



Citation: Roperti v. Allstate Insurance Company of Canada, 2024 ONLAT 24-003339/AABS-PI

Licence Appeal Tribunal File Number: 24-003339/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:

Teresa Roperti

Applicant

And

Allstate Insurance Company of Canada

Respondent

PRELIMINARY ISSUE HEARING DECISION

VICE-CHAIR: Tyler Moore

APPEARANCES:

For the Applicant: Peter Galway, Counsel

For the Respondent: Andrew Rodrigues, Counsel

HEARD: In Writing

OVERVIEW

- [1] Teresa Roperti, the applicant, was involved in an automobile accident on November 5, 2018, and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “*Schedule*”). The applicant was denied benefits by the respondent, Allstate Insurance Company of Canada, 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 in dispute is:
- i. Is the applicant barred from proceeding to a hearing as they failed to notify the respondent of the circumstances giving rise to a claim for benefits no later than the seventh day after the circumstances arose or as soon as practicable after that day?

RESULT

- [3] The applicant is statute-barred from proceeding with her application.

ANALYSIS

The Law

- [4] Section 32(1) of the *Schedule* provides that a person who intends to apply for accident benefits shall notify the insurer of their intention no later than the seventh day after the circumstances arose that give rise to the entitlement to the benefit, or as soon as practicable after that day.
- [5] Pursuant to section 55(1)1 of the *Schedule*, an insured person may not apply to the Tribunal if they have not notified the insurer of the circumstances giving rise to a benefit or have not submitted an application for the benefit within the times set out in the *Schedule*.
- [6] Section 34 of the *Schedule* states that “a person’s failure to comply with a time limit set out in this Part does not disentitle the person to a benefit if the person has a reasonable explanation.” The onus is on the applicant to establish a reasonable explanation for the delay. The interpretation of “reasonable explanation” is guided by *Horvath and Allstate Insurance Company of Canada*, 2003 ONFSCDRS 92 (CanLII)(“*Horvath*”), and was more recently reiterated in

K.H. v. Northbridge, 2019 CanLII 101613 (ON LAT). The guiding principles are summarized as follows:

1. An explanation must be determined to be credible or worthy of belief before its reasonableness can be assessed.
2. The onus is on the insured person to establish a “reasonable explanation.”
3. Ignorance of the law alone is not a “reasonable explanation.”
4. The test for “reasonable explanation” is both a subjective and objective test that should take account of both personal characteristics and a “reasonable person” standard.
5. The lack of prejudice to the insurer does not make an explanation automatically reasonable.
6. An assessment of reasonableness includes a balancing of prejudice to the insurer, hardship to the claimant and whether it is equitable to relieve against the consequences of the failure to comply with the time limit.

Agreed Facts

- [7] The applicant was struck by a motor vehicle while crossing the street as a pedestrian on November 5, 2018.
- [8] The applicant issued a tort claim against the Motor Vehicle Accident Claims Fund (“MVACF”) on November 3, 2020.
- [9] The applicant submitted an application for accident benefits to the MVACF on March 27, 2021.
- [10] The applicant first applied for accident benefits to the MVACF on March 27, 2021.
- [11] The applicant notified the respondent of her accident on February 25, 2022.
- [12] The applicant submitted accident benefit OCF forms to the respondent on May 25, 2022, including an OCF-3 dated December 3, 2018.

Positions of the Parties

- [13] The applicant submits that although she was struck by a motorist who left no identification or insurance details at the scene, and police or ambulance records did not reveal the identity of the driver. The applicant submits that she suffered serious injuries, including a head injury and fractures to her shoulder, pelvis, and ankle, and that she was initially confused as to whether she had slipped and fallen or if she had been hit by a vehicle.
- [14] According to the applicant, the earliest reasonable date to notify the respondent of her accident benefits claim was February 25, 2022 because:
- a. Though she reported to her healthcare providers that her injuries resulted from a motor vehicle accident on November 9, 2018, she and her representative could not identify the motorist until December 10, 2021;
 - b. The redacted accident records necessitated an extensive search and legal steps taken by the applicant's representative; and
 - c. The applicant notified the respondent by way of letter on February 28, 2022 of her accident benefits claim, just three days after getting confirmation that the respondent was the motorist's insurer.
- [15] The applicant argues that she submitted an application for accident benefits to the MVACF based on what was initially believed to be the involvement of an uninsured and unidentified motorist. She also argues that any failure to notify the MVACF is irrelevant as it was not the proper insurer ultimately responsible for responding to her claim, and her duty to provide notice for her accident benefits claim rests solely with the proper insurer, and not with the MVACF.
- [16] The applicant also argues that she first obtained the redacted Toronto Police records of the accident on March 13, 2019. She then appealed for unredacted records, which led to mediation in August 2019. That mediation led to a release of additional information about the motorist. In November 2019, the applicant obtained the contact information of an accident witness, but that witness failed to identify the motorist. The applicant submits that this led to a subsequent Motion for unredacted police records that was heard in writing on May 14, 2021. Then, on August 16, 2021 an order was made for the unredacted Toronto Police records, which the applicant received on October 28, 2021.
- [17] In providing an explanation for the delay, the applicant relies on the fact that the motorist was only successfully identified on October 28, 2021, and their contact

information was only ascertained by way of a private investigation report on December 10, 2021. The applicant submits that on February 25, 2022, after the applicant's representative circulated an inquiry to all Ontario Insurers, the motorist's insurer was finally identified as the respondent.

- [18] The applicant argues that the respondent is not prejudiced and should have conducted its own investigation after receiving the applicant's application for benefits on May 25, 2022. This could have included an examination under oath, an IE, or asked for an updated OCF-3. The applicant also argues that there is no evidence of prejudice to the respondent by proceeding with the application in light of the delay.
- [19] The respondent submits that the applicant has not provided a reasonable explanation for the delay for her accident benefits application, and that the delay is excessive. The respondent argues that the applicant first applied for any accident benefits on March 27, 2021, nearly 2.5 years after the incident.
- [20] The respondent relies on the fact that the applicant reported to her doctors that she was "struck by a car" as early as November 9, 2018, just four days after the accident, and then again on November 23 and December 14, 2018. The respondent submits that even if the Tribunal accepts that the applicant was initially confused about the cause of her injuries, she began telling her treating physicians that she was in a motor vehicle accident shortly after the accident, and she had an OCF-3 completed on December 3, 2018. According to the respondent, it is still not clear why the OCF-3 was not submitted at the time it was created.
- [21] The respondent argues further that the applicant could have submitted an accident benefits application on many occasions before she did. For example, on November 9, 2018, the applicant first reported that she was in a motor vehicle accident, then on December 3, 2018 a disability certificate was completed on her behalf. The respondent argues that the applicant could also have submitted an application to the MVACF on November 25, 2020, which is the date of the investigative report, or on November 3, 2020 when her tort claim was issued against the MVACF.

The applicant has not established a reasonable explanation for the delay

- [22] I find that the applicant has not established a reasonable explanation for the delay in applying for accident benefits for the following reasons.

- [23] While I find the applicant's explanation to be credible, I do not find it to be reasonable. I agree with the respondent that it was open to the applicant to notify the MVACF of the circumstances of her accident and to make an application for accident benefits on several occasions before she did so on March 27, 2021. At the time the application was submitted to the MVACF, the identity and insurance status of the driver was still unknown. I am not persuaded by the applicant's explanation that she could not have submitted an application at an earlier date because the identity and status of that driver did not change between November 2018 and March 2021. The applicant was clearly aware of the MVACF through her representative because she filed a tort claim against the MVACF in November 2020.
- [24] While I accept that the applicant could not have notified Allstate at an earlier date, I do not find that the applicant has provided a reasonable explanation for the delay in notifying the MVACF, which I find to be relevant.
- [25] The applicant has been represented by counsel since shortly after the accident, as confirmed by the fact that the redacted police report was requested and received by her representative in March 2019. The applicant's representative would, or ought to, have been aware of the MVACF. There is also documented medical evidence of the applicant's report to numerous healthcare providers that she sustained injuries as a result of a motor vehicle accident as early as November 9, 2018, and an OCF-3 was completed on the applicant's behalf on December 3, 2018. Accordingly, I find that notification of the circumstances giving rise to a claim could have been done at any time after November 9, 2018.
- [26] I find that the delay in reporting the claim for accident benefits has also prejudiced the respondent by depriving it of the opportunity to obtain contemporaneous information regarding the applicant's alleged injuries, to obtain contemporaneous medical documentation, and investigate and assess the applicant's claim.
- [27] For these reasons, I find that the applicant did not notify the insurer of the accident in accordance with s. 32(1) of the *Schedule* and has not provided a reasonable explanation for the delay. Pursuant to s. 55(1) of the *Schedule*, I find that the applicant is statute barred from proceeding with her application.

ORDER

[28] The applicant is barred from proceeding with her application pursuant to s. 55(1) of the *Schedule* for failure to comply with the time limits set out in s. 32(1).

[29] The application is dismissed.

Released: December 16, 2024

Tyler Moore
Vice-Chair