

**Automobile Injury Appeal Commission
Province of Saskatchewan**

Citation: *O.S. v. Saskatchewan Government
Insurance, 2003 SKAIA 009*
Date: 20030827
File: 013 of 2003

BETWEEN

O.S., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:

Peter A. Abrametz, For the Applicant

Lynn Henderson and John Schmidt, For the Respondent

Before: **Ann Phillips, Q.C., Chair**
Beverley Cleveland, Commission Member
Mukesh Mirchandani, Commission Member

**THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL AND HEALTH
INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND
OTHER IDENTIFYING INFORMATION.**

Heard at Prince Albert, Saskatchewan
July 23, 2003

DECISION

[1] The Appellant, O.S., appeals a decision of Saskatchewan Government Insurance (“SGI”) dated January 9, 2003 denying him benefits because his first contact with SGI to initiate an injury claim was August 22, 2002, considerably more than one year after the time for making claim expired on October 31, 2001.

FACTS

[2] The Appellant was in a motor vehicle accident on October 31, 1999. He is a flooring contractor who installs rugs and tiles. He is now [in his twenties] and lives in [location].

[3] The day after the accident, November 1, 1999, he went to SGI’s claims office, and told the adjuster that he did not wish to claim anything for the damage to his car. He said that he had been injured but had not seen a doctor yet. The adjuster gave him her card with a file number written on it. He did not know where the card is now. He did see a doctor on November 2, 1999, and his problems today are substantial.

[4] The adjuster who met with the Appellant on November 1, 1999 entered the information provided by him in the “Auto Claim Summary Sheet” under the heading “Accident Description”. She noted:

“My name is [the Appellant] owner of a [vehicle] with plate [xxx xxx]. On October 31, 1999 at about 9:30 p.m. I was travelling about 14 miles west on highway (sic) [number]. The road was very icy as it had been snowing. I hit some slush and went sideways and hit the sand and rolled into the ditch. I rolled all the way over and back onto the wheels. The vehicle does not have seatbelts. I was trying to hang onto my girlfriend so she would not get hurt. We got thrown around in the vehicle pretty good. I am really sore. My shoulder, back and legs are really sore. My arms are sore. I think my right arm may be fractured. My right shoulder is extremely sore. I am going to see my doctor this afternoon. [My girlfriend] seems OK so far. I reported to the RCMP. The vehicle is still sitting in the ditch. I do not believe my vehicle is worth much, so I do not want to put a claim through SGI for the vehicle. I am just going to keep the vehicle the way it is. No liquor or drugs were involved.”

[5] She then entered under “Discussion with Insured”:

“Insured did not want to have injury claim set up at this time. He is going to see his doctor. I told him if he wants to pursue injury claim to call our office back. I gave him the claim number and my card. No claim on vehicle. Close file at this point.”

[6] The adjuster did not testify.

[7] Section 167(1) of *The Automobile Accident Insurance Act* in force at the time of the accident (“the old *Act*”) provides:

“Time Limitations for Claims

167(1) Subject to subsections (2) to (5) a claimant shall make an application for a benefit:

(a) within two years from the date of the accident on which the claim is based.”

[8] Section 167(1)(b), section 167(2), (3) and (4) do not apply in the Appellant’s case. Section 167(5) provides:

“The insurer may waive a time limitation set out in this section if it is satisfied that the claimant had a reasonable excuse for failing to make an application within the time limit.”

[9] The Appellant thought that he had opened a file. The card with the claim number, even though he had lost it, gave him that impression. Nothing was said about a limitation period. The distinction between a vehicle claim and an injury claim does not seem to have been made clear to him. He had a problem getting in to see specialists in Prince Albert: this was a reason why he did not get back to SGI.

[10] SGI now has a protocol followed by its personnel if a customer initially declines to pursue an injury claim. The customer is advised of the limitation period and is given written material. This was not done in the Appellant’s case.

[11] When the Appellant’s solicitor first contacted SGI by facsimile on August 22, 2002, he received in return a letter from SGI on August 27 referring to the limitation period, attaching an application for benefits form, and stating:

“Once we are in receipt of completed form we will forward to our Coverage Committe (sic) to determine if we are able to waive time limitation. Please advise why application was not made within the time limit.”

[12] The Appellant’s lawyer replied on September 4, 2002:

“With regards to the issue of delay, [the Appellant] advises that he opened a claim with SGI soon after the accident but was never contacted by SGI again. He further explains that it took him over one year to see a specialist for his injuries and that his treatment is on-going to this day.”

[13] SGI obtained medical records and on October 1, 2002, rejected the application for benefits as a result of the expiry of the time limitation. No reference was made to the waiver on the grounds of a reasonable excuse. This decision was reviewed by SGI and its decision January 9, 2003 again made no reference to the reasonableness of the excuse. No documents were produced with respect to any decision by the Coverage Committee.

[14] The Appellant’s lawyer referred us to section 176 of the old *Act*:

“The insurer shall advise and assist claimants and shall endeavour to ensure that claimants are informed of and receive the benefits to which they are entitled.”

[15] We agree that SGI did have such a duty to advise of the limitation period and failed to do so in this case. SGI also failed to address the “reasonable excuse” issue in determining whether the limitation period should be waived.

DECISION

[16] It is clear to all of us that SGI failed to inform the Appellant of the requirement to file a claim within two years, or if this was done, he was given the impression that he had done so by being given a card with a claim number.

[17] We are all of the view that he had a reasonable excuse for failing to make an application within the time limit.

[18] As a result, we waive the time limitation of two years from the date of the accident so that the Application for Injury Benefits and Application for Injury Benefits (for Income Replacement or Loss of Studies Benefits) submitted to SGI on September 3, 2002 and undated respectively, be dealt with in the usual way.

[19] We note that from the testimony and from the medical documentation filed by SGI, the Appellant may have difficulty establishing that his current condition is attributable to the

accident of October 31, 1999. His right shoulder hurt at the time of the accident: it had been previously injured. His left shoulder is now the problem. There is limited evidentiary support for the reduction of the dislocation of his shoulder in emergency at the time of the accident.

Costs

[20] Pursuant to section 193(11) of *The Automobile Accident Insurance Act* that came into force January 1, 2003, (“the new *Act*”) and section 96(1) of the new *Personal Injury Benefits Regulations*,¹ the Appellant is entitled to his costs of the application, specifically fees and disbursements according to Column 2 of the Tariff of Costs of the Court of Queen’s Bench to a total of \$2,500, including preparation of witness for trial, and counsel fee at trial. He is also entitled to his travel expenses from [location] to Prince Albert and return.

Dated at Regina, Saskatchewan, on August 27, 2003.

Ann Phillips, Q.C., Chair

Beverley Cleveland, Commission Member

Mukesh Mirchandani, M.D., Commission Member

¹ Chapter A-35, Reg. 3, as amended by SR 70/2002 and 121/2002.