

CITATION: Zhu v. Co-operators Insurance, 2025 ONSC 6308
COURT FILE NO.: DC-25-00000504-0000
DATE: 20251112

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

RE: LE RONG ZHU, Appellant

AND:

CO-OPERATORS GENERAL INSURANCE COMPANY, Respondent/Insurer

BEFORE: Sachs, Backhouse, Mandhane JJ.

COUNSEL: *Anil Hampole*, for the Appellant

Emily Schatzker, for the Respondent/Insurer

HEARD at Toronto: November 10, 2025

ENDORSEMENT

The Court

[1] This is a statutory appeal from the reconsideration decision of Adjudicator Pahuta of the Licence Appeal Tribunal (“LAT”) dated May 12, 2025 (“Reconsideration Decision”). In the Reconsideration Decision, the LAT reconsidered its original decision dated January 29, 2025 (“CAT Decision”) and varied that decision based on the doctrine of issue estoppel.

[2] On January 6, 2023, another LAT adjudicator issued a final decision regarding certain of the appellant’s statutory accident benefit claims (“Initial Benefits Decision”). The Reconsideration Decision found that the Initial Benefits Decision made a finding that the Appellant’s unresolved physical and chronic pain impairments were not caused by the accident giving rise to his claim for statutory accident benefits. This estopped him from making a claim for benefits to cover a catastrophic impairment assessment relating to those injuries. The Reconsideration Decision did authorize benefits to cover a catastrophic impairment assessment relating to the Appellant’s psychological injuries.

[3] The Appellant submits that the Reconsideration Decision contains an error of law with respect to the application of the doctrine of issue estoppel. In doing so, he concedes that the doctrine could apply as causation was a material issue that was common to both of his benefits applications. However, he argues that the Reconsideration Decision erred when it found that the Initial Benefits Decision made a finding that his physical and chronic pain impairments were not caused by the accident at issue.

[4] According to the Appellant, the Initial Benefits Decision only made one causation finding—at paragraph 45—where the adjudicator cited the “but for” test for causation and found that it was satisfied with respect to the Appellant’s claim for psychological treatment.

[5] This appeal turns on the meaning of paragraph 27 of the Initial Benefits Decision, which reads:

[27] In September 2020, Dr. Xiao recommended physiotherapy for the applicant's complaints of neck, shoulder, upper back and bilateral leg pain. The applicant's first complaint of upper back pain was not made until August 24, 2020. Given the length of time from the date of the accident before this complaint was first made, I am unable to find that it was caused by the accident. The other complaints reported by Dr. Xiao in September 2019 are the same as the applicant's pre-accident complaints. *Given Dr. Gharsa's opinion that the applicant's accident injuries had all healed within 6 to 12 weeks, I am unable to find the applicant's complaints in September 2020 were as a result of the accident.* This, in addition with the lack of examples of when or to whom the applicant has reported that physiotherapy or chiropractic treatment provides pain relief, does not satisfy the applicant's onus to prove on a balance of probabilities that the following treatment plans from Total Recovery Rehab are reasonable or necessary as a result of the applicant's accident injuries or impairments. (emphasis added; footnotes omitted)

[6] The finding in paragraph 27 was also relied upon in paragraphs 38 and 40 of the Initial Benefits Decision to deny the Appellant’s claims for chiropractic services and physiotherapy treatment.

[7] Paragraph 27 of the Initial Benefits Decision must be read in light of the adjudicator’s analysis at paragraphs 17 through 19, which state:

[17] Dr. Gharsa's examination of the applicant was normal with no finding of major muscle atrophy. The applicant had some crepitation of the left knee, but his right fibula fracture had healed with good range of motion. Dr. Gharsa diagnosed the applicant with a fracture of his proximal right fibula at the level of midshaft, soft tissue injuries to his low back and neck, and contusion to his chest and left knee. All these injuries healed physiologically within 6 to 12 weeks. His opinion was that the applicant's pre-accident shoulder and back complaints may have been exacerbated by the accident, but they had healed. The applicant's increased pain complaints were likely due to his pre-accident issues and were not related to any soft tissue injuries the applicant sustained in the accident.

[18] I prefer Dr. Gharsa's opinion over that of Dr. Palantzas' because Dr. Gharsa's opinion is supported by the clinical notes and records of Dr. Xiao who reported that by May 20, 2020, the applicant no longer had complaints of back

pain. Except for his right leg pain, he was back to his pre-accident chronic neck and shoulder pain. Dr. Gharsa could find no orthopaedic impairment attributable to the accident and opined that there were no functional limitations or physical restrictions that prevented the applicant from completing his pre-accident self care activities as a result of any injuries sustained in the accident. His opinion is supported by the medical records which record pre-accident history of chronic pain including chronic headaches, neck pain, shoulder pain, bilateral elbow numbness at the bottom of his elbow, sleep apnea and dizziness.

[19] Another reason I give less weight to Dr. Palantzas' opinion is because she described the applicant has [*sic*] having a right facial contusion with dislocation of his upper and lower teeth requiring dental work. She diagnosed the applicant with a crushing injury of his face, which is inconsistent with the findings of Dr. Gharsa, Dr. Xiao, the ambulance call report, and the hospital emergency records. I also give little weight to her musculoskeletal diagnoses or opinion where it differs from Dr. Gharsa or Dr. Xiao's opinions because there is nothing to corroborate her diagnosis of a face crush injury other than the treatment plans of Ahmed Afifi, physiotherapist. Mr. Afifi works at Total Recovery Rehab with Dr. Palantzas and provided the exact same diagnoses as Dr. Palantzas. I give Mr. Afifi's opinion little weight as well for the same reasons I give little weight to Dr. Palantzas' opinion.

[8] Read as a whole, it is clear that the adjudicator in the Initial Benefits Decision reviewed the evidence before her (which the Appellant concedes is the same as the evidence before the adjudicator in the Reconsideration Decision) and made a final decision that she accepted the evidence of Dr. Gharsa that the physical injuries that the Appellant sustained in the accident were resolved within 6 to 12 weeks; that, to the extent that the Appellant's pre-accident injuries had been exacerbated, they had healed; and that any increased pain complaints the appellant had were likely due to his pre accident issues. On this basis, she found that she was not satisfied that the "[Appellant's] complaints in September of 2020 were as a result of the accident."

[9] The Appellant submits that this is not a final finding with respect to the issue of causation. According to him, this is because, unlike in paragraph 45 of the same decision, the adjudicator did not refer to the applicable test for causation, namely the "but for" test.

[10] We disagree. The adjudicator in the Initial Benefits Decision made a clear finding that the Appellant's physical and chronic pain impairments were not caused by the accident. Paragraph 45 highlights that, in making this finding, the adjudicator was aware of the applicable test for causation. The Appellant never applied for a reconsideration of the Initial Benefits Decision and never appealed that decision.

[11] Therefore, the Reconsideration Decision correctly determined that the material issue of the causation of the Appellant's physical and chronic pain impairments had been finally decided in the Initial Benefits Decision. Thus, the doctrine of issue estoppel applied.

[12] While the Appellant raised in his factum the issue of whether the adjudicator should have applied her residual discretion not to apply issue estoppel, this argument was not pursued in oral submissions. Further, in our view, this would not have been an appropriate case to apply such discretion.

[13] For these reasons, the appeal is dismissed. In accordance with the agreement of the parties, the Appellant is to pay the Respondent its costs of the appeal fixed in the amount of \$5000 all inclusive.

SACHS, J.

BACKHOUSE, J.

MANDHANE, J.

Date: November 12, 2025