



**Citation: TD Home and Auto Insurance Company v. Srikanth, 2024 ONLAT 23-012709/AABS**

**Licence Appeal Tribunal File Number: 23-012709/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:

**TD Home and Auto Insurance Company**

**Applicant**

and

**Sharaniya Srikanth**

**Respondent**

**DECISION**

**ADJUDICATOR: Bonnie Oakes Charron**

**APPEARANCES:**

For the Applicant: Kari-Anne Layng, Counsel

For the Respondent: Did Not Attend

Court Reporter: Victory Verbatim

**Heard by Videoconference: October 16, 2024**

## OVERVIEW

- [1] Sharaniya Srikanth, the respondent, was involved in an automobile accident on July 30, 2021, and sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “Schedule”) from the applicant, TD Home and Auto Insurance Company. The applicant applied to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.
- [2] The applicant submits that the respondent made material misrepresentations in relation to her application for an Income Replacement Benefit (“IRB”). The applicant has paid the respondent an IRB in the amount of \$11,319.71 and is seeking repayment of these benefits with interest.

## ISSUES

- [3] The issues in dispute are:
- i. Is the applicant (insurer) entitled to a repayment of \$11,319.71 relating to its payment of an IRB because the respondent was not employed at the location that it disclosed to the applicant at the time of the accident?
  - ii. Is the applicant entitled to interest?

## RESULT

- [4] For the reasons that follow, the applicant is entitled to a repayment of \$11,319.71, with interest.

## PRELIMINARY ISSUE

### ***Pre-hearing requirements***

- [5] There was a lack of compliance by both parties with regard to the Tribunal’s pre-hearing requirements.

### ***Lack of compliance – applicant***

- [6] The applicant’s initial filings on September 25, 2024, complied with Rule 9.4.3 of the *Licence Appeal Tribunal Rules* (“the Rules”). However, the applicant later filed an update on October 3, 2024. Pursuant to Rule 9.4.4, these supplementary documents are considered late. The Rule directs the Tribunal to treat the admittance of these documents as a preliminary issue.

- [7] The applicant indicated that the documents were relevant to the issue in dispute, highlighting that they provide additional corroborative evidence given the non-attendance of the respondent and intended witness Rathan Amirthalingam. Mr. Amirthalingam was named on the applicant's pre-hearing witness list but did not appear. The applicant reported that it was unsuccessful in serving him with a summons despite multiple attempts.
- [8] Satisfied that the documents carried some relevance to the issue in dispute, and that appropriate weight could be assigned to the evidence later, I admitted the documents. While late, the respondent was properly notified of the hearing, and was served with the documents successfully by email.

***Lack of compliance – respondent***

- [9] The respondent did not comply with the Tribunal's pre-hearing requirements under Rule 9.4.3 and did not attend the hearing despite being served with a summons.
- [10] Rule 9.4.3 requires that no later than 21 days before an electronic or in-person hearing, each party must file with the Tribunal and serve on the other party:
- i. a list of witnesses the party will call to give evidence at the hearing;
  - ii. a summary of the evidence each witness will give at the hearing, along with the anticipated amount of time needed for each witness to testify;
  - iii. a PDF copy of the evidence and authority brief; and
  - iv. a completed form for electronic and in-person hearings that is provided on the Tribunal's website.
- [11] The respondent did not comply with any of the requirements outlined above.

**PROCEDURAL HISTORY, ISSUES AND POSITIONS OF THE PARTIES**

- [12] The applicant paid the respondent an IRB benefit in relation to the subject accident of July 30, 2021.
- [13] Later, it determined that the respondent had misrepresented her employment situation. The applicant is now seeking repayment of the benefits paid.
- [14] The respondent has not participated in the proceedings to date:

- i. She did not attend the case conference on March 12, 2024.
  - ii. Her legal representative withdrew on April 1, 2024.
  - iii. She did not produce any of the documents to be exchanged between the parties that were identified in the CCRO dated May 29, 2024.
  - iv. She did not comply with any of the Tribunal's pre-hearing requirements.
  - v. She did not attend the hearing despite a summons being issued by the Tribunal.
- [15] Previously, in a Motion Order dated June 3, 2024, the Tribunal denied the applicant's motion to change the hearing format from a one-day videoconference to a written hearing. The applicant had argued that a written hearing was more just, expeditious, and cost-effective, in the context of the respondent's lack of participation. The respondent made no submissions on the matter. The motion adjudicator concluded that a written hearing could prejudice a self-represented party, and it was speculative to assume the respondent would not participate in the hearing.

#### **PROCEEDING WITH THE HEARING WITHOUT THE RESPONDENT**

- [16] Rule 3.7.1 requires that if a party who has been given notice of a hearing does not attend within 30 minutes of the scheduled start time, the Tribunal may proceed in the absence of the party.
- [17] At 9:30 AM the hearing room was opened, and attendance taken. The respondent was not present. Given the respondent's absence and because there was no explanation for her non-attendance, a 30-minute recess was called to determine the intentions of the respondent.
- [18] During the break, I confirmed the respondent had received the Notice of Hearing dated June 28, 2024. The email correspondence was sent successfully with no indication it was not received.
- [19] At 9:45 AM I asked the Case Management Officer ("CMO") to contact the respondent at the email address and phone number on file. The CMO indicated that there was no dial tone or voicemail box. An email was sent but was not answered. There was no indication that it was not received.
- [20] The respondent did not answer the Tribunal's outreach efforts during the break.

- [21] The applicant requested that a negative inference be made due to the respondent's non-attendance and failure to mount a defence. I agree with the applicant and have drawn a negative inference based on the respondent's history of non-participation and her failure to appear before the Tribunal to defend her IRB claim, despite receiving a summons.
- [22] The respondent has presented no evidence, made no submissions, and provided no explanation for her non-participation, despite receiving ongoing correspondence from the Tribunal at every stage of the process.
- [23] Since the applicant was prepared to continue the hearing began at 10:06 AM.
- [24] The applicant agreed to proceed by way of brief oral submissions and the admittance of its Hearing Briefs (Volumes 1 and 2, and Supplementary) into evidence.

## ANALYSIS

### *Repayment*

- [25] Under s. 52(1)(a) of the *Schedule*, an insured person is liable to repay any benefit that is paid as a result of an error on the part of the insurer, the insured person or any other person, or as a result of wilful misrepresentation or fraud.
- [26] Under s. 52(2)(a) of the *Schedule*, the applicant must provide notice to the respondent of the amount of the IRB to be repaid.
- [27] Under s. 52(3) of the *Schedule*, if notice under subsection (2) is not given by the applicant within 12 months after the payment of the amount that is to be repaid, the respondent ceases to be liable to repay the amount unless the IRB was paid to them as a result of wilful misrepresentation or fraud.

### ***Was the respondent employed at the location that it disclosed to the applicant at the time of the accident, in order to establish entitlement to an IRB?***

- [28] I find, on a balance of probabilities, that the respondent wilfully misrepresented the facts surrounding her employment situation in order to establish entitlement to an IRB.
- [29] It is the applicant's onus to prove that the respondent made misrepresentations with respect to an application for benefits. The applicant submits that the respondent made material misrepresentations about her employer, the fact she was employed, and the appropriate quantum of income: The following

documents, each of which was submitted to the insurer by the respondent, evidence how she wilfully misrepresented her employment.

- [30] A disability certificate (“OCF-3”) dated August 24, 2021, completed by General Physician (“GP”) Dr. Lo, indicated that the applicant was not working at the time of the accident. Part 1 states that at the time of the accident, she was not working, had not worked at least 26 weeks of the previous 52, and was not receiving Employment Insurance (“EI”) benefits. The checkbox for being a primary caregiver with dependents was not selected. The respondent certified the document with her signature on August 25, 2021.
- [31] Despite the information that she was not employed in the OCF-3 from Dr. Lo, the respondent selected Income Replacement Benefit as the correct option in her Election of Income Replacement, Non-Earner or Caregiver Benefit form (“OCF-10”). The respondent certified the document with her signature on September 27, 2021.
- [32] The respondent’s employer confirmation form (“OCF-2”) dated September 24, 2021, indicated the following:
- i. in Part 3 that she was employed at the time of the accident;
  - ii. in Part 4 that her income in the four weeks before the accident was \$950.00 per week;
  - iii. in Part 6 that her job title was Janitorial Services, with the job description described as “mopping, vaccumming (sic), loading, squatting (sic), etc”;
  - iv. in Part 7 that her employer was Unipro Maintainance (sic) Limited (“Unipro”); and
  - v. in Part 8 that it was certified by Rathan Amirthalingam, supervisor.
- [33] The respondent’s application for benefits (“OCF-1”), certified by the respondent on September 27, 2021, identified the following:
- i. in Part 7 that she was the primary caregiver to five minor children with an assertion that she is “takeing (sic) care of all my minor kids ...not able to bend, lift, and taking (sic) care of my kids (sic) daily chores completely stopped”; and

- ii. in Part 8 that she was employed by Unipro Maintenance Ltd from 2021 to the present but had not worked since the accident. Her income is listed as \$950.00 per week based on a 40-hour work week.
- [34] There was a second OCF-3 dated December 17, 2021, from Chiropractor Dr. Grigoropoulos, that introduced alternative information to that provided by Dr. Lo. In the first OCF-3, it indicated that the applicant was working at the time of the accident, had worked at least 26 weeks in the previous 52, and that she was unable to perform the essential tasks of her employment. This time the checkbox was selected for a primary caregiver. The respondent certified the document on December 17, 2021.
- [35] In summary, with regard to establishing her claim for an IRB, the respondent certified two separate OCF-3s, one indicating she was working at the time of the accident and the other not, and one indicating she was a primary caregiver at the time of the accident and the other not. The respondent also certified her application for benefits wherein she identified Unipro as her employer for a 40-hour work week, as well as being a primary caregiver to five minor children in the household.
- [36] The log notes between the date of loss and early October 2021 show that the applicant tried numerous times unsuccessfully to speak with Rathan Amirthalingam at Unipro in order to discuss the respondent's employment. Further, pay cheques for the respondent in the six-week period before the accident show that her hourly rate of pay was \$23.00, with earnings of \$1,472.00, \$1,888.00, and \$1,909.00 respectively. This differs from the \$950 per week identified in the respondent's OCF-1 and OCF-2.
- [37] Subsequently, Kanapathipilai Ramesh, the manager at Unipro, confirmed to TD Claims Litigation Services in an email dated June 17, 2023, that both the respondent and her claimed supervisor, Rathan Amirthalingam, had never worked at Unipro. The email conversation references a telephone call where Mr. Ramesh had confirmed he was the manager of Unipro and his daughter, Rathusa Ramesh, the owner. Mr. Ramesh is listed on the company's Ontario Corporate Profile Report ("the Report") as a past Corporate Director, while Ms. Ramesh is currently the sole registered Corporate Director acting as President, Treasurer, and Secretary. The Report is issued by the Ontario Ministry of Public and Business Service Delivery.
- [38] The applicant next directed my attention to some highly distinctive penmanship found on OCF-2s for two other individuals involved in the subject accident. These documents were part of the applicant's supplementary brief admitted into

evidence. One document contained the signature of Rathan Amirthalingham while the other is signed in a similar style, but for a different individual and a company other than Unipro. Both documents contain reference to the same job title and description found in the respondent's OCF-2. As a result, the text in these documents offers a useful way to compare the handwriting involved. Since the penmanship and stylistic flourishes are very unique, it is likely the same person who executed all three OCF-2s, two of which identify him as a supervisor at Unipro. Unipro denied that Mr. Amirthalingham was ever employed as a supervisor by the company.

- [39] While I assign the information less weight than the documents certified by the respondent herself, it is clear they offer some corroborative value that the respondent's documents contain misrepresentations.
- [40] For the reasons that follow, I accept the applicant's evidence and find that the respondent's actions were deliberate, and she misrepresented her employment situation to establish entitlement to an IRB.
- [41] First, the applicant's evidence is unrefuted.
- [42] Second, the respondent personally certified much of the documentation. Thus, her actions were deliberate.
- [43] Further, with regard to misrepresentation, the respondent:
- i. has not produced the necessary documentation to support her claim of employment at Unipro (i.e., T4s, employment contract, shift schedules, etc.);
  - ii. has not reconciled the amounts identified on her reported pay cheques with the amounts being claimed;
  - iii. has not clarified the contradictory information listed on her two OCF-3s;
  - iv. has claimed employment at Unipro on her OCF-1 and OCF-2, a fact denied by the manager of Unipro; and
  - v. has furnished an OCF-2 with a signature by a supervisor at Unipro, while Unipro denies such a supervisor was ever employed by the company.

- [44] As a result, and in accordance with s. 52(1) of the *Schedule*, an insured person is liable to repay any benefit paid as a result of the wilful misrepresentation or fraud.
- [45] The applicant has successfully demonstrated that the respondent misrepresented her claim.

***Was the applicant's notice of repayment compliant?***

- [46] I find that the applicant's notice of repayment satisfies the requirements of s. 52(2) and (3) of the *Schedule*.
- [47] The respondent wilfully misrepresented material facts in relation to her application for the IRB. The applicant was persuaded into paying \$11,319.70 in IRB benefits for the period August 7, 2021 to February 16, 2022, based on the misrepresented facts surrounding the respondent's employment.
- [48] Per s. 52(2)(a) of the *Schedule*, the applicant made a request for repayment. The respondent was informed of her obligation to repay the specific amount of benefits paid, with interest, in a letter dated June 15, 2023. The letter advised that Unipro had confirmed that the respondent had never been employed by them, and as a result, her IRB was terminated pursuant to s. 53 of the *Schedule*.
- [49] Per s. 52(3) of the *Schedule*, the applicant provided proper notice of the amount that is required to be repaid. Further, the 12-month deadline to provide such notice following the payment of the benefit does not apply given the respondent's misrepresentation of the facts.
- [50] The applicant's notice was compliant.

***Interest***

- [51] Section 52(5) of the *Schedule* states that an insurer may charge interest on the outstanding balance of the amount to be repaid for the period, starting on the 15<sup>th</sup> day after the notice is given, and ending on the day repayment is received in full. The calculation is to be made at the bank rate in effect on the 15<sup>th</sup> day after the notice was given.
- [52] I find that interest applies on the repayment of benefits pursuant to s. 52(5) of the *Schedule*.

**ORDER**

[53] I order that Sharaniya Srikanth repay IRBs to TD Home and Auto Insurance Company in the amount of \$11,319.71, plus interest.

**Released: November 20, 2024**

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**Bonnie Oakes Charron  
Adjudicator**