

**LICENCE APPEAL  
TRIBUNAL**

**TRIBUNAL D'APPEL EN MATIÈRE  
DE PERMIS**



**Safety, Licensing Appeals and  
Standards Tribunals Ontario**

**Tribunaux de la sécurité, des appels en  
matière de permis et des normes Ontario**

**Citation: [SSZ] vs. Certas Direct Insurance Company, 2019 ONLAT 18-  
007365/AABS**

**Date: October 30, 2019  
File Number: 18-007365/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:**

**[SSZ]**

**Appellant**

**and**

**Certas Direct Insurance Company**

**Respondent**

**DECISION**

**ADJUDICATOR: Tavlin Kaur**

**APPEARANCES:**

For the Appellant: Arash Goneh-Farahani, Paralegal

For the Respondent: Pamela Vlasic, Counsel

**HEARD: In Writing Hearing: May 13, 2019**

## OVERVIEW

- [1] The applicant was injured in an automobile accident (“the accident”) on February 24, 2016 and sought insurance benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010*<sup>1</sup> (the “*Schedule*”). He applied to the Licence Appeal Tribunal – Automobile Accident Benefits Service (“the Tribunal”) when his claims for benefits were denied by the respondent.
- [2] The respondent denied the applicant’s claims because it determined that all of the applicant’s injuries fit the definition of “minor injury” prescribed by s. 3(1) of the *Schedule*, and therefore, fall within the Minor Injury Guideline<sup>2</sup> (“MIG”). The applicant’s position is the opposite.
- [3] If the applicant’s position is correct, then I must address the issue of whether the medical benefits claimed are reasonable and necessary.
- [4] If the respondent’s position is correct, then the applicant is subject to a \$3,500.00 limit on medical and rehabilitation benefits prescribed by s.18(1) of the *Schedule*, and in turn, a determination of whether claimed medical benefits are reasonable and necessary will be unnecessary as the \$3,500.00 maximum benefit for minor injuries has been exhausted.

## ISSUES

- [5] Did the applicant sustain predominantly minor injuries as defined by the *Schedule*?
- [6] If the applicant’s injuries are not within the MIG, then I must determine the following issues:
  - (i) Is the applicant entitled to receive a medical benefit in the amount of \$1,656.81 for physiotherapy, recommended by Toronto Medical Centre in a treatment plan dated December 18, 2017, and denied by the respondent on January 16, 2018?
  - (ii) Is the applicant entitled to receive a medical benefit in the amount of \$2,743.37 for psychological treatment, recommended by Toronto Medical Centre in a treatment plan dated April 9, 2018, and denied by the respondent on May 19, 2018?
  - (iii) Is the applicant entitled to payments for the cost of examinations in the amount of \$1,995.33 for a psychological assessment, recommended by

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<sup>1</sup> O. Reg. 34/10.

<sup>2</sup> Minor Injury Guideline, Superintendent’s Guideline 01/14, issued pursuant to s. 268.3 (1.1) of the *Insurance Act*.

Toronto Medical Centre in a treatment plan dated March 22, 2018 and denied by the respondent on April 27, 2018?

- (iv) Is the applicant entitled to interest on any overdue payment of benefits?

## RESULT

- [7] I find that the applicant sustained predominantly minor injuries as defined under the *Schedule*. It is therefore unnecessary to consider the reasonableness or necessity of the treatment plans.

## ANALYSIS

- [8] The onus is on the applicant to show that his injuries fall outside of the MIG.<sup>3</sup> In order to determine if the applicant's injuries fall outside the MIG, I considered whether or not there was any evidence that the applicant (a) had a pre-existing medical condition that would prevent him from achieving maximum medical recovery within the MIG; (b) if he sustained any physical injuries that were more than soft tissue in nature; or (c) if he has psychological injuries and/or post-concussion syndrome as a result of the accident.

## ANALYSIS

### ***The Minor Injury Guideline***

- [9] Section 3(1) of the *Schedule* defines a "minor injury" as "one or more of a sprain, strain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and includes any clinically associated sequelae to such an injury and includes any clinically associated sequelae to such an injury." The MIG defines in detail what these terms for injuries mean.
- [10] Section 18(1) of the *Schedule* prescribes a \$3,500.00 limit on medical and rehabilitation benefits payable for any one accident.
- [11] The onus is on the applicant to show that his injuries fall outside of the MIG<sup>4</sup>

### ***Did the applicant have a pre-existing condition?***

- [12] I do not find that the applicant had a pre-existing condition that would remove him from the MIG for the following reasons:
- [13] Section 18(2) of the *Schedule* provides that insured persons with minor injuries who have a pre-existing medical condition may be exempted from the \$3,500.00 cap on benefits. In order to be removed from the MIG, the

<sup>3</sup> *Scarlett v. Belair*, 2015 ONSC 3635 para.24

<sup>4</sup> *Scarlett v. Belair*, 2015 ONSC 3635 para.24

applicant must provide compelling evidence meeting the following requirements:

- (i) There was a pre-existing medical condition that was documented by a health practitioner before the accident; and
- (ii) The pre-existing condition will prevent maximal recovery from the minor injury if the person is subject to the \$3,500.00 on treatment costs under the MIG.<sup>5</sup>

[14] A pre-existing condition will not automatically exclude a person's impairment from the MIG; it must be shown to prevent maximal recovery within the cap imposed by the MIG.

[15] The applicant states that the assessment reports pertaining to two prior accidents support that he had a pre-existing condition which would prevent him from achieving maximum medical recovery within the MIG.<sup>6</sup> However, he does not provide any explanation as to how those prior accidents affected his recovery from this accident.

[16] I find that the applicant did not have a pre-existing condition that would remove him from the MIG for the following reasons.

- a. The applicant has not provided any evidence of pre-existing conditions that was documented prior to the subject accident.
- b. I am not persuaded by the reports that the applicant is relying on in support of his position because they were written after the date of the subject accident; not prior to the accident. For example, some of the reports that the applicant is relying on were written two to three years after the subject accident.<sup>7</sup>
- c. The applicant reported having no pre-existing health conditions and being in good health prior to the January 7, 2016 accident to various assessors.<sup>8</sup> He denied receiving counseling for emotional or adjustment difficulties.<sup>9</sup>

<sup>5</sup> Minor Injury Guideline, Superintendent's Guideline 01/14, issued pursuant to s. 268.3 (1.1) of the *Insurance Act* page 5, Part 4, "Impairments that do not come within this Guideline".

<sup>6</sup> There were at least three accidents noted throughout the record. The applicant did not specify which ones in his submissions.

<sup>7</sup> Chachshina and Keeling report dated April 7, 2018. Grinberg and Waxer report dated February 18, 2019.

<sup>8</sup> Golden and Levinson report dated May 17, 2016. Majl report dated August 22, 2016.

<sup>9</sup> Golden and Levinson report dated May 17, 2016.

d. A review of the evidence shows that the applicant suffered from adjustment disorder in 2011. However, the applicant has not provided any evidence as to how this condition would prevent him from achieving maximal recovery from the MIG.

[17] The applicant has not satisfied the criteria of section 18 of the *Schedule*, namely that he provides compelling medical evidence of a pre-existing condition that was documented by a health practitioner, prior to his accident, which would prevent him from achieving maximal medical recovery if subjected to the MIG limits. As a result, I find the applicant's pre-existing conditions do not remove him from the MIG.

***Did the applicant sustain predominantly minor physical injuries?***

[18] Section 3(1) of the *Schedule* defines a minor injury as "one or more of a sprain, strain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and includes any clinically associated sequelae to such an injury and includes any clinically associated sequelae to such an injury." Section 18(1) limits the entitlement for medical and rehabilitation benefits for minor injuries to \$3500.00.

[19] The applicant has failed to persuade me that he sustained any injuries that were more than soft tissue in nature for the following reasons.

[20] The emergency department note dated February 24, 2016 states that his spine was tender along the midline of the cervical spine as well as the T-spine and L-spine. The x-rays for the C-spine, T-spine and L-spine were normal with no obvious fractures.

[21] The applicant had an x-ray on March 9, 2016 and the results were normal. It was found that there was no soft tissue abnormality.

[22] An MRI of the applicant's lumbar spine was conducted on December 15, 2016 which confirmed normal alignment and no fractures. The MRI revealed that the applicant had degenerative disc disease at L5-S1 which might be irritating the existing s1 nerve root. There was a mild reactive endplate at this level which often correlates to pain symptoms.

[23] A review of the x-ray and MRI show that the applicant's injuries were minor in nature. As for the degenerative disc disease, it appears to have developed later in the year. Degenerative disc disease is an age-related condition. There is nothing in the evidence to show that it is a result of the accident. Moreover, the pain that the applicant experienced may be a result of the mild reactive endplate as noted by Dr. Ryan Margau. No medical opinion or diagnosis was submitted by the applicant of a medical expert to support that

he above-noted diagnostic results were accident related or that they do not fit within the definition of the MIG.

- [24] Moreover, the applicant met with Dr. Ghazi, his family doctor on a few occasions from February 2016 to March 2016. Other than some investigation into marked bradycardia and an episode of syncope which will be addressed later on, I did not find the family physician's clinical notes and records to be helpful. After March 2016, there is nothing in the family doctor's record that shows ongoing pain-related complaints. If the applicant's injuries were more than minor in nature, I would expect that he would have visited his family doctor on a more constant basis. The applicant's family doctor's records did not persuade me that the physical injuries he sustained are more than minor in nature.

### ***Chronic Pain***

- [25] I am not satisfied that the applicant has chronic pain as a result of the accident. The applicant relies on an orthopaedic assessment completed by Dr. Tajadin Getahun dated February 6, 2019. Dr. Getahun diagnosed the applicant with chronic myofascial strain of the cervical spine, myofascial strain of the thoracic spine, chronic myofascial strain of the lumbosacral spine, aggravation of pre-existing degenerative disc disease and left knee contusive injury/patellofemoral syndrome. He is of the opinion that the applicant's accident-related injuries are a direct result of the motor vehicle accident on February 25, 2016. Dr. Getahun states that the applicant's "injuries do not fall within the Minor Injury Guidelines as his injuries have not resolved within the expected time course for uncomplicated soft tissue injuries."
- [26] I am not persuaded by Dr. Getahun's opinion. Firstly, the documentation that Dr. Getahun reviewed is mostly from 2016 with the exception of Dr. Keeling's psychological assessment dated April 7, 2018. There is a gap with respect to documentation pertaining to the applicant's pain-related issues from 2017 to 2019. He did not review clinical notes and records from his family physician that document the applicant's pain-related complaints from 2017 and onwards. He did not review the s.44 assessments. It is unclear how he came to this conclusion without fully considering the applicant's medical history.
- [27] Moreover, Dr. Getahun does not explain how he determined that the injuries are a direct result of the subject accident. Based on the evidence, there have been at least three accidents from 2016 to 2017. The applicant's impairments could be a result of any one of these accidents. There has to be a basis for such a conclusion. I am not convinced that there is one in this particular case based on the evidence before me.
- [28] The applicant has not provided any additional objective evidence that shows a history of pain-related complaints. The CNRs of Dr. Ghazi do not mention

these pain-related complaints. Without objective evidence, it is difficult to determine that the applicant suffers from chronic pain.

- [29] I find that the applicant has not met his burden to demonstrate that he has chronic pain. He has not provided supporting medical records that corroborates that he suffers from chronic pain as a result of the subject accident. The applicant has not satisfied his onus to establish that he has chronic pain that may remove him from the MIG.

### ***Psychological Impairment***

- [30] Psychological impairments, if established, may fall outside the MIG, because the MIG only governs “minor injuries” and the prescribed definition does not include accident related psychological impairments.
- [31] I find that the applicant has not demonstrated that he suffers from a psychological injury that would remove him from the MIG for the following reasons.
- [32] There is nothing in Dr. Ghazi’s clinical notes and records that show a history of ongoing psychological complaints. If the applicant had psychological issues, I would expect that he would speak to his doctor for the purposes of treatment and/or referrals.
- [33] I am not persuaded by the psychological assessment of Alysa Golden and Toby Levinson dated May 17, 2016 relied upon by the applicant. This assessment is in relation to an accident that occurred on January 7, 2016. The assessors diagnosed the applicant with Adjustment Disorder with Mixed Anxiety and Depressed Mood and Specific Phobias, Situational Type (Vehicle Driver and Passenger).
- [34] Based on my review of this report, there is no mention made of the subject (February 24, 2016) accident to the assessors. As a matter of fact, when asked about being involved in any previous MVA, the applicant reported that he was involved in one on May 9, 2014. It is unclear why the applicant did not mention the subject accident. Moreover, there is no evidence that the applicant sustained psychological injuries as a result of the February 24, 2016 accident or that this accident further exacerbated his condition. As such, I am assigning less weight to this report.
- [35] The applicant also submitted a psychological assessment completed by Galina Chachshina and Dr. Kenneth R. Keeling on April 7, 2018. I did not find this report persuasive as it was completed two years after the subject accident. The assessors diagnosed the applicant with Adjustment Disorder with Mixed Anxiety and Depressed Mood and Specific Phobia, Situational Type (Automobile Anxiety as a Driver or passenger). In my view, the findings

of this assessment are based on the applicant's self-reporting of his impairments.

- [36] Furthermore, the assessors have not documented whether they reviewed the applicant's medical records. Although the assessors completed four psychological tests with the applicant, I am not persuaded that that his impairments are stemming from the February 24, 2016 car accident. What I found lacking was any objective evidence to link the subject accident to the psychological diagnosis. There is no evidence that shows causation. Furthermore, there is a significant delay from the time of the accident to the date of this report.
- [37] Finally, I did not find the report by Lital Grinberg and Dr. Peter Waxer dated February 18, 2019 compelling. This report was completed approximately three years after the subject accident. The assessors diagnosed the applicant with Post-Traumatic Stress Disorder, Generalized Anxiety Disorder and Somatic Symptom Disorder. The doctor makes the following statement "in my opinion, it is probable that the physical and related mental impairments sustained in the subject accident have led to chronic frustration with activity limitations, and there is no reason to hypothesize that [SSZ] would have developed his mental health conditions had the subject accident not occurred."
- [38] In my opinion, this conclusion is problematic for two reasons. Firstly, it appears that the assessors relied mostly on the applicant's self-reporting, which was inconsistent with the other evidence. Secondly, it appears that the assessors did not review the applicant's clinical notes and records. For example, the report notes that "psychological assessments are based upon information from a number of sources. These include verbal reports from the patient, his answers to psychometric tests, and the psychologist's observations regarding his behavior."
- [39] Based on my review of the evidence, the assessors were not provided with an accurate account of the applicant's history. He did not inform them about the accidents that took place in 2016 and 2017. Based on the information provided, they concluded that his impairments were a direct result of the February 2016 accident. If they were provided with an accurate account, perhaps they would have arrived at a different conclusion. For these reasons, I am assigning little weight to their opinion.

### **Post-Concussive Syndrome**

- [40] The applicant also maintains that he suffers from post-concussive syndrome as a result of the accident. His submissions state "the applicant was treated for a head injury at Mackenzie Health and continues to suffer from headaches. The evidence of a potential concussion and the assessment reports provided



pertaining to the prior accidents would evidently remove the client from the Minor Injury Guideline.”

- [41] The applicant has failed to satisfy me that he sustained a concussion as a result of the subject accident for the following reasons.
- [42] On February 24, 2016, the applicant was taken to Mackenzie Health. A CT scan was conducted to rule out a head injury. Dr. Stroz concluded that it was an unremarkable CT of the brain.
- [43] The applicant met with his family physician on March 9, 2016 and reported that he was experiencing headaches on and off. Dr. Ghazi examined him and found that his head, neck and neurological function were normal. The diagnosis was “headaches/MVA”. The doctor prescribed him Naproxen BID for one week and asked him to follow up in one to two weeks. Based on the clinical notes and records from Dr Ghazi, it appears that the applicant did not follow up with his doctor as instructed. It is unclear whether the suggested treatment was helpful or whether any other treatment was recommended.
- [44] Dr. Ghazi also referred him to Cardiologist Dr. Bahareh Motlagh to be evaluated for marked bradycardia and one episode of syncope. Marked bradycardia is associated with a slower than normal heart rate and syncope is a temporary loss of consciousness caused by a fall in blood pressure. Dr. Ghazi notes that the applicant has been asymptomatic since the accident. If Dr. Ghazi felt that the applicant was suffering from a concussion, it begs the question why the applicant was referred to see a cardiologist instead of a neurologist. I infer from the evidence that Dr. Ghazi suspected that the applicant’s loss of consciousness may have not been a result of a concussion, but rather it was due to issues with the applicant’s heart rate and blood pressure.
- [45] The applicant relies on a neurological evaluation completed by Dr. Lance B. Majl on August 22, 2016. This report is in relation to the January 7, 2016 accident. No mention is made of the subject accident although this report was completed months after it occurred. Dr. Majl diagnosed the applicant with post-traumatic headaches, post-traumatic migraine headaches and cervicogenic headaches. Dr. Majl states that the headaches are a direct result of the motor vehicle accident of January 7, 2016. The applicant did not provide any evidence that the subject accident may have caused a concussion or exacerbated his condition.
- [46] As such, based on the reasons above, I am not persuaded that the applicant sustained post-accident concussive syndrome as a result of the subject accident.

### **The treatment plans and interest**

- [47] As I have found that the applicant's injuries fall within the Minor Injury Guideline, I do not have to make a determination on whether the treatment plans are reasonable and necessary. Consequently, interest is not payable as there are no amounts owing.

### **ORDER**

- [48] For the reasons outlined above, I find that the applicant sustained predominantly minor injuries that fall within the Minor Injury Guideline. Accordingly, he is not entitled to the treatment plans claimed in this application. His application is dismissed in its entirety.

**Released: October 30, 2019**

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**Tavlin Kaur  
Adjudicator**