CITATION: Rooney v. Allstate Insurance Company, 2025 ONSC 2575
DIVISIONAL COURT FILE NO.: 462/24 & 465/24
DATE: 20250502

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

Backhouse, O'Brien, Kaufman JJ.

BETWEEN:	
MICKEY ROONEY Appellant/Applicant	*Ashu Ismail* and *Joseph Campisi*, for the Appellant/Applicant
– and –	
ALLSTATE INSURANCE COMPANY Respondent	Ian D. Kirby, for the Respondent, Allstate Insurance Company
– and –	
LICENCE APPEAL TRIBUNAL Respondent	Theresa McGee, for the Respondent, Licence Appeal Tribunal
	HEARD at Toronto: April 22, 2025

REASONS FOR JUDGMENT

Backhouse J.

Overview

[1] This is an appeal and application for judicial review from the Licence Appeal Tribunal ("LAT") decision dated July 12, 2024 (the "Rescission Decision") and the Reconsideration Decision dated November 4, 2024 (collectively the "Rescission Decisions"). The LAT denied Ms. Rooney's claim to rescind a settlement she entered into on December 19, 2000 of two accident benefit claims for two car accidents which both occurred in 1996. Ms. Rooney argues that the

LAT erred in finding that the settlement agreement did not breach Allstate's settlement disclosure obligations under s. 9.1 of Regulation 664 under the *Insurance Act*, R.S.O.1990, c.18 (since amended). She submits Allstate breached the Regulation by failing to provide a commuted value for the payment of a lump sum and an explanation of how it determined the commuted value with respect to Attendant Care Benefits.

[2] For the reasons set out below, the appeal and application for judicial review are dismissed.

Background

[3] Ms. Rooney was involved in two accidents in 1996. The first accident was on September 24, 1996 and the second on December 3, 1996. She sought benefits from her insurer, the respondent, Allstate, pursuant to the *Statutory Accident Benefits Schedules ("SABS")* under the *Insurance Act* in effect at the time the accidents occurred. The *SABS* which was applicable to the first accident was amended by the date of the second incident and was quite different.[1]

[4] In private mediation on December 19, 2000, the parties reached a settlement of $30,000 for all accident benefits arising from both 1996 accidents except for medical and rehabilitation benefits incurred after December 5, 2000.

[5] The breakdown of the settlement was:

1. Past income replacement benefits: $ 5,351.64.
2. Interest on past income replacement benefits: $ 4,574.78.
3. Past supplementary medical and rehabilitation expenses: $ 4,109.04.
4. Interest on past supplementary medical and rehabilitation expenses: $3,512.41
5. Future income replacement and loss of earning capacity benefits: $2,452.13.
6. Legal costs, including disbursements: $10,000.00.

TOTAL: $30,000.00

[6] At the time of the settlement, the insurer was required to comply with Regulation 664 (Automobile Insurance) as amended by Ontario Regulation 780/93 (Section 7) under the *Insurance Act* to provide a written notice to the insured before a settlement is entered into containing certain

[1] The version of the *Schedule* applicable to the first accident on September 24, 1996 is O. Reg 776/93: *Statutory Accident Benefits Schedule – Accidents after December 31, 1993 and Before November 1, 1996*. The version of the *Schedule* applicable to the second accident on December 3, 1996, is O. Reg 403/96: *Statutory Accident Benefits Schedule – Accidents on or After November 1, 1996*. Both regulations have since been revoked and replaced with the current schedule: O. Reg 34/10: *Statutory Accident Benefits Schedule – Effective September 1, 2010*.

information. Ms. Rooney submits that Allstate failed to comply with its obligation under s.9.1(2)(5) to provide a commuted value for the payment of a lump sum and an explanation of how Allstate determined the commuted value with respect to Attendant Care Benefits. Section 9.1(2) 5 provides:

> If the settlement provides for the payment of a lump sum in an amount offered by the insurer and, with respect to a benefit under the Statutory Accident Benefits Schedule that is not a lump sum benefit, the settlement contains a restriction on the insured's person's right to mediate, litigate, arbitrate, appeal or apply to vary an order as provided in sections 280 to 284 of the Act, a statement of the insurer's estimate of the commuted value of the benefit and an explanation of how the insurer determined the commuted value.

[7] With respect to Attendant Care Benefits, Schedules "A" and "B" to Ms. Rooney's settlement agreement with Allstate provided the following:

> **Schedule "A"**
>
> …
>
> 8. ATTENDANT CARE BENEFITS (ss.47 -50 of SABS)
>
> If an insured person sustains an impairment as a result of the accident, he or she may be entitled to payment for reasonable expenses to cover services provided by:
>
> …
>
> The amount of benefit available varies according to the severity of the impairment sustained ... Generally, a maximum of $3,000 per month is available to the insured person. The maximum limit can increase to $6,000.00 per month or $10,000.00 per month, depending on the nature of the injuries and impairments … pursuant to s. 47 of SABS. These maximum limits are adjusted annually for inflation …
>
> **Schedule "B"**
>
> …
>
> C. ATTENDANT CARE BENEFITS
>
> You have not advanced a claim for attendant care benefits, and it is impossible to provide an estimate of commuted value for this benefit other than by presenting the available policy limits, which are 1 million dollars. [2]

[2] LAT's Record of Proceedings, Tab 12 "Exhibit 2 – Settlement Documentation" at [B556]. Because the SABS changed between the date of the 2 accidents, two settlements were entered into with slightly different wording in Schedules A and B. Nothing turns on the slightly different wording.

Procedural History

LAT Decision (September 23, 2020) & Reconsideration Decision (March 25, 2021)
(Not Under Review)

[8] On December 18, 2018, Ms. Rooney made application to the LAT for further statutory accident benefits arising out of her motor vehicle accident of December 24, 1996, including, among other things, Attendant Care and Housekeeping Benefits. She claimed that the settlement entered into in December of 2000 did not encompass Attendant Care or Housekeeping Benefits.

[9] Ms. Rooney further argued, as she argues here, that the settlement agreement should be rescinded as it did not comply with the requirements for settlement notice disclosures set out in Regulation 664, discussed above. In its September 23, 2020 decision, the LAT determined that Attendant Care Benefits and Housekeeping Benefits were part of the settlement. The Tribunal further found that Ms. Rooney was not permitted to rescind because she never repaid the settlement funds to Allstate, which was at that time a requirement for recission. At para.15, the LAT held:

> [15] What may be confusing to the applicant is that no attendant care or housekeeping benefits were claimed to the date of the mediation. Also, no monies were allotted in consideration of "future" attendant care or housekeeping benefits in the settlement agreement. This may have left the applicant believing that she may still be able to claim this benefit under this date of loss. However, in signing the full and final release, the applicant gave up her right to claim all benefits other than medical rehabilitation claims incurred after December 5, 2000. This is clearly identified in the full and final release as well as written notice, signed by the applicant on December 19, 2000. The applicant was represented by counsel at the time. The written notice identifies:
>
> "The effect of the said settlement is that you are permanently and forever giving up the right to mediate, litigate, arbitrate, appeal, apply to vary or proceed to Judicial Review in respect of the benefits which are subject to such settlement."[3]

[10] The Reconsideration Decision upheld this Decision.

LAT's Recission Decisions
(Under Review)

---

[3] Decision of the Licence Appeal Tribunal, dated September 23, 2020, at para. 15.

[11] Based on the prior decisions, Ms. Rooney repaid the amounts outlined in the settlement and applied to the LAT to have the settlement rescinded. Allstate argued that the proceeding was barred by *res judicata* as the LAT had already found Ms. Rooney was not permitted to rescind the agreement. In its Rescission Decision dated July 12, 2024 the LAT dismissed the *res judicata* argument, because the recission question was only dismissed on a preliminary basis (on the basis that the settlement amount had not been repaid at that time) and not on the merits.

[12] Ms. Rooney argued before the LAT that the settlement agreement was invalid because the settlement disclosure notice did not meet its obligation under s. 9.1 of Regulation 664 to include the estimated commuted value of Attendant Care Benefits.

[13] Ms. Rooney submitted in addition to providing no commuted value for Attendant Care Benefits, the statement that the maximum benefit was 1 million dollars was wrong and there was no maximum.

[14] Ms. Rooney argued (as she does on the present appeal/judicial review) that this was insufficient to meet the standard required by Regulation 664. She submits that full commutation amounts were required to provide the insured with relevant information and, as such, the agreement should be rescinded. [4] At this hearing, counsel for the Ms. Rooney also argued that the settlement agreement was invalid for failing to meet the commuted value requirement with respect to Income Replacement Benefits and Medical Benefits. It is unclear whether this was raised before the LAT during the hearing or on Reconsideration. It is not mentioned in the July 12, 2024 Rescission Decision. No transcript was provided. It does not appear that Ms. Rooney argued on reconsideration that the LAT initially ignored this argument at the hearing and it is not mentioned in the November 4, 2024 Rescission Reconsideration Decision.

[15] Allstate argued (as it does on the present appeal/judicial review) that since Ms. Rooney did not claim and was not entitled to any amount for Attendant Care Benefits, it had no obligation to provide a calculation for their commuted value.[5]

[16] The LAT ultimately agreed with Allstate, finding that the notice provided sufficient and meaningful information for Ms. Rooney to make an informed decision as to whether to accept the terms of the settlement agreement. LAT found that Allstate was not required to provide a commuted value for benefits that were not claimed:

> [25] The panel agrees that the respondent was not required to give the commuted value of payment(s) that had not been claimed by the applicant, such as ACBs, because it was

[4] Recission Decision, July 12, 2024 at paras. 22-23.
[5] Recission Decision, July 12, 2024 at para. 24.

impossible to do so. This involves calculations and projections of the duration, terms, and quantum of a stream of future payments that the applicant has not claimed.

[26] Here, the parties decided that no claim for ACBs would be part of the settlement agreement, and therefore, it cannot be said that the applicant was deprived of meaningful or important information regarding the commuted value of benefits that she was not claiming. To put it simply, it is unrealistic to expect the respondent to be able to provide the commuted value of a benefit that was never claimed and the quantum of it is zero.
…

[29] In any event, the need for ACBs was not demonstrated by the applicant at the time of the Settlement Notice. Had the applicant claimed for ACBs, the compliance requirements of s. 9.1(5) would have been more stringent in terms of requiring the calculation of the commuted value of the ACBs. Despite her submissions for this hearing that there is evidence of her need for ACBs, the fact is the Applicant never claimed entitlement to ACBs at the time of, or prior to, the settlement agreement. As a result, the Panel finds that the compliance requirements of s.9.1(5) are not engaged.

[30] The panel concludes that it is not reasonable to expect the respondent to commute the value of all possible benefits, including those that were not part of the Settlement Agreement. Thus, we find that the Settlement Agreement is valid pursuant to s.9.1 of Regulation 664.

[17] Mr. Rooney sought reconsideration of the Rescission Decision which was denied November 4, 2024. She now brings the present appeal and application for judicial review arguing that the LAT's decisions were based on legal error and were unreasonable.

Court's Jurisdiction

[18] This is both an appeal and an application for judicial review.

[19] Pursuant to ss. 11(1) and (6) of the *Licence Appeal Tribunal Act, 1999*, S.O. 1999, c. 12, Sched. G, decisions of the LAT may be appealed to the Divisional Court on a question of law alone.

[20] Despite any right of appeal, the Divisional Court has jurisdiction to hear Ms. Rooney's concurrent judicial review application: *Judicial Review Procedure Act*, R.S.O. 1990, J.1, ss. 2, 6(1). Judicial review is a discretionary and extraordinary remedy, but the existence of a right of appeal limited to questions of law does not in itself amount to a discretionary bar nor preclude a judicial review application for questions of fact or mixed fact and law: *Yatar v. TD Insurance Meloche Monnex*, 2024 SCC 8, 489 DLR (4th) 191, at para. 57.

Standard of Review

[21] The appeal is restricted to questions of law, which are reviewable on a correctness standard: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at paras. 36-37.

[22] The standard of review on the application for judicial review with respect to findings of fact and mixed fact and law is reasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

Analysis

Did the LAT err in law by upholding the settlement disclosure notice as valid?

[23] Ms. Rooney argues that Allstate failed its obligation to provide an explanation as to how it arrived at the commuted value for Attendant Care and other various benefits. She relies on *Opoku v. Pal, 1999 CanLII 19913 (ON SC),* where Justice Spiegel held that this explanation is necessary in order for a settlement to be valid. Where an insurer has insufficient information to provide a commuted value, *Opoku* requires that it must conduct the assessment in good faith and clearly state the factual assumptions relied on for the commuted value which Allstate failed to do as well.

[24] Ms. Rooney submits that despite this, the LAT upheld the agreement on the basis that the insurer was not required to provide a commuted value where that benefit was not claimed. The LAT never inquired whether the insurer could have conducted a good faith assessment for Medical and Rehabilitation Benefits, Attendant Care, or Housekeeping Benefits. She submits that the LAT's failure to hold Allstate to its obligation to provide a good faith calculation of commuted values for all benefits with clearly identified factual assumptions was an error of law.

[25] In *Opoku, supra*, the plaintiff, then 17 years old, was very seriously injured on June 24, 1997 when he was run down by a motor vehicle which rendered him a quadriplegic. A settlement was entered into in April 1998 for $700,000 in the form of a structured settlement to be allocated to the Statutory Accident Benefits claim and $1million to be allocated to the tort claim. One or two days after the 2-day cooling off period, the plaintiff sought to revoke the settlement. In a decision dated May 19, 1999, Spiegel J. found that the insurer had failed to provide an estimate of commuted value together with an explanation setting out relevant assumptions on which such commuted value was based and that this failed to satisfy the commuted value requirement which gave the insured the right to rescind the settlement beyond the 2-day cooling off period.

[26] Spiegel J. held that setting out the maximum dollar value of the remaining benefits is not compliance. Rather, the insurer is to provide the present value of a stream of future payments and "an explanation of how the insurer arrived at the commuted value", including:

(a) life expectancy;

(b) the appropriate discount rate for each periodic benefit;

(c) the assumptions concerning the rate at which medical rehabilitation benefits would be paid out of the available lifetime fund of $1 million and the date at which that fund would be exhausted; and
(d) the assumptions concerning the rate attendant care benefits would be paid from the available lifetime fund of $1 million and the date the benefits would be exhausted if the date occurs before the estimated life expectancy.[6]

[27] The Court of Appeal upheld the decision subject to the following: The insurer was not obliged to delay a final settlement until it had sufficient information to provide a commuted value. Rather, the assessment must be made in good faith on the basis of the information available to it and the explanation must clearly indicate the factual assumptions relied on to determine the commuted value.[7]

[28] Ms. Rooney's claim in regard to the two motor vehicle accidents was commenced in November 1998 by a statement of claim in the Ontario Superior Court (then called the Ontario Court (General Division)) against Allstate for statutory accident benefits, a choice available under the legislative scheme at that time. The claim sought income replacement, medical/rehabilitation and other benefits pursuant to the *SABS*. Ms. Rooney's counsel commissioned a future care cost analysis report which did not recommend Attendant Care costs. There was no opinion expressed in the report that her condition would deteriorate. The report recommended a spring and fall cleaning expense of $500 annually which fell at that time under "Other Benefits".

[29] At the time the settlement was entered into, Ms. Rooney had made no claim for Attendant Care or Housekeeping Benefits and Allstate had not paid anything with respect to Attendant Care costs or Housekeeping.

[30] Before the LAT, Ms. Rooney's primary focus was on Attendant Care benefits and Allstate's failure to set out the commuted value and the basis for it in compliance with the statutory settlement notice requirements.

[31] In *Opoku*, *supra*, the catastrophically injured plaintiff had entered into a complicated settlement relatively soon after the accident and then almost immediately sought to set it aside. In contrast, in Ms. Rooney's case, at the time of the Rescission Decision, the LAT was dealing with

---

[6] *Opoku*, *supra* at paras.58-60.
[7] *Opoku v. Pal*, 2000 CanLII 1539 (ON CA), at paras. 6-7.

two accidents which occurred almost 28 years previously and a settlement that had been in place for over 23 years.

[32] At para. 130 of *Opoku, supra,* Speigel J. held:

> However, I wish it to be understood that nothing I have said is intended to preclude an insurer from enforcing a SABS settlement, if the insurer can establish that the defect in the written notice is merely a technical one which could not have reasonably affected the insured's decision to settle.

[33] While Ms. Rooney is correct that there was no cap on Attendant Care Benefits in the *SABS* applicable to the first accident[8], this changed in the *SABS* applicable to the second accident to provide a maximum of $1,000,000 in the case of catastrophic impairment.[9]

[34] In the case of Attendant Care Benefits which had not been claimed, not been paid, where there was no indication that they would be required and where they did not form a component of the settlement amount, failure to provide a commuted value of nil could not have reasonably affected Ms. Rooney's decision to settle.

[35] As noted above, it is unclear whether deficiency in providing the commuted value with respect to Income Replacement Benefits and Medical Benefits was argued before the LAT. A court has the discretion to refuse to deal with an issue that could have been raised before the administrative decision-maker but is not raised until judicial review. The rationale for declining to hear such an argument rests on many considerations: showing respect for the legislative decision to confer first line responsibility on the administrative decision-maker to make such decisions; obtaining the benefit, for the court on judicial review, of a decision of the specialized decision-maker on the issue; avoiding any unfair prejudice to the responding party; and ensuring there is an adequate evidentiary record to decide the question (*A.T.A. v. Alberta (Information and Privacy Commissioner)*, 2011 SCC 61 (CanLII), [2011] 3 S.C.R. 654 (S.C.C.) (CanLII) at paras. 22-26).

[36] To the extent that deficiency in providing the commuted value is properly before us with respect to:

---

[8] O.Reg.776/93, the SABS regime applicable to the first accident, deals with rehab/medical benefits separately from attendant care benefits and does not place a maximum on the total for attendant care benefits. Section 46(1) caps supplementary medical and rehabilitation benefits at $1 million, but there is no corresponding provision setting out a total for attendant care (other than monthly totals): see Part X.

[9] O.Reg.403/96, s.19(2), the SABS regime applicable to the second accident, considers medical, rehabilitation, and attendant care benefits together in the same Part. At section 19(1), it caps medical and rehabilitation benefits at $100,000 or $1 million for catastrophic impairments; and s. 19(2) caps attendant care benefits at $1 million for catastrophic impairments.

a) Medical and Rehabilitation Benefits: these were excluded from the settlement and not released, making s.9.1(5) not applicable to them; and

b) Income Replacement Benefits: Allstate concedes that its compliance with the statutory notice requirements was far from perfect. However, it did provide a commuted value of $147,400 for Income Replacement Benefits, albeit without an adequate explanation of its assumptions.

[37] In all the circumstances, I am unable to find that LAT erred in law in finding that the settlement should not be set aside on the basis that it failed to meet the requirement of Regulation 664. Before the LAT, Ms. Rooney's primary challenge was to Allstate's failure to adequately set out in the settlement the commuted value or its assumptions in the case of Attendant Care Benefits. The LAT did not err in concluding that the notice provided sufficient and meaningful information for Ms. Rooney to make an informed decision as to whether to accept the terms of the settlement agreement and that it was not possible to give the commuted value of Attendant Care Benefits that were never claimed and the quantum of which is zero.

Was the LAT's Recission Decision unreasonable?

[37] In this case, there was no challenge to any findings of fact. The argument raised is a question of law. Accordingly, it was not necessary to bring a separate application for judicial review. Nevertheless, it was not unreasonable for the LAT in the circumstances of this case to find that the settlement should not be rescinded for breaching Allstate's settlement disclosure obligations.

Is the issue concerning the validity of the settlement barred by *res judicata*?

[38] Given the finding that the LAT's decision was both correct in law and reasonable, it is not necessary that the *res judicata* issue be determined.

Conclusion

[39] The appeal and the judicial review are dismissed.

Costs

[40] In accordance with the parties' agreement, Allstate, as the successful party, is entitled to costs in the all-inclusive amount of $3000.

_____
Backhouse J.

I agree _____
O'Brien J.

I agree _____
Kaufman J.

Released: May 02, 2025

CITATION: Rooney v. Allstate Insurance Company, 2025 ONSC 2575
DIVISIONAL COURT FILE NO.: 462/24 & 465/24
DATE: 20250502

ONTARIO**02**

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

Backhouse O'Brien Kaufman JJ.

BETWEEN:

MICKEY ROONEY

Appellant/Applicant

– and –

ALLSTATE INSURANCE COMPANY

Respondent

– and –

LICENCE APPEAL TRIBUNAL

Respondent

REASONS FOR JUDGMENT

Backhouse J.

Released: **May 02, 2025**