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Landmark accident claim case broadens benefits after 'catastrophic impairment'

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Donovan Vincent

Full Report

The Ontario Court of Appeal has overturned a lower court ruling that would have severely restricted benefits awarded to victims of serious accidents.

The case centred on an accident claim filed by Anna Pastore, a 60-year-old Toronto woman. She was struck by a car while visiting Montreal for a wedding in November 2002.

Pastore suffered significant pain and impairment as a result of her fractured left ankle, according to her appeal lawyer, Joseph Campisi Jr.

Her injury didn't heal properly, requiring several surgeries over the next five years, and right knee replacement when the ankle pain led to a change in her gait.

Before the accident she was the primary caregiver to her husband of 38 years, who was receiving chemo-dialysis. She has limited mobility since the accident, and almost completely depends on others for her most basic personal care needs, the Court of Appeal ruling says.

In 2005 she applied to her insurer, Scarborough-based Aviva Canada, for enhanced accident benefits due to "catastrophic impairment."

Catastrophic impairment entitles one to benefits of up to \$1 million in medical and rehabilitation treatment, while standard benefits only give \$100,000.

A medical team concluded Pastore had a catastrophic impairment consisting of a "marked impairment in her activities of daily living."

But her insurance company refused to accept this finding.

The two sides fought through mediation, arbitration, Divisional Court and the Court of Appeal.

The appeal court ruled on four issues, including whether someone seriously injured qualifies for a catastrophic impairment if they're "markedly impaired" in all four criteria (daily living, social functioning, concentration, deterioration on the job) — or just one, as in Pastore's case.

The court determined that one of the four criteria is enough.

"The applicable (guideline) does not state a minimum number of functional domains to be at the marked or extreme level to (qualify as) a catastrophic impairment," the court ruled.

Roger Oatley, senior partner with a Barrie-based law firm acting in the case on behalf of the Ontario Trial Lawyers Association, an intervenor, called the ruling a "big deal for accident victims because considerably more people will be able to access the benefits that they need."

"They (accident victims) still have to prove it's reasonable and necessary they get these benefits, but at least the benefits are available," Oatley added.

The insurance industry has been lobbying the province to amend the definition of catastrophic impairment. This court ruling broadens the definition, which won't make the industry happy, Oatley says.

Aviva's lawyer, Robert Rogers, said he can't comment given he'll sit down with his client Friday.