Safety, Licensing Appeals and Standards Tribunal Ontario
Licence Appeal Tribunal

Automobile Accident Benefits Service
Mailing Address: 77 Wellesley St. W., Box 250, Toronto, ON M7A 1N3
In Person Service: 20 Dundas St. W., Suite 530, Toronto, ON M5G 2C2
Tel: 416-314-4260
1 800-255-2214
TTY: 416-916-0548
1 844-403-5906
FAX: 416-325-1060
1 844-618-2566
Website: www.slasto.gov.on.ca/en/AABS

Tribunaux de la sécurité, des appels en matière de permis et des normes Ontario
Tribunal d'appel en matière de permis

Service d'aide relative aux indemnités d'accident automobile
Adresse postale : 77, rue Wellesley Ouest, Boîte n° 250, Toronto ON M7A 1N3
Adresse municipale : 20, rue Dundas Ouest, Bureau 530, Toronto ON M5G 2C2
Tél. : 416-314-4260
1 800-255-2214
ATS : 416-916-0548
1 844-403-5906
Téléc. : 416-325-1060
1 844-618-2566
Site Web : www.slasto.gov.on.ca/fr/AABS

Ontario

RECONSIDERATION DECISION

Before: Linda P. Lamoureux, Executive Chair

Date: May 25, 2018

File: 16-004349/AABS

Case Name: Aviva Insurance Canada v. G.P.

Written Submissions By:

For the Applicant: Matthew C. Owen

For the Respondent: Julia Logoutova

Overview

1. G.P. requests reconsideration of an order by the Licence Appeal Tribunal (the "Tribunal") requiring him to repay certain income replacement benefits ("IRBs") to his insurer, Aviva Insurance Canada ("Aviva").

2. After being injured in a motor vehicle accident, G.P. received various insurance benefits, including IRBs, from Aviva under the *Statutory Accident Benefits Schedule – Effective September 1, 2010*[1] (the "*Schedule*"). However, Aviva later voided G.P.'s policy on the basis that he failed to disclose that M.M., his partner and someone with a poor driving record, had moved in with him before the accident.

3. Aviva subsequently applied to the Tribunal for repayment of the IRBs. The Tribunal agreed and ordered G.P. to repay the IRBs due to his intentional failure to notify Aviva of a change in a risk material to his policy.

4. G.P. now asks me to reconsider the Tribunal's decision on the basis that it heard false or misleading evidence that likely affected the result.

5. For the reasons that follow, I dismiss G.P.'s request in its entirety. In short, G.P. has failed to establish that any of the criteria under Rule 18.2 of the Tribunal's *Common Rules of Practice and Procedure* for granting reconsideration have been met.

Discussion and Reasons

6. As part of his request for reconsideration, G.P. includes four documents marked A to D. These are as follows:

   A. An insurance binder from G.P.'s broker, Canadian Insurance Brokers Inc. ("CIBI"), listing both G.P. and M.M. as insured for their new home. G.P. relies on this document to illustrate that he was not attempting to hide the fact he was living with M.M.

   B. CIBI policy notes. G.P. relies on these notes to, in effect, prove that CIBI was at fault for Aviva being unaware of G.P. and M.M.'s cohabitation.

   C. An email about automobile insurance addressed to M.M. from her former broker, Dracup Insurance Brokers Ltd. G.P. relies on this email to show that M.M. was able to get coverage of her own. Apparently, this document refutes the proposition that G.P. purposely withheld the fact concerning his cohabitation with M.M. in order to secure a more favourable rate.

[1] O. Reg. 34/10

D. A copy of the health card belonging to G.P. and M.M.'s daughter. Here, G.P. argues that M.M. was not driving at the time he obtained automobile insurance because she was pregnant and experiencing health issues.

7. The simple answer to all of these documents is that they should have been adduced before. G.P. was aware of Aviva's position throughout its application, and received Aviva's disclosure, evidence, and submissions. He had ample opportunity to respond. As part of his response, he chose not to rely on the above-mentioned documents. G.P. must now live with that choice. Although he argues that this new information highlights the false or misleading nature of the evidence upon which the Tribunal's decision was based – *i.e.*, that his request falls squarely within the ambit of Rule 18.2(c) – he misses the larger point. In essence, Rule 18.2(c) is intended to allow parties to correct evidence that, only after a hearing, they discover is false or misleading. That is to say, it allows them to adduce new evidence to correct a falsehood of which they were not previously aware. The rule does not allow parties, as G.P. does here, to reargue their case based on information that they had the opportunity, but failed to, adduce the first time around.

8. G.P. has not provided any explanation for why the documents were not obtained before the hearing, or not filed for consideration on the merits, raised late prior to issuance of the decision, or why they should now be considered for the first time on reconsideration. It is not open to G.P. to now point for the first time to information that was available beforehand but that he initially failed to include. This is an attempt to reargue issues previously raised and already resolved by the Tribunal. This policy is reflected in Rule 18.2(d), which G.P. does not satisfy. Thus, it would be improper for me to consider the new documents at this time.

9. However, even if I were to consider them, they offer no help to G.P.'s case.

10. G.P. appears to rely on the new documents to suggest that he did not purposely withhold the information about living with M.M. and that CIBI should have informed Aviva of their cohabitation. However, G.P. was responsible as the insured for keeping Aviva apprised of any change in a risk material to his policy. The information contained in Documents A, B and D does not negate G.P.'s responsibility for keeping Aviva informed, which he failed to do. He was seemingly aware of this obligation – particularly so given his experience as an accident benefits paralegal – as apparent in his having updated the details for his policy upon moving and after buying a new car.

11. Similarly, I do not see how Document C assists G.P.'s case. The email from M.M.'s former insurance broker shows that she had some difficulty getting automobile insurance coverage or a rate she felt affordable, likely because of her driving history. This supports the possibility that G.P. purposely withheld the information about living with M.M. in order to secure a more favourable rate for the vehicle that she transferred to him.

12. G.P. has failed to show how the new documents, even if admissible, would have affected the result on the merits of whether he is liable to repay the IRBs to Aviva.

Conclusion

13. Based on the above reasons, I dismiss G.P.'s request in its entirety.

_____

Linda P. Lamoureux
Executive Chair
Safety, Licensing Appeals and Standards Tribunals Ontario

Released: May 25, 2018