



**Citation: Hamid v. Intact Insurance, 2023 ONLAT 21-001783/AABS-PI**

**Licence Appeal Tribunal File Number: 21-001783/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:

**Asia Hamid**

**Applicant**

and

**Intact Insurance**

**Respondent**

**PRELIMINARY ISSUE HEARING DECISION and ORDER**

**ADJUDICATOR: Tavlin Kaur**

**APPEARANCES:**

For the Applicant: Michelle Velvet, Counsel

For the Respondent: Matthew Owen, Counsel

**HEARD: By way of written submissions**

## OVERVIEW

- [1] The applicant's husband was involved in an incident on March 28, 2015. The applicant sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010* (the "*Schedule*"). The applicant was denied benefits by the respondent, Intact Insurance company, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

## PRELIMINARY ISSUE IN DISPUTE

- [2] The preliminary issue to be decided is whether the applicant is an insured person pursuant to section 3(1) of the *Schedule*?
- [3] The question that is before the Tribunal is a very narrow one. However, it should be noted that there have been other issues raised which are not within the scope of this hearing. Neither party has filed a motion to add additional issues in dispute to this proceeding. As such, I decline to consider those issues.

## RESULT

- [4] I find that the applicant does not meet the definition of an "insured person".

## ANALYSIS

### *Background*

- [5] On March 28, 2015, the applicant's husband was driving a motor vehicle when he lost control and struck a guardrail on the Gardiner Expressway. The attending officer believed that her husband had a medical incident while driving. He was taken to Toronto Western Hospital where it was determined that he had a stroke. A few days later, her husband went into cardiac arrest and fell into a coma. He remained in a coma from April 2015 until his death in July 2019.

### *Parties' positions*

- [6] The applicant submits that she sustained psychological injuries as a result of taking care of her husband throughout his hospitalization following the accident. Therefore, she is an insured person under the *Schedule*.
- [7] The respondent submits that the applicant is not an insured person pursuant to section 3(1) of the *Schedule* because there is no evidence that her husband sustained a physical injury as a result of the accident.

### *Insured Person*

- [8] The [Schedule](#) provides that insurers are liable to pay certain benefits to, or on behalf of, an insured person who sustains an impairment as a result of an accident involving the use or operation of an automobile.
- [9] Under section 3(1), an “insured person” means, in respect of a particular motor vehicle liability policy,
- (a) the named insured, any person specified in the policy as a driver of the insured automobile and, if the named insured is an individual, the spouse of the named insured and a dependant of the named insured or of his or her spouse,
    - (i) if the named insured, specified driver, spouse or dependant is involved in an accident in or outside Ontario that involves the insured automobile or another automobile, or
    - (ii) if the named insured, specified driver, spouse or dependant is not involved in an accident but suffers psychological or mental injury as a result of an accident in or outside Ontario that results in a physical injury to his or her spouse, child, grandchild, parent, grandparent, brother, sister, dependant or spouse’s dependant,
  - (b) a person who is involved in an accident involving the insured automobile, if the accident occurs in Ontario, or
  - (c) a person who is an occupant of the insured automobile and who is a resident of Ontario or was a resident of Ontario at any time during the 60 days before the accident if the accident occurs outside Ontario.

### *The applicant is not an insured person*

- [10] The applicant was not involved in the car accident. However, as a result of the accident, she asserts that she has sustained a psychological injury. The applicant is relying on the section 3(1)(a)(ii) of the “insured person” definition which address psychological injuries. I note that the parties have not made any submissions regarding iterations (a)(i), (b) or (c) of the insured person definition in section 3(1). As such, the analysis will focus on section 3(1)(a)(ii) of the *Schedule*.
- [11] In order for the applicant to be considered an insured person under section 3(1)(a)(ii), she would need to demonstrate that she sustained psychological

injuries as a result of the accident which resulted in a physical injury to her spouse. The applicant's submissions state that she sustained psychological impairments, but she does not elaborate on what exactly her psychological impairments are. Nor does she direct the Tribunal to references to her alleged psychological injuries in the medical evidence. The Application for Accident Benefits ("OCF-1") includes a Schedule A in which her psychological injuries are listed as: "psychological, emotional distress, sleeping difficulty, depression and anxiety."

- [12] Even if I were to accept that the applicant sustained a psychological injury, the challenge in this case is that there is no evidence that proves that the applicant's husband sustained a physical injury as a result of the accident.
- [13] I have reviewed the voluminous evidence brief submitted by the applicant and did not find any mention of her husband suffering a physical injury as a result of the accident. The Ambulance Call Report dated March 28, 2015 notes that the applicant's husband had a mild right sided facial droop, right sided neglect and right sided paralysis. Furthermore, it was noted that he was soft and non-tender in all quadrants. The Toronto Police Collision Field Notes list the injuries as a stroke. On March 30, 2015, the applicant's husband had a cardiac arrest. He suffered from a cardiac-arrest-associated anoxic brain injury and fell into a coma.
- [14] The applicant submits that there is medical literature to support how a motor vehicle accident can cause strokes and heart attacks. The applicant has submitted excerpts from various websites such as PubMed and MyHealth.Alberta.ca and has made references to the clinical notes and records from the hospital to suggest that the accident caused her husband's soft-tissue and musculoligamentous injuries. While these articles provide useful information, they are not a substitute for an opinion from a medical practitioner with respect to the specific conditions that affected the applicant's husband. Nor is the applicant or her legal counsel in a position to provide a medical opinion. Moreover, there is no evidence that the soft-tissue and musculoligamentous injuries were caused by the accident.
- [15] The applicant stated in her submissions that:

Unless asked for a medical-legal opinion, especially in an emergency room and intensive care unit context, treatment providers and emergency personnel do not assess the insured/patient with a view of determining legal causation, but rather to treat, often the most acute (and life-threatening) ailments. As such, Mr. Ali's CNRs would not be expected to include assessments/opinions on whether and to what extent, the MVC

caused or worsened the outcome of Mr. Ali's medical incident and physical injuries generally.

- [16] While that may be true, given the unfortunate circumstances of this particular case, the applicant and her counsel could have sought the opinion of her husband's treating practitioners at the hospital. This may have assisted with determining whether or not he had sustained physical injuries as a result of the accident. However, there is no evidence that any such attempts were made. Without definitive evidence, I am unable to conclude that the applicant's husband suffered a physical injury as a result of the accident.
- [17] While I acknowledge that the applicant is in a difficult position given the loss of her spouse and I sympathize with her, I find that she is not an "insured person" as defined under the [Schedule](#).

### **CONCLUSION AND ORDER**

- [18] The applicant is not an insured person under section 3(1) of the *Schedule* and therefore is not eligible for benefits.
- [19] The application is dismissed.

**Released: November 6, 2023**



---

**Tavlin Kaur  
Adjudicator**