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Morrison v. Gravina

Between
Inez Morrison, plaintiff, and
Sebastiano Gravina and Salvatore Gravina, defendants

[2001] O.J. No. 1208

104 A.C.W.S. (3d) 393

Court File No. 98-CU-157102

Ontario Superior Court of Justice

Greer J.

Heard: February 20, 2001.
Judgment: April 3, 2001.

(10 paras.)

Insurance -- Automobile insurance, compulsory government schemes -- Bodily injury and death benefits -- Reimbursements for services and supplies essential for treatment or rehabilitation -- Bars.

Action by Morrison against the Gravinas for damages for expenses incurred as a result of a motor vehicle accident. Morrison's damages brief included itemized expenses for parking and travelling to and from medical appointments, as well as hourly remuneration paid to friends who assisted with chores. She claimed that she was entitled to claim in tort against the Gravinas because her claims did not fall within the Statutory Accident Benefits Schedule.

HELD: Action dismissed. There was a clear statutory defence against liability for health care expenses, which were broadly defined and which included the claims made by Morrison.

Statutes, Regulations and Rules Cited:

Insurance Act, R.S.O. 1990, c. I-8, s. 267.5(3), 267.5(4).

Counsel:

Neil Wheeler, for the plaintiff.
Linda Matthews, for the defendants.

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1 **GREER J.**:-- The parties are before me at Trial in an Action commenced by the Plaintiff against the Defendants, arising out of a motor vehicle accident, which occurred on November 7, 1996. The date of that accident brought the parties within the provisions of Bill 59, being Part V1 of the Insurance Act ("the Act") in Ontario for accidents on or after November 1, 1996, R.S.O. 1990, c. 1-8; amended S.0. 1990, c. 2; S.0. 1993, c. 10 ("Bill 59"). Incorporated into Bill 59, is the Statutory Accident Benefits Schedule ("SABS") for accidents on or after November 1, 1996. O. Reg. 403/96. The complexity of the various parts of the Act and the various schedules to it, which arise out of the several insurance schemes legislated within the past decade, have given rise to questions as to how the SABS operate within the statute and what rights plaintiffs have to recover damages for what they see are tort damages not covered nor intended to be included under SABS.

2 The Plaintiff has given the Court a Special Damages Brief, in which the Plaintiff claims the amount of $12,798.43. Plaintiff's counsel says this amount covers expenses, for which she might be reimbursed by the Defendants, in her tort claim against them. These damages include 17 itemized expenses for parking and mileage travelling to and from various medical appointments and to and from assessments. They further include hourly remuneration proposed to be paid to friends who assisted the Plaintiff with her vacuuming, cleaning, attendance with her (or on occasion without her) to purchase her groceries, and for yard work and snow removal and house repairs. The Plaintiff further asks for reimbursement for 2 pairs of special shoes she purchased. The Plaintiff also intends to claim for ongoing and future expenses of a similar nature.

3 The Plaintiff says that the claims being made do not fall within Part V of the SABS, which cover "Medical, Rehabilitation and Attendant Care Benefits." Section 267.5(3) of the Act protects the owner of an automobile, the occupants of the automobile and any other person present at the incident from liability in an Action in Ontario for damages for expenses that have been incurred or will be incurred for health care resulting from bodily injury arising directly or indirectly from the use or operation of the automobile. There is an exemption from this protection under s. 267.5(4) if the injured person has received catastrophic impairment arising out of the accident. It is conceded that the Plaintiff before me does not fall within the catastrophic exemption.

4 Medical, rehabilitation and attendant care benefits, which are covered, are set out in Part V of the SABS. Section 14(2)(g) of the SABS covers transportation for the insured person to and from treatment sessions, including transportation for an aide or attendant. Section 15(5)(k) and (1), "Rehabilitation Benefit", also cover transportation by that person to or from counselling, training sessions and assessments, and "other goods and services" required by the injured person. There is, however, a limit to these transportation expenses, in that the first 50 kilometers to and from the appointment are excluded.

5 The Plaintiff says that her expenses being claimed really fall within Part V1 of the SABS under "Payment of Other Expenses", where the insurer pays certain expenses as set out in s. 24(1)(a)(b) and (c). The transportation expenses are set out in s. 24(1)(C) as those incurred in obtaining a cer-

tificate report or treatment plan as set out in the SABS. Again here, in s. 24, the insurer is not liable for the first 50 kilometers to and from the examination or assessment.

6 The Plaintiff says there is no prohibition in the Act to suing in tort and that the SABS are not intended to be a "blanket" to prevent suing in tort. Her position is that expenses, such as parking, are clearly outside the provision of "transportation" as set out in the SABS. The Plaintiff's SABS carrier, State Farm, ceased paying her expenses in May 1997. The Plaintiff says that the services provided by her friends were not in the form of health care provider services, and therefore should also be recoverable in the tort Action.

7 The Defendants say that these claims are barred under the SABS by its very wording and by legislative intent of Bill 59 and the SABS. Under the SABS, before the insurer pays anything, the injured person's family doctor must fill out a disability form. Treatment plans are required to be filled out by medical providers and it is an obligation on the part of the insurer to pay for such expenses incurred by the insured. If the insured chooses to attend a designated assessment centre, as defined in the SABS, to have a further assessment, the onus is on the insurer to pay for the centre's fees.

8 The Defendants further state that the word "transportation" as used in the SABS, includes not only mileage but parking, as well. Since the SABS carrier cut the Plaintiff's benefits off in May 1997, and since the Plaintiff entered into a settlement with State Farm, (the SABS Carrier), it is the position of the Defendants that such a settlement covers future claims for these items, as well. All expenses being claimed by the Plaintiff as "special damages", say the Defendants, are all SABS claims and cannot be recovered in tort by her. The Defendants' position is that there are limits placed in the Act and the SABS on certain benefits and that this was recognized by the Legislature when the Act was amended and SABS were drafted. Some benefits would simply not be covered. This, say the Defendant, is in the nature of a "phantom deductible" for all insured persons for any claim in this no-fault insurance scheme, which say the Defendants, is a generous one, and thus the trade-off by having a "phantom deductible" for such claims.

9 The Defendants rely on two decisions of our Court, Henderson v. Parker (1998), 42 O.R. (3d) 462 [1998] O.J. No. 4389, File No. 26757/97, a decision of Heeney J., which was followed by W. Jenkins J. in Folmer v. Graham, [2000] O.J. No. 2699, Court File No. 27282/97. Counsel provided me with only the Quicklaw versions of such decisions. The scheme of the SABS is set out in Henderson, supra. There, Heeney J. notes that Bill 59 is "essentially remedial legislation, which restricts the right to sue in certain respects, but offsets that with first party benefits that are available regardless of fault." Heeney J. also points out that the right to sue in tort for such benefits is restricted to catastrophically impaired persons. The legislation, he says, must be looked at as a complete package, noting that something less than full recovery may be justified. I agree with the conclusions reached by Heeney J., and although he only dealt with the Part V of the SABS in his decision, I am satisfied that the same overall reasoning applies to the Part V1 arguments made by the Plaintiff before me.

10 W. Jenkins J. in Folmer, followed the reasoning of Heeney J. At paragraph 12 of this decision, W. Jenkins J. states that s. 267.5(3) "... provides a clear and unambiguous defence against liability for health care expenses as set out in the Act. I am satisfied that the term "health care" is broad in its meaning and that the Act prohibits such tort claims being made by the Plaintiff as special damages. The Defendants' interpretation of the legislation is therefore a correct one and the Plaintiff's claim for these expenses and similar future expenses therefore fails.

GREER J.
cp/s/qlsar/qlhcs

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