

Dear Parties,

**RE: Tribunal File No: 23-005475/AABS
Bibekananda Majumder vs. Sonnet Insurance Company**

Please see the attached AABS Preliminary Decision related to your Automobile Accident Benefits Service dispute.

If you have questions regarding the scheduling of a future event, please contact AABSScheduling@ontario.ca

Should you have any other concerns regarding this file, ***please contact Tania Cam, the assigned Case Management Officer***, or the Tribunal via telephone at **416-326-1356** or via email at LATregistrar@ontario.ca.

Sincerely,

Pamela Austrie-Christian
Case Management Officer
Licence Appeal Tribunal
Tribunals Ontario
General Inquiries: 416-326-1356 | Toll Free: 1-888-444-0240
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Tribunal d'appel en matière de permis



Citation: Majumder v. Sonnet Insurance Company 2024 ONLAT 23-005475/AABS-PI

Licence Appeal Tribunal File Number: 23-005475/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:

Bibekananda Majumder

Applicant

and

Sonnet Insurance Company

Respondent

PRELIMINARY ISSUE HEARING DECISION AND ORDER

ADJUDICATOR: Ulana Pahuta

APPEARANCES:

For the Applicant: Manuel Carrondo, Paralegal

For the Respondent: Colin MacDonald, Counsel

HEARD: By way of written submissions

OVERVIEW

- [1] Bibekananda Majumder, the applicant, was involved in an automobile accident on December 7, 2021, 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, Sonnet Insurance Company, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (“Tribunal”) for resolution of the dispute.

PRELIMINARY ISSUE IN DISPUTE

- [2] The preliminary issue to be decided is:
- i. Is the applicant barred from proceeding with his claim for benefits, as a result of his failure to notify the respondent of the circumstances giving rise to a claim for a benefit or to submit an application for the benefit within the times prescribed by the *Schedule*?

RESULT

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

ANALYSIS

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] 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), and was more recently reiterated in *K.H. vs Northbridge*, 2019 CanLII 101613 (ON LAT). The guiding principles are summarized as follows:

- a. An explanation must be determined to be credible or worthy of belief before its reasonableness can be assessed.
- b. The onus is on the insured person to establish a “reasonable explanation.”
- c. Ignorance of the law alone is not a “reasonable explanation”.
- d. 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.
- e. The lack of prejudice to the insurer does not make an explanation automatically reasonable.
- f. 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.

Did the applicant fail to notify the respondent in accordance with s. 32(1) of the Schedule?

- [6] I find that the applicant did not notify the respondent of his intention to apply for accident benefits within 7 days of the circumstances that gave rise to the entitlement to the benefit, or as soon as practical thereafter.
- [7] The respondent submits that while the accident took place on December 7, 2021, the applicant did not notify it of his intention to apply for accident benefits until March 7, 2022, three months later. There is some dispute between the parties as to the exact date that the applicant notified the respondent. The applicant submits that he had submitted his initial accident benefits package on February 22 2022. However, I agree with the respondent that while the Application for Accident Benefits (“OCF-1”) was dated February 22, 2022, the timestamp on the OCF-1 confirms the date of submission as March 7, 2022. As such, I accept that the date that the applicant first notified the respondent was three months after the accident.
- [8] I agree with the respondent that three months after the accident is well outside the seven days specified in s. 32(1) of the *Schedule*. However, the applicant submits that he has a reasonable explanation for the delay in notice of his intention to apply for accident benefits.

The applicant has not established a reasonable explanation for the delay

- [9] The respondent submits that the applicant has not explained why he took months to notify the respondent of his intention to apply for accident benefits. It submits that the applicant was aware of any injuries immediately, or soon after the accident, relying on the applicant's Examination Under Oath ("EUO") transcript. It further argues that the applicant's Disability Certificate ("OCF-3") stated that the applicant's symptoms first appeared on December 7, 2021, the date of the accident. The respondent contends that it has provided the applicant with multiple opportunities to provide a reasonable explanation for the delay, including a request for a Statutory Declaration, sent 16 days after receipt of the OCF-1. The applicant returned the Statutory Declaration without providing an explanation for the delay.
- [10] In his submissions, the applicant concedes that he had sustained injuries during the elapsed period prior to submitting his application. However, he points to his EUO transcript where he states that he does not "*like to complain*", and that once he saw a "*problem coming*", he would "*do this one*". The applicant argues that the fact that he does not like to complain, is a reasonable explanation for the delay.
- [11] I am not persuaded by the applicant's argument. I do not find that the single statement in the EUO that he does not like to complain, to be a reasonable explanation for the delay. No further evidence or detailed submissions were provided by the applicant to explain his delay in notifying the respondent.
- [12] The applicant further argues that his statements that he could not remember why he waited to submit his OCF-1, were due to the fact that the EUO was scheduled almost a year after the accident. However, I agree with the respondent that the applicant had an earlier opportunity to provide an explanation, when the respondent requested a Statutory Declaration and reasonable explanation on March 23, 2022. However, no explanation was provided at that time.
- [13] As such, based on the evidence before me, I find that the applicant has not establish a reasonable explanation for the delay in notifying the respondent of his intention of applying for accident benefits.

Communication from the respondent and s. 131 of the Insurance Act

- [14] The applicant raises the further argument that the preliminary issue should be dismissed on the basis of the application of the remedies of waiver and estoppel as set out under s. 131 of the *Insurance Act*, R.S.O. 1990, c. I.8. He submits that the respondent initially approved treatment plans in March and May 2022, and it

was only on November 8, 2022 that the respondent denied the application based on s. 32 of the *Schedule*. The applicant cites *Akinyimide v. Economical Mutual Insurance Company*, 2023 ONSC 5272 (CanLII), in support of his position that the Tribunal has jurisdiction to award the remedies cited in s. 131.

[15] I agree with the respondent that the applicant has not established a basis for the application of waiver and estoppel pursuant to s. 131. Section 131(b) of the *Insurance Act* states that an insured is excused from the obligation to comply with a requirement under a contract, if:

(b) The insurer's conduct reasonably causes the insured to believe that the insured's compliance with the requirement is excused in whole or in part, and the insured acts on that belief to the insured's detriment.

[16] Although the applicant makes the general argument that s. 131 is applicable, he has not provided specific submissions or evidence as to how the insurer's conduct caused him to believe that compliance with s. 32 was not required and how he acted on that belief to his detriment. The applicant only submits that the respondent initially approved treatment plans. However, no argument was provided as to how the applicant detrimentally relied on that conduct.

[17] Without any specific submissions or evidence on this issue, I find that the applicant has not established that s. 131 of the *Insurance Act* is applicable in the present matter.

Section 55

[18] Pursuant to s. 55(1)1 of the *Schedule*, an insured person shall not apply to the Tribunal under subsection 280(2) of the *Insurance Act* if the insured person has not notified the insurer of the circumstances giving rise to a claim for a benefit or has not submitted an application for the benefit within the times prescribed in s. 32.

[19] As outlined above, I find that the applicant did not notify the respondent of the accident within the timelines prescribed by the *Schedule* and has not provided a reasonable explanation for the delay. Accordingly, I find that the applicant is statute-barred from proceeding with his application before the Tribunal.

CONCLUSION AND ORDER

[20] The applicant is barred by s. 55(1)1 of the *Schedule* from proceeding with his application. The application is dismissed. The Tribunal shall vacate any date that has been scheduled for the substantive issue hearing.

Released: February 7, 2024



Ulana Pahuta
Adjudicator