Tribunals Ontario
Licence Appeal Tribunal

Tribunaux décisionnels Ontario
Tribunal d'appel en matière de permis

Citation: Sonnet Insurance Company v. Sarassra, 2024 ONLAT 22-004161/AABS

Licence Appeal Tribunal File Number: 22-004161/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:

Sonnet Insurance Company

Applicant

and

Khaled Sarassra

Respondent

DECISION

VICE-CHAIR: **Brett Todd**

APPEARANCES:

For the Applicant: Kadey Schultz, Counsel

For the Respondent: No Submissions Filed

HEARD: **By way of written submissions**

OVERVIEW

[1] Khaled Sarassra (the "respondent") alleged that he was involved in an automobile accident on January 24, 2020 and sought benefits from Sonnet Insurance Company ("the applicant") pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010 (including amendments effective June 1, 2016)* (the "*Schedule*").

[2] Originally, Mr. Sarassra was the applicant in Licence Appeal Tribunal – Automobile Accident Benefits Service (the "Tribunal") file 20-013259/AABS regarding this claimed accident. He withdrew this application on December 15, 2021 and the Tribunal file was closed.

[3] Following this, Mr. Sarassra filed a second application with the Tribunal regarding this same alleged accident. This application, which was assigned file 22-002427/AABS by the Tribunal, was dismissed as abandoned by the Tribunal in a Case Conference Report and Order ("CCRO") dated April 4, 2023 and this file was also closed.

[4] The current dispute relates to medical and rehabilitation benefits that were paid by Sonnet Insurance Company (now the applicant) to Mr. Sarassra (now the respondent) following the subject accident referenced in Tribunal applications 20-013259/AABS and 22-002427/AABS. The applicant claims that these benefits were paid as the result of the respondent's wilful misrepresentations of material facts in relation to the address he used to enter into his contract for automobile insurance, as well as the circumstances of the subject accident and claimed impairments as a result of this accident.

[5] As a result of the above, the applicant is seeking an order for the full repayment of the medical benefits paid to the respondent, plus interest, as well as a ruling excluding the respondent from receiving income replacement benefits ("IRB"). In addition, the applicant is requesting costs of $1,106.00 due to the respondent's unreasonable conduct.

ISSUES

[6] The issues in dispute are:

1. Has the respondent wilfully misrepresented material facts with respect to his application for medical and rehabilitation benefits and IRB, pursuant to s. 53 of the *Schedule*?

2. Is the applicant entitled to a repayment in the amount of $2,315.00 plus interest relating to its payment of medical benefits for the period of September 21 to September 23, 2020, pursuant to s. 52 of the *Schedule*?

3. Is the respondent excluded from receiving IRB pursuant to s. 31(1)(b) of the *Schedule*, due to his material misrepresentations which induced the applicant to enter into the contract of automobile insurance?

4. Is the applicant entitled to interest on any overdue repayment of benefits, pursuant to s. 52 of the *Schedule*?

5. Is the respondent liable to pay costs of $1,106.00 in costs to the applicant?

[7] I have added the applicant's request for costs to the issues in dispute. While this request was not noted in the CCRO dated February 21, 2023 that set this matter down for a written hearing, I am allowing it due to Rule 19.2 of this Tribunal's *Rules*, which establishes that a party can make a request for costs "in writing or orally at a case conference or hearing, at any time before the decision or order is released."

RESULT

[8] I find that:

i. The respondent wilfully misrepresented material facts with respect to his application for medical and rehabilitation benefits and IRB.

ii. As a result of his wilful misrepresentation to the applicant, the respondent shall repay $2,315.00 in medical benefits, in accordance with s. 52(1)(a) of the *Schedule*.

iii. The respondent shall pay interest on the above amount, in accordance with ss. 52(5) and 52(6) of the *Schedule*.

iv. The respondent is barred from receiving IRB in relation to this application and the alleged accident on January 20, 2020 due to material misrepresentation, in accordance with ss. 31(1)(b) and 53 of the *Schedule*.

v. The respondent is not liable to pay costs to the applicant.

ANALYSIS

Proceeding Without the Respondent

[9] I find that the Tribunal has met its reasonable notice obligations. Therefore, I am proceeding with this written hearing in the absence of the respondent.

[10] Proceeding with a written hearing where a party fails to participate, under s. 7(2) of the *Statutory Powers Procedure Act*, RSO 1990, c. S.22 ("*SPPA*"), requires the Tribunal to be satisfied that the absent party received notice of the written hearing that complies with ss. 6(1) and 6(4) of the *SPPA*.

[11] The respondent has failed to meaningfully participate in the Tribunal process. Although I provide some added consideration due to his being self-represented in this matter, his legal representative withdrew on December 14, 2022 and the Tribunal adjourned the original case conference date. This, in my view, afforded the respondent sufficient added time to either secure new representation or to prepare to represent himself.

[12] Despite this accommodation, the respondent failed to attend a case conference that was scheduled for January 24, 2023. This resulted in the issuing of the aforementioned CCRO on February 21, 2023 that set the matter down for a written hearing. This CCRO included production orders and deadlines for written submissions and evidence. The applicant's submissions and evidence were due 30 calendar days prior to the scheduled hearing date, with the respondent's submissions and evidence due 14 calendar days prior to the scheduled hearing. The applicant's reply submissions, if any, were due seven calendar days prior to the hearing.

[13] The Tribunal sent a Notice of Written Hearing ("NoWH") to both parties on March 23, 2023. This NoWH set October 27, 2023 as the date for the written hearing. As a result, the applicant's submissions were due on September 27, 2023; the respondent's submissions were due on October 13, 2023; and the reply submissions were due on October 20, 2023. The NoWH included the provision that the Tribunal may make a decision without the participation of either or both of the parties and without further notice if submissions were not filed.

[14] The applicant filed its written submissions and evidence for the hearing on September 27, 2023 in accordance with the timeline as established by the CCRO and the NoWH. The respondent failed to file any written submissions or evidence for the hearing. According to Tribunal records, the respondent did not answer or

reply to multiple attempts by email and phone to discuss the status of this application.

[15] There is no evidence that the respondent's address changed or was otherwise incorrect in Tribunal records. Tribunal records also note that the respondent's former legal counsel provided the Tribunal with the respondent's updated contact information in an email on November 15, 2022. Regardless, if the applicant's contact information changed, he had an obligation under Rule 4.4 of the *Rules* to correct this with the Tribunal in writing.

[16] Given the above, I find that the respondent knew of this proceeding and chose not to participate. Although, as noted above, I am prepared to allow latitude for a self-represented party, the respondent had 10 months between the withdrawal of his legal representation and the date of the written hearing. In my view, this was more than enough time for the respondent to have sought new representation, requested that the Tribunal extend the hearing timeline, and/or prepared to represent himself in this matter.

[17] As a result, I am satisfied that the Tribunal has met its notice obligations pursuant to s. 7(2) of the *Statutory Powers Procedure Act* and is in compliance with ss. 6(1) and 6(4) of the *SPPA*.

Medical Benefits Repayment and IRB

Notice of repayment request

[18] I find that the applicant has satisfied repayment notice requirements as specified in s. 52(2) and s. 52(3) of the *Schedule.*

[19] The applicant is permitted to claim repayment in certain situations and subject to conditions as established by the *Schedule*. Section 52 of the *Schedule* addresses repayments to an insurer, with s. 52(2) providing that an insurer must give an insured person notice of the amount that is required to be repaid. Section 52(3) of the *Schedule* provides a 12-month time limit on a claim for the repayment of a benefit under s. 52(2), unless this amount was "originally paid to the person as a result of wilful misrepresentation or fraud."

[20] In submissions, the applicant provided copies of documents filed with the Tribunal dated July 20, 2021, August 12, 2021, November 15, 2021, December 17, 2021, March 30, 2022, November 1, 2022, and April 4, 2023 that clearly indicate that the respondent was provided notice of its intent to seek the repayment of $2,315.00 that had been paid in medical benefits.

[21] As the respondent did not file submissions for this hearing, he is silent on this matter.

[22] I accept the submissions of the applicant. The notices sent on the dates noted above meet s. 52(2). Further, even though some of the notices detailed above came more than 12 months after the benefit was paid to the respondent, I find (see below) that the respondent committed wilful misrepresentation, and therefore also rely on s. 52(3) of the *Schedule* to allow the applicant to seek repayment.

[23] As a result, the applicant may seek repayment of $2,315.00 in medical benefits paid to the respondent.

Material and wilful misrepresentations—medical benefits repayment and IRB

[24] I find that the applicant is entitled to the repayment of $2,315.00 in medical benefits, due to the respondent's wilful and material misrepresentations, plus interest.

[25] I find that the respondent is barred from receiving IRB in relation to the claimed subject accident, due to wilful and material misrepresentation.

[26] Section 52(1)(a) of the *Schedule* provides that an insured person is liable to repay an insurer any benefit 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."

[27] Section 31(1) of the *Schedule* establishes the circumstances during which certain benefits—specifically IRB, a non-earner benefit, or a benefit under ss. 21, 22, and 23 of the *Schedule* (expenses for education, visitors, and housekeeping and home maintenance)—are not payable. In s. 31(1)(b), one of the circumstances is detailed as being "a material misrepresentation that induced the insurer to enter into the contract of automobile insurance."

[28] Section 53 of the *Schedule* stipulates that an insurer may terminate the payment of benefits to or on behalf of an insured person, if that insured person has wilfully misrepresented material facts with respect to the application for the benefit and if the insurer provides notice setting out reasons for the termination.

[29] The applicant submits the following:

i. The respondent wilfully misrepresented material facts that induced Sonnet Insurance Company to enter into a contract for automobile insurance.

Specifically, the applicant alleges that the applicant represented that in resided in Thunder Bay, ON to secure this insurance policy for the period of March 21, 2019 to March 21, 2020, when he actually resided in North York, ON.

ii. As a result of the above misrepresentation, Sonnet was induced into providing an automobile insurance policy for $2,810.38 per year based on the Thunder Bay address—not the $3,669.28 yearly rate based on the respondent's true address in North York. The applicant notes that the premium difference between the two addresses amounted to 23 per cent, a significant number that qualifies it to be regarded as a material fact. The applicant relies on *Sagl v. Chubb Insurance Company of Canada*, 2009 ONCA 388 (CanLII) and *16-004349 v. "Mr. P"*, 2017 CanLII 148395 (ON LAT) to support its position, further noting with regard to *16-004349 v. "Mr. P"* that the Tribunal has found a policy difference as low as 15 per cent to be material.

iii. The respondent provided Sonnet falsified BMO banking information regarding a bank account in Thunder Bay.

iv. The respondent provided Sonnet a falsified lease agreement for a residence in Thunder Bay.

v. The respondent staged the alleged subject accident on January 24, 2020 in an attempt to defraud Sonnet for the purpose of collecting insurance money.

[30] In the absence of submissions from the respondent, I accept the position of the applicant. In any event, the applicant's argument is well founded and very well substantiated with a significant amount of documentary evidence.

[31] I am not providing a ruling on the allegations about the staging of the subject accident, as this is not listed as one of the issues in dispute in the CCRO dated February 21, 2023. As such, determining if the January 24, 2020 incident was an accident by definition of the *Schedule* is not properly before me.

[32] Further, the applicant has not substantiated its allegations about the nature of the alleged accident. While the applicant makes a number of claims in submissions based on the respondent's brother, Raouf Sa Sarassra, coming forward with anonymous emails to the insurer in May-June 2020 and then taking part in a sworn affidavit dated June 21, 2022, the applicant has not provided this affidavit in its submissions. Only the aforementioned anonymous emails—which have

also had their sender lines blacked out in the copies before me—were included with the applicant's submissions, and they are of negligible value without the support of the affidavit.

[33] However, I do agree with the position of the applicant in the principal aspects of this dispute. The other allegations made by the applicant have been corroborated with external, objective evidence that meet the applicant's burden in proving that the respondent made wilful misrepresentations that warrant the repayment of the medical rehabilitation benefits in dispute as well as barring the respondent from receiving IRB.

[34] I assign significant weight to the affidavit of Cheryl Legarde, a Thunder Bay resident with whom the respondent claimed to have signed a lease agreement during the period of time in question here. In this affidavit, dated December 19, 2022, Ms. Legarde fully denied the respondent's claims in an Examination Under Oath (that took place on June 4, 2020) that he had rented living accommodations from her in Thunder Bay during the time period in question here.

[35] Specifically, Ms. Legarde said that she had only met the respondent on two or three occasions. She noted that she agreed to the respondent's request to use her apartment as his mailing address, but that she did so in the assumption that this would be only to receive mail. Ms. Legarde asserted that she had not leased her apartment to the respondent at any time and that the respondent had never lived in, or even spent the night in, this residence (which she further explained was in a building designed for seniors' living). Ms. Legarde also stated that the handwriting on the lease agreement that the respondent provided to Sonnet was not hers.

[36] I agree with the applicant's assertion that the respondent provided falsified bank information in an effort to mislead Sonnet regarding his home address. These allegations were confirmed in an email sent to the applicant by Jocelyne Sauve, a BMO manager, on March 3, 2020. In this email, Ms. Sauve noted that the banking statement that had been provided to Sonnet by the respondent was "fake." She also confirmed that the respondent's name was not on the account referenced in the statement and that the transit number on the statement belonged to a BMO branch in Scarborough, ON, not Thunder Bay, as the respondent claimed.

[37] Lastly, I accept the applicant's position that the monetary difference in automobile insurance policy premiums between Thunder Bay and North York constitutes a material fact. In submissions, the applicant has substantiated its argument that the difference in premiums between the two residents would have

amounted to 23 per cent by including the certificate of the applicant's insurance for the Thunder Bay address and a quote for the North York address.

[38] As held at paragraph 51 of *Sagl v. Chubb*, "[a] fact is relevant or material if it would influence a prudent insurer in deciding whether to issue the policy or in determining the amount of the premium." Here, I would agree that the home address misrepresentation influenced the insurer to determine a lower premium. And I am also persuaded that the 23 per cent difference is material, in part due to my agreement with the Tribunal's finding in *16-004349 v. "Mr. P"* and in part due to the simple fact that the difference here constitutes almost a full quarter of the insurance policy premium.

[39] For the above reasons, I accept that the respondent misrepresented his address and did not reside in Thunder Bay between March 21, 2019 and March 21, 2020. Moreover, I agree with the applicant that the respondent did so for the purposes of fraudulently inducing Sonnet into providing automobile insurance. In my view, the combination of the affidavit of Ms. Legarde and the comments from Ms. Sauve sufficiently demonstrates that the respondent wilfully misrepresented his home address as being in Thunder Bay while residing in North York, with the intent of securing a significantly lower automobile insurance premium.

[40] Accordingly, the applicant is entitled to the repayment of $2,315.00 in medical benefits from the respondent, pursuant to s. 52(1)(a) of the *Schedule*. Interest is applicable on this amount, in accordance with ss. 52(5) and 52(6) of the *Schedule*.

[41] Further, due to the material misrepresentation detailed above, the respondent is barred from receiving IRB in relation to the claimed accident dated January 20, 2020, pursuant to ss. 31(1)(b) and 53 of the *Schedule*.

Costs

[42] I find that the respondent is not liable to pay costs to the applicant.

[43] Costs are a discretionary remedy that the Tribunal may impose when it is determined that a party has acted unreasonably, frivolously, vexatiously, or in bad faith, pursuant to Rule 19.1 of this Tribunal's *Rules* and s. 17.1 of the *SPPA*.

[44] In this instance, the applicant is requesting $1,106.00 in costs due to the respondent's unreasonable, frivolous, vexatious, and bad-faith conduct by "repeatedly filing LAT applications" regarding this alleged accident and also

withdrawing one of these applications on the eve of a Tribunal hearing, an action that caused the applicant to incur significant costs.

[45] In submissions, it breaks this down to $1,000.00 for costs, the maximum amount allowable per full day of attendance at a motion, case conference, or hearing under Rule 19.6, plus an additional $106.00 to cover the cost of the Tribunal application.

[46] In addition, the applicant relies on *Jevco Insurance v. Owusu-Achiaw*, 2021 CanLII 18941 (ON LAT) ("*Jevco*"), a Tribunal decision where costs of $106.00 were awarded in a similar situation involving an insured person misrepresenting a home address to secure a lower automobile insurance premium.

[47] I do not find the rationale for costs noted in *Jevco* to be persuasive. While the situations are similar, I note that I am not bound by decisions of this Tribunal, and that the bar for costs is a high one. In my view, that high bar has not been met here, as the respondent's conduct with regard to this hearing does not meet the criteria as noted in Rule 19.5.

[48] Most notably, the applicant has not directed me to sufficient evidence that the respondent's behaviour interfered with the Tribunal's ability to carry out a fair, efficient, and effective process. While the respondent's misconduct with regard to the misrepresentations detailed above is serious, his only transgression in this hearing process was his failure to file submissions. That is not enough to demonstrate unreasonable, frivolous, vexatious, or bad-faith conduct that would rise to the level of awarding costs. Lastly, awarding costs against an applicant who failed to file submissions would have a negative impact on individuals accessing the Tribunal system.

[49] As a result, the respondent is not liable to pay costs to the applicant.

ORDER

[50] I find that:

i. The respondent wilfully misrepresented material facts with respect to his application for medical and rehabilitation benefits and IRB.

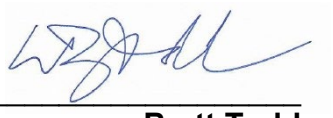
ii. As a result of his wilful misrepresentation to the applicant, the respondent shall repay $2,315.00 in medical benefits, in accordance with s. 52(1)(a) of the *Schedule*.

iii. The respondent shall pay interest on the above amount, in accordance with ss. 52(5) and 52(6) of the *Schedule*.

iv. The respondent is barred from receiving IRB in relation to this application and the alleged accident on January 20, 2020 due to material misrepresentation, in accordance with ss. 31(1)(b) and 53 of the *Schedule*.

v. The respondent is not liable to pay costs to the applicant.

Released: February 9, 2024



Brett Todd
Vice-Chair