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Recent Caselaw

1st Case

The Ontario cap regime creates two causes of action for different heads of damages arising out of the same negligent act: one for pecuniary losses and one for non-pecuniary losses. The contention that, by analogy, the New Brunswick cap provision has a similar effect, was rejected by the Court. Defendants/Insurers can therefore still rely on legislated limitation periods in New Brunswick when defending both pecuniary and non-pecuniary damage claims.

2nd Case

The Plaintiff claimed entitlement to a death benefit relating to the death of her father who was struck and killed by a motor vehicle.

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McIntyre v. Babin 2009 NBQB 65

1st Case

The Plaintiff attempted to avoid the provisions of the New Brunswick Limitation of Actions Act, having filed an action for damages sustained in a motor vehicle accident two years and one day after the accident. The Defendant sought a summary judgment on the basis that the claim was time-barred.

The Plaintiff argued that the adoption of s. 265.21(1) of the Insurance Act changed the common law discoverability rule in New Brunswick. The Plaintiff raised the Ontario legislation limiting recovery for non-pecuniary loss to permanent injury, arguing that, by analogy, the New Brunswick legislation should have a similar effect on claims for non-pecuniary damages made in New Brunswick.

The Ontario legislation creates two separate causes of action arising from one instance of negligence: one for pecuniary damages and one for non-pecuniary damages. The Plaintiff argued that s. 265.21(1) of the Insurance Act has a similar effect in New Brunswick. As a result, the limitation period in respect of the Plaintiff's claim for non-pecuniary damages would effectively not run from the date of the accident, but rather from the time she knew she suffered more than a minor personal injury. In that case, her action would not be time-barred.

The Defendant outlined the differences in the Ontario and New Brunswick legislation. More particularly, it was argued that in Ontario, a Plaintiff is barred from commencing an action for non-pecuniary losses unless he can meet the legislated threshold as interpreted by the Courts. This was potentially prejudicial to plaintiffs whose injuries did not meet the threshold until some time after the accident because those Plaintiffs are precluded from even starting an action until the full extent of their injuries is established. To eliminate this injustice, two separate causes of action for different heads of damages arising out of the same negligent act were created.

The Plaintiff's position was rejected by the New Brunswick Court of Queen's Bench. The court acknowledged the Plaintiff's position that with the cap on non-pecuniary damages, a plaintiff may not file an action until aware that the injuries suffered are more than a minor personal injury. This, the Plaintiff argued, is the same as if there is a bar to such claims. The Court rejected the Plaintiff's argument and concluded that, contrary to the Ontario legislation, s. 265.21(1) of our Insurance Act does not require the creation of two separate causes of action. Plaintiffs in New Brunswick are able to commence their action within two years of the date of the accident, regardless of the extent of their injuries.

Living in separate residences does not prevent a Plaintiff from claiming entitlement to death benefits as a "dependent" under Section B. The case law suggests that the term "household" as provided in the policy wording is flexible. It does not mean the same as residence. The notion of "affinity" and "contribution" becomes the test. Despite residing in a separate residence from that of the "dependent", with a mix of physical presence and emotional or familial attachment to the household, a deceased can meet the test. Ultimately however, the Plaintiff in this case was not successful as it was found that she was not "principally dependent" on the deceased and therefore she did not qualify for the death benefit.

Boyle v. United General Insurance Corporation 2009 NBQB 37

2nd Case

The Plaintiff, Charlene Boyle, claimed entitlement to a death benefit relating to the death of her father who was struck and killed by a motor vehicle on December 20, 2006. The death benefit claimed was pursuant to Section B provisions of the S.P.F. No. 1 Standard Automobile Policy issued by the Defendant, United General Insurance Corporation, to the driver of the motor vehicle that struck and killed the Plaintiff's father. United's denial of the Plaintiff's claim was based on the fact that she was not the deceased's "dependent" at the time of the accident.

The death benefit in Section B of the S.P.F. No. 1 is statutorily-mandated by virtue of Section 264(b) of the Insurance Act. The "Ordinary Meaning Rule" and not the contra proferentum rule applies to the interpretation of statutorily mandated policy wording. On this point, the Court agreed with United that the New Brunswick Superintendent of Insurance effectively controls the wording of the statutory policy, and it is not the insurance company who defines the wording.

The deceased did fit the definition of "insured person" under the insurance policy issued by United. The question then was "did the Plaintiff fit the definition of 'dependent' to qualify for the death benefit she sought?" Using the "Ordinary Meaning Rule", the Court interpreted Section B.(3)(b)(iii), which was pleaded by the Plaintiff in her action. According to this provision, a "Dependent" is "a person 19 years of age or over who, because of full-time attendance at school, college or university, is principally dependent upon the head of the household or the spouse or common law partner of the head of the household for financial support". The Plaintiff and the deceased lived in separate apartments. The Court revisited the interpretation given to the term "household" by the Canadian courts and found that despite their separate residences, this did not mean that the deceased could not be part of the Plaintiff's household. In applying the test for membership in the household, involving a mix of physical presence and emotional or familial attachment, the Court found that the deceased was in fact a part of the Plaintiff's household. The deceased spent time in the Plaintiff's residence and cared for her young autistic son, allowing her to attend university. He also provided financial assistance to the Plaintiff to "make ends meet". The Plaintiff's action failed to show that the deceased was the "head of her household" upon whom she was "principally dependent". The Court rejected the Plaintiff's argument that the deceased contributed to the operation of the household to the extent necessary to establish that he was the head of the household. The Court found that the Plaintiff was not principally dependent upon her father's financial support at the time of the accident. In fact, the Plaintiff earned more income than the deceased, who was the recipient of a disability pension.