

Disclosure of Accident Benefits Settlements in Tort Jury Trials

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The Ontario Superior Court of Justice recently dealt with the issue of what can be disclosed as evidence to the jury with respect to a plaintiff's accident benefits settlement for the same accident.

What follows is a brief summary of the decision in [*Farrugia v. Ahmadi*](#), 2019 ONSC 4261, and the issues addressed.

Background

The plaintiff had been involved in an accident in December 2013, and in March 2016, settled her accident benefits claim for a total of \$1.8 million. The breakdown was as follows:

- \$100,000 for all past and future caregiver benefits;
- \$700,000 for all past and future medical benefits;
- \$750,000 for all past and future attendant care benefits;
- \$75,000 for all past and future housekeeping and home maintenance benefits; and
- \$175,000 for legal expenses, past incurred expenses and disbursements

The plaintiff brought a tort action seeking damages from the driver and owner of another motor vehicle involved in the accident.

During the trial, counsel for the defendants made known their intention to cross-examine the guardian of the plaintiff's property, as well as the plaintiff herself, about the total amount received for various accident benefits under the accident benefits settlement. Plaintiff's counsel objected.

Parties' Positions

The defendants' position was that questions in respect of accident benefits were based on the defence that the plaintiff failed to take reasonable steps to mitigate her damages.

The defendants argued that the plaintiff could have taken reasonable steps by using funds received from her accident benefits settlement to reduce her loss and the damages sought in the tort action.

The plaintiff's position was that the jury had all of the evidence from the plaintiff's guardian of property that they needed to assess the mitigation issue, namely, that the jury had heard that \$750,000 had been paid for attendant care benefits and had been invested in a structured settlement.

The plaintiff also submitted that the plaintiff could not obtain double recovery of amounts the jury may award for particular damages in the tort action to the extent that she had already received accident benefits for the same purposes. Counsel for the plaintiff noted that those accident benefits would be deducted as collateral benefits from any damages awarded as a matter of law.

Reasoning: Prejudicial Effect vs. Probative Value

Justice Emery noted that all questions to a witness in cross-examination must be relevant, unless the prejudicial effect of those questions outweighs their prohibitive value, or the answer to the question is protected by privilege.

Reasoning: Proper Purpose

Justice Emery also noted that, in his view, the law permits counsel to ask a question or refer to the receipt of payment or settlement for accident benefits during the cross-examination of a witness when the question or reference is posed for a proper purpose.

That evidence should be accompanied with the appropriate instruction to the jury that collateral benefits will be deducted by the trial judge as a matter of law after the verdict is delivered.

Justice Emery added that the fact that the plaintiff had received or settled her accident benefits claim "should not be used as a basis to defeat the purpose behind receiving the collateral benefits, or the assessment of damages in a tort action."

However, he also noted that that fact should not be shielded from relevant questions "that are asked in good faith, or at the expense of the defendant to properly cross-examine a witness to answer the case it must meet."

Outcome

Justice Emery denied permission to the defendants to ask about the totality of the plaintiff's accident benefits settlement, given the prejudicial effect it would create in the minds of the jury compared to its probative value, and the lack of materiality for asking those questions.

He noted that the issue of mitigation was not pled with enough specificity and that there was no prior evidence in the trial that the use to which the plaintiff had put the settlement funds could lessen, reduce or mitigate her loss or claim for damages. He reasoned that permitting a question about the totality of the accident benefits settlement received and related questions would expose the plaintiff to double jeopardy.

Justice Emery ruled that the defendants could ask questions on the caregiver expenses, attendant care expenses, and housekeeping and home maintenance expenses received, as they had been expressly pleaded by the plaintiff and denied by the defendants.

He noted that “this exchange of pleadings but those benefits in dispute, making questions on each of them relevant for the jury to hear.” He also noted that these questions were relevant to prior evidence.

Justice Emery also reiterated that it is appropriate to instruct the jury during a charge that they are to make awards on a gross basis with no deduction for any collateral benefits.

The *Farrugia* decision is helpful in clarifying how evidence pertaining to collateral benefits can be used in tort jury trials.