

2007 ONCA 661  
Ontario Court of Appeal

Chun v. Primmum Insurance Co.

2007 CarswellOnt 6105, 2007 ONCA 661, [2007] O.J. No. 3635, 61 C.C.L.I. (4th) 60

**Helen Chun, Plaintiff (Respondent) and Primmum  
Insurance Company, Defendant (Appellant)**

Moldaver, Sharpe, LaForme JJ.A.

Heard: September 25, 2007  
Judgment: September 25, 2007  
Docket: CA C44073

Proceedings: affirming *Chun v. Primmum Insurance Co.* (2005), 2005 CarswellOnt 10296 (Ont. S.C.J.)

Counsel: Nestor E. Kostyniuk, for Appellant  
Alden M. Dychtenberg, for Respondent

Subject: Insurance; Civil Practice and Procedure

**Related Abridgment Classifications**

For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

**Insurance**

**XII** Automobile insurance

**XII.5** No-fault benefits

**XII.5.h** Reduction by benefits received from other sources (collateral benefits)

**XII.5.h.vii** Miscellaneous

**Headnote**

**Insurance --- Automobile insurance — No-fault benefits — Reduction by benefits received from other sources (collateral benefits) — Miscellaneous sources**

Insured received income replacement benefits from insurer — Insurer was entitled to deduct "net payment for loss of income" from insured's benefit pursuant to s. 75(1) of certain Statutory Accident Benefits Schedule — Insured was receiving long-term disability ("LTD") benefit from another source which was being deducted from income replacement benefit — LTD benefits were reduced by insured's receipt of Canada Pension Plan ("CPP") disability benefits — Insured brought action for determination of amount insurer should deduct in calculating insured's income replacement benefit pursuant to s. 75(1) — Under s. 75(1) insurer could deduct amount insured actually receives as LTD benefit, amount net both of taxes and CPP benefits that were being deducted from insured's LTD benefits — Plain meanings of words "net" and "receive" resulted in interpretation of s. 75(1) whereby what should be deducted is amount "net" of both tax and other deductions of benefits such as CPP — There was no indication in language of s. 75(1) to limit meaning of word "net" to net of taxes only — Amount that insured actually took into her possession was amount net of CPP, given that CPP was deducted from her entitlement to LTD benefits by other source pursuant to CPP offset clause — Insured was not receiving CPP as compensation for loss of income, thus she was not receiving CPP under terms of s. 75(1) and there was no double recovery — Insurer appealed — Appeal dismissed — Trial judge's reasons were exemplary — Trial judge's analysis and conclusions were agreed with.

APPEAL by insurer from judgment reported at *Chun v. Primum Insurance Co.* (2005), 2005 CarswellOnt 10296, 61 C.C.L.I. (4th) 53 (Ont. S.C.J.).

***Per curiam:***

1 The trial judge's reasons are exemplary. We agree with her analysis and conclusion. Accordingly, the appeal is dismissed. Costs to the respondent fixed at \$7,000 inclusive of G.S.T. and disbursements.

*Appeal dismissed.*

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