



**Citation: Pridonashvili v. Economical Mutual Insurance Company, 2023 ONLAT
21-015769/AABS - P**

Licence Appeal Tribunal File Number: 21-015769/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:

Nikoloz Pridonashvili

Applicant

and

Economical Mutual Insurance Company

Respondent

PRELIMINARY DECISION

ADJUDICATOR: Terry Prowse

APPEARANCES:

For the Applicant: Nikoloz Pridonashvili, Applicant
Jenny Babayev, Paralegal

For the Respondent: Roovina Sehdev, Accident Benefit Specialist
Kyle McNerney, Counsel

Heard by Videoconference: April 4-6, 2023

OVERVIEW

- [1] Nikoloz Pridonashvili, the applicant, was the passenger of an automobile that was involved in an accident on July 23, 2020. He applied for accident benefits, pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)*. The respondent, Economical Mutual Insurance Company, denied the benefits. The applicant applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

PRELIMINARY ISSUES

- [2] The parties submitted the following preliminary issues to be considered:
- i. Is the applicant disentitled to some or all of the benefits sought because he (a) failed to notify the insurer of his intention to apply for benefits within the required time limits set out in the *Schedule* and (b) provided no reasonable explanation for his failure to notify the insurer within the required time limit?
 - ii. Is the applicant disentitled to some or all of the benefits sought because he wilfully misrepresented material facts with respect to his application for the benefits?
 - iii. Is the applicant disentitled to some or all of the benefits sought because he failed to submit a completed and signed application for benefits to the insurer within 30 days after having received the application forms?
 - iv. Did the insurer fail to respond to the applicant's application within the required timeline set out in the *Schedule*, and if so, what is the impact of this failure?

RESULT

- [3] I find the applicant is statute-barred from proceeding with his claim for statutory accident benefits, as he failed to notify the respondent of the circumstances giving rise to the claim, without a reasonable explanation. Therefore, it is unnecessary for me to consider the remaining preliminary or substantive issues.

ANALYSIS

- [4] Pursuant to section 32(1) of the *Schedule*, a person who intends to apply for statutory accident benefits shall notify the insurer of their intention no later than

the seventh day after the circumstances that give rise to the entitlement to the benefit, or as soon as practicable thereafter.

- [5] Once an insurer receives notice of an applicant's intention to apply for statutory accident benefits, the insurer must provide the applicant with the appropriate OCF-1 application forms, a written explanation of the benefits available, information to assist the person in applying for benefits and information on the election relating to the specified benefits, as required by section 32(2). Pursuant to section 32(5) of the *Schedule*, the applicant must then submit a completed and signed application for benefits to the respondent within 30 days after receiving the form.
- [6] 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 interpretation of "reasonable explanation" is guided by *Horvath and Allstate Insurance Company of Canada*, FSCO A02-000482, June 9, 2003, and was more recently reiterated in *K.H. vs Northbridge*, 2019 CanLII 101613 (ON LAT). Therefore, without a reasonable explanation, s. 55 of the *Schedule* bars applicants from applying to the Tribunal if they have not notified the insurer of the circumstances giving rise to a claim for a benefit or have not submitted an application for the benefit within prescribed time limits.

The applicant failed to notify the insurer within the prescribed time limits

- [7] I find that the applicant contravened Section 32(1) of the *Schedule* by not notifying the respondent within 7 days of the circumstances that give rise to the entitlement to the benefit, or as soon as practical after.
- [8] The respondent argues that although the automobile accident occurred on July 23, 2020, it was not made aware of it until December 2020. The respondent submits that as soon as it received the notification, it took the necessary steps to provide the applicant with the proper documentation and confirm his eligibility for accident benefits. The respondent submits that the applicant's delay in reporting is in excess of the time permitted by s. 32 of the *Schedule*, and as such, the applicant should be statute barred from going forward with his claim.
- [9] The applicant initially said that he telephoned the respondent about the accident in August 2020 but did not receive a reply. When asked for the date he telephoned, he did not know. He then altered his submission, stating that he did not contact the insurance company himself, but that the driver mentioned the applicant was a passenger when the driver contacted the respondent in August 2020. The applicant asks the Tribunal to consider its January 9, 2023 Preliminary

Issue Decision (and Order). That decision found that the driver of the vehicle, Merab Katsiashvili, did not fail to notify the respondent of the accident within the time limits of the Schedule.

- [10] While I appreciate the applicant's submission that the same preliminary issue was dealt with in the case of the driver, these are separate and distinct applications. As such, the onus is on the applicant of this claim to provide sufficient evidence that he properly applied for accident benefits within the statutory time limits of his application. The preliminary issue decision related to the driver did not deal with the applicant and has no probative value in this case. Even if it did, I would not be bound by the findings of another adjudicator.
- [11] While the applicant initially provided conflicting evidence of when he first notified the respondent that he was involved in an accident, he ultimately confirmed that he did not personally do so for several months. Clearly, the seven-day time limit under s. 32 was not met, as the applicant applied for benefits from the respondent five months after the accident occurred.

There was also no reasonable explanation

- [12] My interpretation of a "reasonable explanation" would normally be guided by considering *Horvath v. All State Insurance Co. of Canada, 2003 Carswell Ont 5651*, against the facts of this claim. In that case, the arbitrator considered what constituted a reasonable explanation.
- [13] In this case, however, once the applicant confirmed that he did not personally contact the respondent within the relevant time limits, he did not provide any explanation for the delay in reporting.
- [14] The respondent's position is straightforward: the applicant failed to provide a reasonable explanation for the delay, and as such, is statute-barred from proceeding with his claim. The respondent asks that I dismiss the application.
- [15] While I acknowledge that the accident occurred during the period of the COVID quarantine, when several services across the country were limited, that was not submitted by the applicant as a factor in his delay. In fact, he did not provide a reason at all.
- [16] As such, I find that the applicant failed to comply with the time limits set out in s. 32 of the *Schedule* and failed to provide a reasonable explanation for his failure to do so, under s. 34. Therefore, pursuant to Section 55(1) of the *Schedule*, the

applicant is statute-barred from applying to the Tribunal for a resolution to the dispute.

- [17] As this preliminary issue disposes of the application, there is no need for me to consider the remaining preliminary or substantive issues in dispute.

ORDER

- [18] I conclude that the applicant is statute-barred under s. 55 of the *Schedule* from proceeding with his claim for statutory accident benefits, as he failed to notify the respondent of the circumstances giving rise to the claim without a reasonable explanation.

- [19] The application is dismissed.

Released: August 10, 2023



**Terry Prowse
Adjudicator**