficiency of the respondent's evidence regarding the status of the section 44 insurer examination reports. The applicant made several assertions regarding the

production of these reports. Further, he assumed that these reports had been completed and that either the respondent or their vendor was holding the reports, contrary to the Schedule.

- [14] The applicant also submitted that there was no reason not to combine the two applications. Although the applicant would prefer to proceed to a hearing on all issues at the end of July 2023, he was not opposed to adjourning the hearing if the respondent required more time to prepare.
- [15] During the motion hearing, the respondent maintained that the applicant was attempting to re-litigate his previous motion. The applicant made several speculative assertions regarding the status of the section 44 insurer examination reports. The respondent stated that the vendor had not been able to confirm the status of the reports, and as a result, the respondent does not have any information regarding the completion of the reports.
- [16] The respondent submitted that it would be prejudicial to add the issue of a catastrophic impairment determination to the proceeding at this stage. Further, procedural fairness provides that a party should have the opportunity to respond to the position taken against them. In this case, it would be unfair to add the issue of a catastrophic impairment determination less than a month before the hearing and when the respondent does not have their section 44 insurer examination reports. Moreover, there is not enough time to prepare for a hearing if this issue was added. Indeed, the hearing was only scheduled for 5 days. If the applications were combined, more time would be needed to address production issues and additional witnesses.
- [17] Finally, the applicant alleged that Adjudicator John's decision to refuse to add the issue of a catastrophic impairment determination was based on erroneous information. Specifically, the applicant noted that Adjudicator John's findings were that the request to add the issue of a catastrophic impairment determination was premature and the issue had not yet crystalized as assessments and reports remained outstanding. The applicant submitted that this was incorrect as the respondent obtained addendum reports and the applicant attended assessments. The applicant acknowledged that they did not take any steps to amend Adjudicator John's decision as there is no right to amend an interlocutory order on an error of fact. Therefore, the applicant sought a different order regarding the issue of a catastrophic impairment determination. In response, the respondent submitted that there was no indication that the applicant took any steps to address the alleged error of fact.

RESULT

- [18] The applicant's motion is denied.

- [19] As per Rule 3.1 of the Tribunal's Common Rules of Practice and Procedure ("Rules"), the Tribunal's mandate is to facilitate a fair, open, and accessible process, to allow effective participation by all parties, and to ensure efficient, proportional, and timely resolution of the merits of the proceedings before the Tribunal.
- [20] For the following reasons, I am not prepared to combine Tribunal File Numbers 20-010308/AABS and 23-004899/AABS and to add the issues raised in 23-004899/AABS to the proceeding in 20-010308/AABS.
- [21] First, as per section 25.0.1 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 ("*SPPA*"), the Tribunal has the power to determine its own procedures and practices and may for that purpose make orders with respect to procedures and practices that may apply in any particular proceeding and establish rules under section 25.1. Further, under Rule 18.1, the Tribunal may reconsider any decision of the Tribunal that finally disposes of an appeal.
- [22] At the case conference, Adjudicator John considered whether the issue of a catastrophic impairment determination should be added to this proceeding. Having heard from both sides, Adjudicator John found that it was premature to add the issue of a catastrophic impairment determination to the proceeding. Although the applicant alleged for the first time at the motion hearing that Adjudicator John relied on erroneous facts submitted by the respondent in rendering her decision, I note that there is no indication in the Case Conference Report and Order that the applicant brought this alleged error to Adjudicator John's attention in his reply submissions, before she rendered her decision.
- [23] Since Adjudicator John's Case Conference Report and Order does not finally dispose of the appeal, pursuant to Rule 18.1, her decision to refuse the applicant's request to add the issue of a catastrophic impairment determination to the proceeding cannot be reconsidered. Further, given that the section 44 insurer examination reports have not yet been produced, I do not find that the circumstances have changed such to warrant adding the issue of a catastrophic impairment determination to the proceeding. Rather, I find that the applicant is attempting to re-litigate Adjudicator John's decision.
- [24] Second, pursuant to Rule 20.5, where two or more AABS Claims have been made involving the same parties or the same accident, the Tribunal may combine the claims on consent of the parties.
- [25] In this case, the respondent does not consent to combining the two applications.

- [26] Further, the two applications in question are at different stages of the adjudication process. Indeed, while Tribunal File Number 20-010308/AABS is scheduled to proceed to a 5-day videoconference hearing from July 31, 2023 to August 4, 2023, Tribunal File Number 23-004899/AABS is scheduled to proceed to a case conference on November 15, 2023. As a result, the July 2023 hearing would need to be adjourned and further case management would be required. Minimizing adjournments is important to the effective administration of the Tribunal, and I note that Tribunal File Number 20-010308/AABS was filed in 2020, and at the time of the motion hearing, was 1,040 days old. Additionally, since neither party has formally requested to adjourn the July 2023 hearing, an adjournment was not considered on this motion.
- [27] Finally, whether the Tribunal should add the issue of a catastrophic impairment determination and further medical and rehabilitation benefits to the parties' dispute will depend on the facts of the individual case. Ultimately, the adjudicator must exercise their own discretion, based on all the facts, in deciding how the case before them should proceed.
- [28] In this case, the respondent has not yet obtained their section 44 insurer examination reports and they did not provide a timeline for completion of these reports. Moreover, the deadline for the exchange of productions, final list of witnesses, and hearing briefs has passed, and documentary production relating to the issue of a catastrophic impairment determination and the further medical and rehabilitation benefits has not yet occurred. Further, the applicant also seeks an award relating to these issues, and there is no evidence before me that the particulars of this award have been provided. Therefore, while the parties are prepared to proceed to a hearing on the issues in dispute identified in Tribunal File Number 20-010308/AABS, they are not prepared to proceed to a hearing on the issues proposed in Tribunal File Number 23-004899/AABS.
- [29] Additionally, given that the applicant has commenced a second application (23-004899/AABS), I do not find that the applicant would be prejudice if the issues raised in the second application were not added to 20-010308/AABS. Also, by proceeding with the second application, these proposed issues, as well as the preliminary issue raised by the respondent, can proceed through the Tribunal's dispute resolution process. This will allow the parties to attend a case conference and to ensure a fair and efficient resolution of the dispute.
- [30] Accordingly, I am not prepared to combine Tribunal File Numbers 20-010308/AABS and 23-004899/AABS and to add the issue of a catastrophic impairment determination, and further medical and rehabilitation benefits as issues in dispute in this proceeding. It would be procedurally unfair to do so at this stage in the proceeding.
- [31] **Except for the provisions contained in this Motion Order all previous orders made by the Tribunal remain in full force and effect.**

OTHER PROCEDURAL MATTERS

[32] If the parties resolve the issue(s) in dispute prior to the hearing, the applicant shall immediately advise the Tribunal in writing.

Released: July 12, 2023



Ludmilla Jarda
Adjudicator