

**Tribunals Ontario  
Safety, Licensing Appeals and  
Standards Division**

Licence Appeal Tribunal  
Mailing Address: Box 250  
Toronto ON M7A 1N3  
Tel: 1-888-444-0240  
Fax: 416-325-1060  
Website: [www.slasto-tsapno.gov.on.ca](http://www.slasto-tsapno.gov.on.ca)

**Tribunaux décisionnels Ontario  
Division de la sécurité des appels en matière  
de permis et des normes**

Tribunal d'appel en matière de permis  
Adresse postale : Boîte no 250  
Toronto ON M7A 1N3  
Tél. : 1-888-444-0240  
Télec. : 416-325-1060  
Site Web : [www.slasto-tsapno.gov.on.ca](http://www.slasto-tsapno.gov.on.ca)



---

## RECONSIDERATION DECISION

---

**Before:** D. Gregory Flude

**Date of Order:** 01/06/2021

**Tribunal File Number:** 19-002362/AABS

**Case Name:** Huseyin Ok vs. Aviva General Insurance

**Written Submissions by:**

**For the Applicant:** Gary Mazin

**For the Respondent:** Nestor Kostyniuk

## OVERVIEW

- [1] On April 7, 2020, I released my preliminary issue decision in this matter finding that the applicant, Huseyin Ok, did not suffer a catastrophic impairment as a result of a motor vehicle collision on June 8, 2016. In response, Mr. Ok invoked Rule 18 of the *Licence Appeal Tribunal, Animal Care Review Board, and Fire Safety Commission Common Rules of Practice and Procedure, Version I (October 2, 2017)* (“Rules”) to request that I reconsider my decision. Pursuant to Rule 18, the Executive Chair has delegated the matter to me for reconsideration.
- [2] Rule 18.2 sets out the grounds for setting aside a decision on reconsideration, while Rule 18.1 requires Mr. Ok to identify the grounds upon which it relies. In this request, Mr. Ok has identified Rules 18.2(a) and 18.2(b). Rules 18.2(a) addresses a lack of jurisdiction and a denial of procedural fairness. Rule 18.2(b) requires me to find that I made a significant error of law or fact such that I would likely have reached a different decision had the error not been made. Having considered the parties’ submissions, I find Mr. Ok has failed to meet his onus under either of Rule 18.2(a) or (b).

## BACKGROUND FACTS AND PREVIOUS DECISION

- [3] At the hearing of this matter the parties were broadly in agreement about the nature of the Mr. Ok’s injuries and the ratings to be assigned to those injuries for the purposes of calculating a whole person impairment percentage (“% WPI”) under the American Medical Association *Guides to the Evaluation of Permanent Impairment*, 4<sup>th</sup> Edition, 1993 (the “Guides”). There was one major area of dispute, a 40% rating assigned by Mr. Ok’s assessors for “*cauda equina*-like syndrome without bowel or bladder impairments.” The parties agreed that if I were to accept Mr. Ok’s position on this point then he met the threshold for catastrophic impairment. If I did not, then he failed to meet the threshold. I found that the preponderance of medical evidence did not support the opinion of Mr. Ok’s assessors. I disallowed to the 40% calculation and it followed that I found him not to be catastrophically impaired.

## GROUNDINGS FOR THE RECONSIDERATION

- [4] Mr. Ok asserts two grounds in support of his application for reconsideration. The first is that by preventing him from asking his expert physiatrist, Dr. Sangha, several questions during his re-examination, my rulings denied him natural justice and procedural fairness. The second ground is that I misunderstood the evidence of Dr. Sangha concerning the involvement of the *cauda equina* and Dr. Sangha’s diagnosis of *cauda equine*-like syndrome without bowel or bladder impairments.

## RESULT

- [5] I find that Mr. Ok has failed to point to a denial of natural justice or procedural fairness. The alleged basis for the procedural unfairness is that, on cross-examination, counsel for the respondent limited Dr. Sangha's answers to the actual question asked and did not permit him to expand the answer beyond the question asked. Requiring witnesses to answer the question asked is the essence cross-examination. The time for Dr. Sangha to give expanded answers was in his examination-in-chief. My denial of questioning in an area that had been well-covered in examination-in-chief correctly prohibited Mr. Ok from splitting his case.
- [6] In the original decision I found that the medical evidence, viewed as a whole, did not support Dr. Sangha's position that Mr. Ok had suffered from *cauda equina*-like syndrome without bowel or bladder impairments. There is nothing in the applicant's reconsideration submissions to support his suggestion that I misunderstood the material evidence.

### Limit on Re-Examination

- [7] Mr. Ok carries the onus in this case and Aviva General Insurance ("Aviva") is the respondent. Mr. Ok had the right to present his case first and he had a right to re-examine his witnesses after cross-examination. There are limits to the right of re-examine, defined by the Supreme Court of Canada in *R. v. Krause*, 1986 CanLII 39 (SCC) at paragraph [15] ("*Krause*"):

The general rule is that ... the plaintiff will not be allowed to split its case. The ... plaintiff must produce and enter in its own case all the clearly relevant evidence it has, or that it intends to rely upon, to establish its case with respect to all the issues raised in the pleadings...The underlying reason for this rule is that the defendant or the accused is entitled at the close of the Crown's [applicant's] case to have before it the full case for the Crown [applicant] so that it is known from the outset what must be met in response.

- [8] While *Krause* addresses the right to present rebuttal or reply evidence after the defence has closed its case, in a scaled-down version of the general rule in civil and criminal trials, it is also the case that Mr. Ok was required to adduce from his witnesses all the relevant evidence or evidence he intended to rely on, in the examination-in-chief. At the end of each of Mr. Ok's witness's testimony, Aviva was entitled to know that it had heard all of the relevant evidence and to structure its cross-examination accordingly. It was not open to Mr. Ok to split the questioning of his own witnesses such that only part of their evidence was heard in the examination-in-chief and new areas of evidence were raised following the cross-examination. In attempting to ask questions of Dr. Sangha about medical records available but not covered in the examination-in-chief after Dr. Sangha's cross-examination, Mr. Ok was trying to split his case.

- [9] Mr. Ok has characterized my refusal to allow Dr. Sangha to answer reply questions on the report of Dr. Wong as a denial of natural justice and procedural fairness. In his submission, when Aviva required Dr. Sangha to limit his answer to the question asked, that colloquially the lower back refers to the lumbar spine, it denied him the opportunity to expand his answer. It points to Aviva's statement that if Mr. Ok had further questions, he could ask them later as giving Dr. Sangha an expectation that he could expound on his answer later. It was not Dr. Sangha's right to expound on answers while under cross-examination. It was his obligation to answer the question he was asked and not to give an unresponsive answer. Aviva's statement that Mr. Ok may have to opportunity to ask further questions had no impact on his obligation to answer the question he was asked or magnify Mr. Ok's rights of reply.
- [10] Nor does Aviva's statement about the right to answer further questions expand the limits on re-examination. In my oral ruling at the hearing, I addressed the right of reply. Dr. Sangha had given fulsome evidence-in-chief about his opinion on the nature of Mr. Ok's injuries and the calculation of the whole person impairment rating that found him to be catastrophically impaired. Mr. Ok and Dr. Sangha had available to them the full pre- and post accident medical documentation before testifying and the expert reports of Aviva's experts. Mr. Ok chose not to cover the pre- and post-accident medical reports with Dr. Sangha, including the report that is the subject of this request for reconsideration, the report of Dr. Wong, a treating neurologist. To permit Dr. Sangha to embark on an explanation of Dr. Wong's findings in re-examination is the essence of case-splitting. According, I ruled against it at the hearing and I reiterate that ruling here.

### **The Errors in Law**

- [11] Dr. Sangha's opinion was that, while the primary injury Mr. Ok suffered was a burst fracture in the thoracic/lumbar area, the spinal compression damaged the area of cauda equina lower in the lumbar spine. Mr. Ok submits that I misunderstood Dr. Sangha's evidence on *cauda equina*-like syndrome without bowel or bladder impairment. He points out that the Guides do include reference to this syndrome at page 103. While acknowledging that my statement that there was no such syndrome in the Guides was in error, it was not material to my findings, which were soundly based in the medical record.
- [12] In paragraphs [28] and following of my decision, I note that Mr. Ok had a severe degenerative disc condition causing nerve impingement and symptoms that Dr. Sangha ascribes to *cauda equina*-like syndrome without bowel or bladder impairment. In his cross-examination, Dr. Sangha confirmed that he did not have Mr. Ok's complete medical record available to him and that his opinion was based on his understanding that Mr. Ok had no pre-accident lower back issues. In cross-examination, when Mr. Ok's history of lower back and lower extremity issues were pointed out to him, Dr. Sangha conceded that it was possible that the symptoms he ascribed to damage to the *cauda equina* arising

from the accident could possibly be as a result of pre-existing severe degenerative disc disease in the lumbar spine.

[13] I also took into account other extracts from the medical history in coming to my conclusion that Mr. Ok's lower back and lower extremity symptoms were not accident related. For instance, I note that;

- Mr. Ok has a long history of back and leg pain and symptoms requiring treatment and resulting in a pre-accident diagnosis of severe degenerative disc disease (paragraph [28]),
- on his release from the fracture clinic approximately three months post-accident he had no neurological deficits (paragraph [31]),
- his back pain and lower extremity neurological symptoms did not worsen until approximately 14 months post-accident (paragraph [32]),
- this worsening led to decompression surgery because of the pre-accident degenerative condition with no mention of *cauda equina* involvement by treating physicians (paragraph [32]), and
- Dr. Sangha's objective examination results largely accord with the examination results of Aviva's assessor, Dr. Paitich, and do not support a finding of bilateral radiculopathy necessary to diagnose *cauda equina* like syndrome (paragraph [37]).

Weighing those factors, I concluded that Mr. Ok's lower extremity symptoms were not accident related.

[14] Looking at the section of the Guides that Mr. Ok states I did not take into account, Dr. Sangha obliquely cites it in his physical impairment evaluation. At page 1 he states: "L3-L4 central disc protrusion with compression of cauda equina → L3-4, L4-5 decompression," and at page 5, "DRE VI for central L3-L4 disc protrusion causing cauda equina like syndrome." There was no other evidence on the specific section of the Guides from Dr. Sangha.

[15] The section relied on by Mr. Ok states:

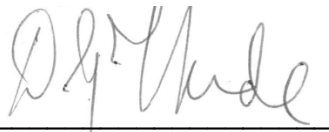
Patients in this category have a cauda equina-like syndrome with objectively demonstrated, permanent, partial loss of lower-extremity function bilaterally. They may or may not have loss of motion segment integrity. They do not have objectively demonstrated bowel or bladder impairment.

[16] As stated above, my decision is grounded in the fact that neither Dr. Sangha nor Dr. Paitich found significant loss of bilateral function. Dr. Sangha notes issues on the right lower extremities and only reduced reflexes bilaterally. Dr. Paitich noted only a slightly reduced Achilles reflex. The deficits noted are

explained by the pre-existing severe degenerative disc disease that was not accident related. Dr. Sangha was unaware of the pre-existing back and lower extremity problems when he formulated his diagnosis and has freely admitted that the full medical record was necessary for a fully informed opinion. His diagnosis is therefore suspect. So, to the extent that my impugned statement is an error of fact, it is not a significant error of fact that would have impacted the outcome of my decision.

## **CONCLUSION**

[17] Based on the foregoing, I have found no denial of natural justice or procedural fairness or error in law in the original decision. The request for reconsideration is denied.



**D. Gregory Flude**

Vice Chair

Tribunals Ontario- Safety, Licensing Appeals and Standards Division

**Released: January 6, 2021**