



Citation: Maxamed v. Allstate Insurance Company of Canada, 2026 ONLAT 25-008739/AABS - PI

Licence Appeal Tribunal File Number: 25-008739/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:

Amin M. Maxamed

Applicant

and

Allstate Insurance Company of Canada

Respondent

PRELIMINARY ISSUE DECISION AND ORDER

ADJUDICATOR: Trina Morissette, Vice-Chair

APPEARANCES:

For the Applicant: Julia Logoutova, Paralegal

For the Respondent: Rebecca Brown Greer, Counsel

HEARD: In writing

OVERVIEW

- [1] Amin M. Maxamed, the applicant, claims to have been injured in an automobile accident on September 4, 2024, 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 Allstate Insurance Company of Canada, the respondent, and applied to the Licence Appeal Tribunal (“the Tribunal”) for resolution of the dispute.

PRELIMINARY ISSUE

- [2] The preliminary issue to be decided is whether the applicant was involved in an “accident” as defined in section 3(1) of the *Schedule*?

RESULT

- [3] The applicant was not involved in an “accident” as defined in section 3(1) of the *Schedule*.

PROCEDURAL ISSUE – Motion to strike part of the applicant’s sur-reply submissions

- [4] In a motion filed with the Tribunal on January 19, 2026, the respondent seeks an order striking paragraphs 13 to 20 of the applicant’s sur-reply submissions. The respondent argues that the applicant made a brief and passing reference to the adequacy of the respondent’s investigation in its initial responding submissions but did not advance the argument in a substantive way, nor did he particularise the alleged deficiencies, until he provided his sur-reply.
- [5] The respondent argues that this is improper and prejudicial. It submits it is well established that an applicant must produce and enter in their initial submissions all the clearly relevant evidence it has, or that it intends to rely upon, to establish their case with respect to all the issues raised. The respondent is entitled to have the applicant’s full case from the outset so that it knows what it must address in its reply.
- [6] The applicant submits that the respondent’s motion is unjust, unreasonable and prejudicial if granted, that the issue of an insufficient investigation was first raised in the applicant’s responding submissions at paragraph 34, and that the respondent had an opportunity to address the issue of an insufficient investigation in its reply submissions but failed to do so.

[7] Paragraph 34 of the applicant's responding submissions, referenced by both parties, states:

The applicant submits that the respondent failed to diligently investigate the accident by requesting the applicant to provide his evidence prior to denying the claim in its entirety (*sic*), such as obtain the applicant's testimony regarding the collision, and based it[s] denial of claim on the incomplete or inaccurate evidence.

[8] In my view, paragraphs 13 to 20 of the applicant's sur-reply specifically reference the respondent's failure to obtain the applicant's written statement, or request that the applicant submit to an Examination Under Oath ("EUO"), which I find is directly in response to the argument put forward by the respondent at paragraph 9 of its reply submissions. Within these paragraphs, the applicant also provides commentary of the cases relied on by the respondent which I find is a reiteration of the comments made in his responding submissions.

[9] I therefore find that paragraphs 13 to 20 are proper; they either respond directly to the arguments made by the respondent in its reply submissions or reiterate the applicant's position on caselaw he initially argued in his responding submissions. For these reasons, the respondent's motion is denied.

ANALYSIS

[10] The applicant is a Somali citizen with permanent resident status in Canada since July 11, 2023. He has limited English. He submits that on September 4, 2024, at approximately 8:00 p.m., he was a backseat passenger of a vehicle insured by the respondent ("the subject vehicle") driven by the insured ("the driver") when it was hit on its side by a third party. At the time of the incident, the driver was turning right out of a plaza and onto the main road. The subject vehicle was struck on the driver's side by the third-party vehicle.

[11] On September 9, 2024, the applicant submitted an OCF-1 to the respondent. Upon receipt of the applicant's application, the respondent undertook an investigation into the incident and advised the applicant in a letter dated July 11, 2025, that it concluded he was not a passenger in the vehicle at the time of the accident and that he provided false information in his application. In its denial of July 11, 2025, the respondent stated that its investigation found discrepancies between the applicant's description of the incident, and an EUO of the driver that took place on June 20, 2025, the police report, and a forensic engineer's analysis of the incident. It claims that the applicant willfully misrepresented material facts on his application.

- [12] The respondent submits that based on its investigation into the incident, the applicant was not an occupant of the vehicle and therefore is not entitled to accident benefits. The respondent adds that, even if it is found the applicant was an occupant of the vehicle, the incident does not meet the definition of an “accident” pursuant to the *Schedule* as the incident was staged.
- [13] The applicant submits that he incorrectly stated he was seated in the passenger backseat (on the right). He was not paying attention to the surroundings at the time of the incident as he was on his telephone. Taken together, he submits that the evidence proves that there was no wilful misrepresentation of the facts. He argues that the respondent failed to diligently investigate the incident as it failed to request the applicant to provide his evidence in its entirety prior to denying his claim. Specifically, the applicant claims that the respondent did not obtain his testimony regarding the collision and based its denial on incomplete or inaccurate evidence. The applicant adds that “despite the incompleteness of his evidence”, the evidence obtained “speaks in support of the applicant’s claim that he was involved in the collision.” He submits his application should not be barred.
- [14] For the reasons that follow, I agree with the respondent that there are discrepancies with the description of the incident provided by the applicant and the evidence submitted in this matter. On a balance of probabilities, these discrepancies, in my view, are sufficient to conclude that the applicant misrepresented the facts of the incident in his description and the applicant did not satisfy his onus of proving an “accident” occurred where he was a passenger in the subject vehicle.

There is insufficient persuasive evidence that the applicant was a passenger in the subject vehicle

- [15] In his application for accident benefits, the applicant described his involvement in the incident as “back seat passenger R side, going home from café. driver – acquaintance, was on the phone, did not pay attention”. Ultimately, he submits that he was a passenger in the subject vehicle at the time of the collision but he mistakenly noted in his application that he was in the backseat on the right, when he was actually seated on the left, behind the driver. He relies on the EUO transcripts of the driver that took place on June 20, 2025, photographs he submits he took following the collision, and email exchanges with his employer.
- [16] The respondent relies on the Motor Vehicle Accident Report dated September 4, 2024, the transcripts of an EUO of the driver dated June 20, 2025, and a Forensic Engineering Report dated January 2, 2025.

- [17] The respondent first points to the Motor Vehicle Accident Report which indicated that neither vehicle involved in the collision were transporting passengers. I note that the “involved people” section of the report only identifies the two drivers. No other individual is identified in the Motor Vehicle Accident Report.
- [18] The applicant submits that the police did not attend the scene until some four hours after the collision. He argues that the Motor Vehicle Accident Report contains “minimum one error”, one of which is the number of occupants in the driver’s vehicle, but he does not elaborate on the other alleged errors nor does he provide an explanation for the omission of the applicant’s identity in the report.
- [19] Both parties point to the driver’s EUO evidence where the driver testified he had a passenger in his vehicle at the time of the collision. In his evidence, the driver identified his passenger as “Mohamed Mohamed”.
- [20] The applicant submits that his full name is Amin Maxamed Maxamed, pronounced “Amin Mahamed Mahamed” and the driver’s evidence confirms he was the passenger in the subject vehicle.
- [21] I am not persuaded that the driver’s evidence confirms the applicant was a passenger in the subject vehicle. When the driver was asked during his examination to spell his passenger’s name, the driver responded “M-O-H-A-M-E-D” and not M-A-X-A-M-E-D. I also note that the driver testified that “Mohamed” is a friend and they were on their way to a restaurant to have dinner at the time of the collision. The driver did not hesitate in providing the spelling of his friend’s name and the applicant did not provide a compelling explanation for why his friend would have misspelled his name.
- [22] In addition, when the applicant filed his application with the Tribunal, he identified himself as “Amin M. Maxamed”. The applicant did not point me to any official government documentation or other evidence to support that his middle name is “Maxamed” or that he is colloquially addressed as “Maxamed Maxamed”.
- [23] The applicant also points to the driver’s EUO testimony to support his submission that the police did not speak to him at the scene. Although the applicant did not expand on this, I assume he argues that had the police spoken to him, the Motor Vehicle Accident Report would not have erroneously omitted him as a party involved in the collision.

[24] Not only am I not convinced of the applicant's argument on this point, I find that the EUO evidence contradicts the applicant's assertion. I note specifically that pages 46-47 of the driver's EUO transcripts confirm the police spoke to, whom he alleges, was a passenger in his vehicle:

Q: *Then did he [the police officer] talk to Mohamed Mohamed as well?*

A: Yes.

Q: *The police officer?*

A: Yes.

[25] Due to these discrepancies, I am not convinced that the police report contains errors.

[26] The applicant also submitted photographs he purports he took on the day in question following the collision. The applicant submits that the photographs show two females standing beside the damaged vehicles (which the driver testified were passengers in the third-party vehicle) and two males standing near the damaged vehicles (one of the males being the applicant). The applicant also points to a photograph included in the forensic engineering report which he alleges is a photograph of him standing near the damaged vehicles. He argues that it "would be reasonable to assume that the persons [in] the photographs have some connection to the motor vehicle accident" and submits the photographs confirm he was a passenger in the subject vehicle.

[27] I acknowledge that the rules of evidence at the Tribunal are less cumbersome than those of a court of law, however, without any further corroborating evidence, I find it would be quite a leap to conclude that photographs of individuals standing around vehicles involved in a collision are evidence that these individuals were occupants of the vehicles at the time of the collision. Rather, I find that these photographs simply show individuals, other than the drivers, were at the scene of the collision at some point following the collision. Other than the applicant's submissions, there is no corroborating information that the applicant is one of the males in these photographs. Submissions are not evidence. I therefore do not find that the photographs relied on by the applicant are sufficient proof to conclude he was a passenger of the subject vehicle at the time of the collision.

[28] The applicant also submitted email exchanges with his employer as evidence that he was a passenger in the subject vehicle. His submissions state:

The applicant's employer confirmed that the applicant advised the employer about his motor vehicle accident shortly after his assignment of August 24, 2024 that lasted until August 31, 2024. The accident happened on September 4, 2024 (Wednesday). The e-mail from the applicant's employer (*sic*) was submitted to the respondent on February 27, 2025.

[29] I infer from these submissions that the applicant submits he advised his employer of the accident and that these email exchanges were provided to the respondent in February 2025 as proof that he was involved in the collision.

[30] I note that these emails are communications between the applicant's counsel and his employer. His counsel advises the employer "according to our records, [the applicant] was unable to work for some period of time as a result of his injuries" and requests the employer to complete an OCF-2 Employer's Confirmation Form. The employer provides a completed OCF-2, provides additional employment information and advises: "[i]f I can remember correctly, [the applicant] informed us of his accident shortly after the August 24th assignment so we didn't schedule or reached out to him for work since until Oct-28-2024 for short term assignment."

[31] I do not find these email exchanges to be persuasive evidence that the applicant was a passenger in the subject vehicle. The emails simply indicate that the applicant advised his employer, at some point after September 4, 2024, that he had been involved in an accident. I find them insufficient to show the applicant was a passenger in the driver's vehicle at the time of the collision.

[32] I therefore find that the evidence relied on by the applicant to prove he was a passenger in the subject vehicle at the time of the collision is not persuasive. The Motor Vehicle Accident Report does not identify the applicant as a passenger of the subject vehicle and the applicant has provided no plausible explanation for the discrepancies in this report or the driver's EUO evidence. On a balance of probabilities, I find that the applicant has not satisfied his onus of proving he was a passenger of the subject vehicle on September 4, 2024 at the time of the collision.

There is evidence of material misrepresentation of the accident

- [33] The respondent does not dispute that there was a collision between the two vehicles in question on September 4, 2024 but, as discussed above, denies the applicant was a passenger of the subject vehicle. It also argues that the collision was staged and relies on a Forensic Engineering Report dated January 2, 2025. The respondent submits that the applicant provided false information in his application for accident benefits by wilfully misrepresenting material facts of the accident.
- [34] The report prepared by Impact Forensics indicates that it considered the Motor Vehicle Accident Report, a statement provided by the third-party driver to his insurer, and photographs and a video from the collision scene. It also attended at the Auto Auctions/Auto Collision site to examine both vehicles, including their respective internal data systems. It concluded that the collision was staged and stated:
- The data stored in the vehicles' ACMs was inconsistent with the reported evidence. In the moments leading to impact, the [driver's vehicle] rolled forwards at 5km/h before coming to a stop about 2.3 metres into the right northbound lane, and was stationary for about 3 seconds before impact. This was inconsistent with the report that the [driver's vehicle] was turning into the roadway at the time of the collision. Had the [third-party driver] braked for the stopped vehicle ahead of him instead of accelerating towards it, or had [the driver] not stopped in an unsafe and atypical position, a collision would have been avoided.
- [35] The respondent argues that the data of both vehicles involved was inconsistent with both drivers' reported evidence. The data shows that the driver's vehicle was not turning at the time of the accident but rather, it was in a stopped position when the third-party vehicle accelerated towards it. The respondent argues that this was a staged, purposeful accident, contrary to the driver's evidence.
- [36] The applicant submits that the conclusion reached in the forensic report is solely based on the description of the accident provided by the third-party driver. I disagree. As noted above, the report also considered the Motor Vehicle Accident Report, photographs and a video of the collision scene, and an on-site examination of both vehicles as well as a review of their respective internal data systems.

- [37] The applicant also points to the driver's EUO evidence where he states: his vehicle was hit when he "first arrived", that he "went a little bit forward", that the driver did not remember exactly how the collision occurred, and that the driver provided his evidence approximately a year after the collision. It is unclear how the applicant purports that the driver's evidence renders the forensic report inaccurate.
- [38] I find that the applicant has not provided any compelling evidence that would question the forensic report's conclusion. As such, I accept the forensic report's conclusion and find that the collision between the two subject vehicles was staged.

The collision of September 4, 2024 does not meet the definition of an "accident" as defined by the *Schedule*

- [39] The *Schedule* provides that insurers are liable to pay certain benefits to or on behalf of insured persons who sustain an impairment as a result of the use or operation of an automobile. Section 2(3) of the *Schedule* provides that the benefits set out in the *Schedule* shall be provided in respect of "accidents". Section 3(1) of the *Schedule* defines "accident" as "an incident in which the use or operation of an automobile directly causes an impairment."
- [40] The onus is on the applicant to establish on a balance of probabilities that the use or operation of an automobile directly caused their injuries.
- [41] In *Economical Mutual Insurance Company v. Caughy*, 2016 ONCA 226 (CanLII) ("*Caughy*"), the Ontario Court of Appeal confirmed the two-part test to determine whether an incident is an "accident" as follows:
- a. Purpose test: did the incident arise out of the use or operation of an automobile? and
 - b. Causation test: did the use or operation of an automobile directly cause the impairment?
- [42] The applicant does not address the *Caughy* test. He relies on *Laframboise v. Co-operators General Insurance Company*, 2024 CanLII 106244 (ON LAT) and argues that the respondent undertook an inadequate investigation into the matter. More specifically, he submits that the information relied on by the respondent is incomplete and inaccurate and argues that the respondent failed to request a detailed written statement of the incident or request that he submit to an EUO prior to denying his claim for accident benefits.

[43] The respondent submits that it is not required to request a statement from the applicant and/or require him to testify at an EUO. Rather, the applicant is required to prove that he was involved in an accident that qualifies as an accident and he has failed to do so. It relies on several decisions of this Tribunal, most notably, *Aliyev v. TD General Insurance Company*, 2023 CanLII 72660 (ON LAT) (“*Aliyev*”) to argue that a staged accident is an intentional act that is contrary to public policy and legislation and that it is excluded from the definition of an accident as it does not pass the purpose test. The respondent also relies on *G.S. v. The Personal Insurance Company*, 2020 CanLII 98734 (ON LAT) (“*G.S.*”) and *Dawkins v. TD General Insurance Company*, 2020 CanLII 103689 (ON LAT) (“*Dawkins*”) to argue where an applicant is not an occupant in a vehicle, they also cannot be said to have been involved in an “accident”.

[44] Although I am not bound by other decisions of this Tribunal, I accept the findings of *Aliyev*, *G.S.* and *Dawkins*. Having found above that the applicant has not provided any persuasive evidence that he was a passenger in the driver’s vehicle at the time of the collision, and having found that the incident was staged, I conclude that the applicant has not satisfied the purpose test set out in *Caughy*. Although the applicant argues that the respondent’s investigation was inadequate, the onus is on him to prove on a balance of probabilities that he was involved in an “accident” as defined in the *Schedule*. I find he has not done so.

ORDER

[45] For all the above reasons, I find that:

- i. The applicant was not involved in an “accident” as defined by section 3(1) of the *Schedule*.
- ii. The application is dismissed.

Released: March 10, 2026



**Trina Morissette
Vice-Chair**