Citation: Vintimilla v. Co-operators General Insurance Company, 2024 ONLAT 23-001131/AABS-R

RECONSIDERATION DECISION

Before:	**Ulana Pahuta**
Licence Appeal Tribunal File Number:	**23-001131/AABS**
Case Name:	**Rosaria Vintimilla v. Co-operators General Insurance Company**

Written Submissions by:

For the Applicant:	Vince Angelillo, Counsel
For the Respondent:	Peter Durant, Counsel

OVERVIEW

[1] On January 2, 2023 the applicant requested reconsideration of the Tribunal's preliminary issue decision released December 12, 2023 ("decision").

[2] In that decision, I determined that the applicant was not involved in an "accident" as defined in s. 3(1) of the *Schedule* and therefore could not proceed with her application.

[3] The grounds for a request for reconsideration are found in Rule 18.2 of the *Licence Appeal Tribunal Rules, 2023* ("Rules"). To grant a request for reconsideration, the Tribunal must be satisfied that one or more of the following criteria are met:

a) The Tribunal acted outside its jurisdiction or committed a material breach of procedural fairness;

b) The Tribunal made an error of law or fact such that the Tribunal would likely have reached a different result had the error not been made; or

c) There is evidence that was not before the Tribunal when rendering its decision, could not have been obtained previously by the party now seeking to introduce it, and would likely have affected the result.

[4] The applicant is seeking reconsideration pursuant to Rule 18(a) and (b). She requests that the decision be set aside, and a determination be made that she was involved in an "accident" as defined in s. 3(1) of the *Schedule*. The respondent submits that the decision should be upheld and that the applicant's request for reconsideration be dismissed.

RESULT

[5] The applicant's request for reconsideration is dismissed.

ANALYSIS

[6] The test for reconsideration under Rule 18.2 involves a high threshold. The reconsideration process is not an opportunity for a party to re-litigate its position where it disagrees with the Tribunal's decision, or with the weight assigned to the evidence. The requestor must show how or why the decision falls into one of the categories in Rule 18.2.

Rule 18.2(a) – Breach of Procedural Fairness

[7] I find that the applicant has not established grounds for reconsideration under Rule 18.2(a).

[8] The applicant submits that I violated procedural fairness when I denied her the right to file affidavit evidence with her written submissions for the preliminary issue hearing. She cites the Supreme Court of Canada decision *Baker v. Canada (Minister of Citizenship and Immigration),* (1992) 2 SCR 817, arguing that the factors outlined in *Baker* mandate that she be afforded an opportunity to provide testimony as to how the accident occurred. Given that the preliminary issue hearing was in a written format, the applicant argues that there was no other way to provide testimony on the central issue of the circumstances of the accident, and that the refusal to consider the affidavits was a denial of natural justice.

[9] I do not find that my determination that the applicant could not file affidavit evidence with her submissions violated procedural fairness. While the applicant cites *Baker* in arguing that she must be given the opportunity to put forward her views and evidence fully, I note that *Baker* does not mandate that tribunals must provide oral hearings or allow affidavit evidence to be filed. Rather, I agree with the respondent that *Baker* provides that the duty of procedural fairness be "flexible and variable" and is considered in the specific context of the case.

[10] As outlined in paragraphs 8 to 11 of my decision, the parties attended a case conference on August 29, 2023 and a Case Conference Report and Order ("CCRO") dated September 8, 2023 was issued on consent. The CCRO expressly stated that the parties agreed that no affidavits would be submitted as evidence. The applicant does not dispute that despite the CCRO stating that affidavits would not be submitted, she and her husband subsequently executed affidavits and included them with her October 4, 2023 submissions.

[11] The applicant is raising the same argument as raised in her initial submissions, namely, that despite what was stated in the CCRO, she had never agreed that affidavits would not be filed. However, as detailed in paragraph 10 of my decision, the applicant was in receipt of the CCRO well before her submissions were to have been filed. The CCRO also specified that the parties were to exchange any documents they intended to rely on within seven days of the case conference. The applicant did not comply with either the order regarding productions or affidavits.

[12] As noted in paragraph 10 of the decision, the applicant in her initial hearing submissions did not direct me to any evidence that she had raised the issue of

an affidavit at any point prior to filing her submissions. The applicant did not bring a motion to the Tribunal to either amend the CCRO or to seek permission to file the affidavits. I agree with the respondent that the applicant was not denied procedural fairness in regard to the denial of the affidavits. Rather, she chose not to follow the available procedure to provide an affidavit. No reason has been provided by the applicant as to why she did not raise the issue of an affidavit at the case conference, or once she received the CCRO, or at any point prior to the filing of her preliminary issue hearing submissions.

[13] As such, I find no breach of procedural fairness in my determination with respect to the affidavits.

Rule 18.2(b) – Error of Law

[14] The applicant argues that I erred in law by failing to properly apply binding Divisional Court decisions *Madore v. Intact Insurance Company,* 2023 ONSC 11 (CanLII) and *North Waterloo Farmers Mutual Insurance Co. v. Samad*, 2018 ONSC 2143 (CanLII) in my determination of whether an "accident" occurred. The applicant further submits that it was an error of law for me to consider the Statement of Claim that was issued pursuant to the applicant's tort action.

[15] I find that the applicant has not established grounds for reconsideration under Rule 18.2(b) with respect to alleged errors of law.

[16] Firstly, with respect to my consideration of the Divisional Court decision *Madore,* I agree with the respondent that in my decision I undertook a fulsome review of the relevant caselaw. I expressly considered *Madore* in paragraphs 33 to 35 of my decision and explained why I found that *Madore* was distinguishable from the matter at hand. I find the applicant is attempting to re-litigate her case. The reconsideration process is not an opportunity for a party to re-litigate their position where they disagree with the decision, or where they failed to meet their burden at first instance.

[17] With respect to the Divisional Court decision *Samad,* while I agree with the applicant that I did not expressly reference *Samad* in my decision, I did consider all the caselaw submitted. It is well-settled that the reasons of the Tribunal are not to be measured against a standard of perfection. As the Supreme Court of Canada stated in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII), at paragraph 91, the fact that a tribunal's reasons do not include all the arguments, statutory provisions, jurisprudence or other details that a reviewing judge would have preferred does not on its own create a basis to set aside the decision.

[18] I did consider the Divisional Court decision *Samad* when rendering my decision, however, I found that it was distinguishable from the present case. While in *Samad,* the Court held that multiple direct causes of an accident may exist, in the matter at hand, I did not find that there were overlapping or competing events that resulted in injuries to the applicant that would make it impossible to separate. Given that *Samad* is distinguishable, I do not find that failing to reference it in my decision would have led to a different outcome.

[19] Finally, I do not find that I made an error of law by considering the applicant's Statement of Claim. In its evidence for the preliminary issue hearing, the respondent included a Statement of Claim that the applicant had filed in her tort claim against a number of parties, where she described the incident as a slip and fall on a patch of ice on the sidewalk, without any reference to the vehicle. The applicant argues that it was an error of law to consider these pleadings, as they only contain a description of facts relevant to that matter, and are not the applicant's testimony.

[20] I find no error of law in my consideration of the Statement of Claim. In paragraph 24 of my decision I acknowledge that pleadings of fact have not been proven true, but that they provide the applicant's perspective of the circumstances relating to the incident. The applicant has not provided any caselaw in support of her argument that a Statement of Claim cannot be considered by the Tribunal when it was submitted as evidence. My reasons for considering the Statement of Claim were provided in paragraphs 23 to 24 of the decision. I find that the applicant is attempting to re-litigate the issue.

CONCLUSION AND ORDER

[21] For the foregoing reasons, the applicant's request for reconsideration is dismissed.

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Ulana Pahuta
Adjudicator
Tribunals Ontario – Licence Appeal Tribunal

Released: February 26, 2024