



Citation: Prasow v. RSA Insurance Company, 2024 ONLAT 23-004505/AABS-PI

Licence Appeal Tribunal File Number: 23-004505/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:

Cole Prasow

Applicant

and

RSA Insurance Company

Respondent

PRELIMINARY ISSUE HEARING DECISION AND ORDER

ADJUDICATOR: Kate Grieves

APPEARANCES:

For the Applicant: Sophie Luesby, Counsel
L. Craig Brown, Counsel

For the Respondent: Kamil Podleszanski, Counsel

Heard: By Way of Written Submissions

OVERVIEW

- [1] Cole Prasow (“the applicant”) was involved in an accident on April 10, 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 RSA Insurance Company (“the respondent”) and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

PRELIMINARY ISSUE IN DISPUTE

- [2] The preliminary issue to be decided is:
- a. Does the exclusion in s. 31(1)(a)(i) of the *Schedule* apply?

RESULT

- [3] The exclusion in s. 31(1)(a)(i) does apply to the applicant’s claim.
- [4] At the time of the accident, the applicant knew or ought reasonably to have known that he was operating the automobile while it was not insured under a motor vehicle liability policy. The respondent is not liable to pay the income replacement benefit pursuant to s. 31(1)(a)(i).

ANALYSIS

- [5] Section 31(1) states:

The insurer is not required to pay an income replacement benefit, a non-earner benefit or a benefit under section 21, 22, or 23,

- (a) In respect of a person who was the driver of an automobile at the time of the accident,
 - i. If the driver knew or ought reasonably to have known that he or she was operating the automobile while it was not insured under a motor vehicle liability policy.

- [6] The onus is on the respondent to show that the exemption in s. 31(1)(a)(i) above applies and thus prove on a balance of probabilities that the applicant knew or ought reasonably to have known that on April 10, 2021 he was operating his motorcycle while it was not insured under a motor vehicle liability policy.

- [7] The standard in this case is an objective test, with contextual perspective. The FSCO decision of *Batoor v. State Farm Mutual Automobile Insurance Company*, 2016 ONFSCDRS 68 (CanLII) ("*Batoor*"), set out the "contextual objective" test in the interpretation of "knew or ought to have known". I must assess what an ordinary rational person, of the age, education, and background of the applicant, in the circumstances he encountered that day, ought reasonably to have known about the insurance coverage on the motorcycle.
- [8] The applicant submits that he is an innocent party and a victim of fraud. He thought he had purchased valid insurance and that his motorcycle was insured at the time of the accident. The applicant submits that it was not unusual for insurance companies and brokers to attend car and motorcycle shows and meetups. He claims that he received assurance from fellow motorcyclists at the meetup who claimed to be insured with the same individual, giving him comfort that this was a legitimate practice. He submits that the proof of insurance was accepted by the Ministry of Transportation, so he did not question its validity. After purchasing a second motorcycle, the second insurance certificate was accepted by the vendor to register and plate the motorcycle, reinforcing his belief in its validity. It was not until after the accident that he realised he did not have a valid insurance policy.
- [9] The applicant relies on several decisions from the Financial Services Commission of Ontario ("FSCO") in support of his position. The decisions are not binding, and I find them distinguishable from the subject dispute.
- [10] In *Bakir v. Dominion*, 2018 ONFSCDRS 20 (CanLII) ("*Bakir*"), the arbitrator found that insurance slip largely looked legitimate, and the applicant was stopped by police officers on two prior occasions who verified his insurance. In this case, there is no evidence of any prior traffic stops, and he was charged following the accident for driving without insurance.
- [11] The facts in *Smith v. Aviva*, 2017 ONFSCDRS 54 (CanLII) are also distinguishable. Mr. Smith believed he had obtained a legitimate insurance policy through a cash and barter system, and lacked the sellers name, contact details, and a copy of the policy. However, Mr. Smith was an Indigenous person residing on a reserve. There was no evidence as to his education. He was previously incarcerated, and his wife exclusively arranged automobile insurance in the past. He received a quote, paid a deposit, and subsequently received an insurance card. It was common practice to rely on a cash and barter system in the community. He had been stopped by police on several occasions and there was no issue as to the validity of his insurance card. The arbitrator found that the "historical differences between aboriginal culture and western culture...cannot be

overlooked". The facts of the subject case are different: the applicant is reportedly a non-Indigenous male, raised in and around Ottawa, completed a high school diploma in Ottawa and one semester of college, previously arranged his own insurance on five prior policies, and dealt with two claims/losses.

- [12] The applicant relies on *Prior v Dominion*, 2008 ONFSCDRS 179 (CanLII), in support of his position that he believed his policy was in good standing. However, the facts are also distinguishable. The insurer in that case cancelled the applicant's automobile policy for non-payment. The applicant made a subsequent payment, which he believed reinstated his insurance. In this case, the applicant was driving his motorcycle with a fraudulent insurance card.
- [13] For the following reasons, I find that the applicant knew and ought reasonably to have known that he was operating his automobile while it was not insured under a motor vehicle liability policy at the time of the accident.
- [14] The applicant was 26 years old at the time of the accident. He is not new to the country and speaks English. He completed a high school diploma in Ottawa and attended college for one semester in automotive technology. He has been a licenced driver since 2011 and held five insurance policies with four different insurers since September 2011. He had experience of his insurance being cancelled for non-payment of premiums with one of those insurers. I find on these facts that he was familiar with the process of securing automobile insurance, registering his vehicle, and paying premiums.
- [15] At the time of the accident on April 10, 2021 the applicant owned two vehicles, a 2010 Kawasaki motorcycle, and a Subaru Forrester, and was in the process of purchasing a 2021 Kawasaki motorcycle. The applicant was involved in the motor vehicle accident on April 10, 2021, while driving the 2010 Kawasaki motorcycle. The applicant had an insurance policy with the respondent on his 2015 Subaru Forester. He obtained the policy for the Subaru through a broker at a brokerage. The premiums for that policy were taken out of his bank account automatically.
- [16] During his examination under oath ("EUO") on August 4, 2021, the applicant testified that he attended informal car enthusiast meetings and had an affinity for the car community.
- [17] In June 2020 the applicant attended an informal car meet-up. This was not a formal autoshow that would be attended by members of the insurance industry. It was in a mall parking lot outside of a Tim Hortons. The applicant met an individual not previously known to him, named Kyle who could purportedly get him insurance for his motorcycle. This individual did not state that he worked for

the respondent or any other insurer, but advised the applicant he can “get him insurance”.

- [18] Despite already having a policy for the Subaru he did not obtain a quote from his brokerage, but through Kyle, the unidentified individual in the parking lot. The transaction took place in the parking lot. The applicant reportedly provided Kyle with \$2,000.00 in cash. The applicant did not obtain Kyle’s last name. Kyle did not operate out of an office or have a brokerage website. The insurance card purportedly from Unifund Assurance Company was delivered to the applicant by email on June 26, 2020 sent from a Gmail e-mail address. The email did not have any text in the body or a signature.
- [19] The applicant did not receive any correspondence from Kyle with respect to a quote, invoice, premium, receipt of cash payment, coverage details, a replacement card, or any other details regarding the insurance policy for the motorcycle. The supposed insurer did not request a copy of the vehicle registration or ask that the applicant call if he had any questions.
- [20] The applicant submits that he took the 2020 insurance card to the Ministry of Transportation and was able to register his motorcycle.
- [21] In the circumstances, an ordinary individual with the applicant’s age, education, and background would have or should have known that payments in cash to an unidentified individual in a parking lot with no follow up documentation was not the proper method of securing an insurance policy.
- [22] The applicant testified at the EUO that he did not obtain his motorcycle insurance through his broker because he believed it to be a hassle, and because “insurance companies were ripping him off” that this was an easy option that was “finally a good deal”. He did not get quotes with any insurance companies or brokers.
- [23] Given that the applicant had a Subaru insured with the respondent, an ordinary rational individual with his age and background would have known or ought to have known the proper process for securing insurance.
- [24] The supposed motor vehicle insurance card the applicant obtained from Kyle is highly suspect to an ordinary, rational person at face value. It is replete with formatting errors and the use of different fonts. For example, the text of the insurance card passes the perforated lines for folding/separation, the policy number falls below the perforated line, the text uses different fonts and sizes throughout, “Unifund Assurance Company” is printed using two different fonts and text sizes, the documents lists a “surance company”, the formatting is poor and words are overlapping.

- [25] An ordinary individual with the applicant's age, education and background would have known or ought to have known that this document was not reflective of a valid insurance policy. The insurance card would prompt an ordinary individual to verify whether it was a valid policy of insurance, but no such inquiries were made. Given that the applicant had a Subaru insured with RSA, and had multiple policies of insurance since 2011, he would have or ought to have known what a valid insurance card would look like and how it would be delivered.
- [26] In late March or early April 2021, the applicant purchased his second motorcycle from a dealership. He attempted to locate Kyle at the mall several times before he was able to locate him and obtain another insurance card by email in April 2021. The applicant submits that he believed that he had a valid policy because his second motorcycle may have been registered by the dealership. It has similar errors as the first.
- [27] The applicant submits that the insurance card was accepted by dealership who sold him the new motorcycle and the Ministry of Transportation in order to register the vehicle. However, there is no evidence that the Ministry or the dealership had any obligation or process to verify that it was a valid policy. Purchasing another insurance card does not indicate good faith belief in the validity of the policy; it indicates a belief that it would be sufficient to register his vehicle. An ordinary individual, with the applicant's age, education and background knew or ought to have known that registration of a vehicle and holding a valid insurance policy is not the same.
- [28] Following the accident, the applicant applied to Unifund under the purported policy and was informed that there was no associated insurance policy. The applicant submits that up until that point he believed he had valid insurance on the 2020 motorcycle.
- [29] Following the accident, the applicant was charged with operating the vehicle without a valid contract of insurance, contrary to section 2(1)(a) of the *Compulsory Automobile Insurance Act*. The applicant submits that he was unaware of the charge until he was presented with a copy of the police report. He subsequently reported the sale of the motor vehicle insurance card as a fraud to police on November 9, 2021. The charge was eventually stayed on December 3, 2021. I find the report to police self-serving, as it was completed in the context of his accident benefits and personal injury claim. Despite this report, at the time of purchase of the insurance card, an ordinary individual with his age, education and background knew or should have known that the document he purchased was not a valid insurance policy.

- [30] The circumstances of this case are similar to those in *Hines v. TD Insurance Meloche Monnex*, 2021 CanLII 45296 (ON LAT) (“*Hines*”). The applicant was an employed, high school educated, legal adult with experience in insuring his motor vehicle and paying premiums. The fact that a government office or dealership relied on the insurance card is not persuasive evidence that it was reasonable for the applicant to think that he had purchased valid insurance.
- [31] Based on the totality of the evidence, I find that the applicant has established on a balance of probabilities, that the applicant knew or ought reasonably to have known that he was operating his automobile on April 10, 2021 while it was not insured under a motor vehicle liability policy.

ORDER

- [32] The exclusion under s. 31(1)(a)(i) applies, and the respondent is not liable to pay income replacement benefits.
- [33] The application is dismissed.

Released: March 21, 2024

**Kate Grieves
Adjudicator**