

Court File No. 3207/98

ONTARIO COURT (GENERAL DIVISION)

BETWEEN:

SYLVIA JOHN

Applicant

- and -

CIBC GENERAL INSURANCE COMPANY LIMITED

Respondent

REASONS FOR DECISION

The Honourable Mr. Justice E.R. Kruzick

Counsel for the Applicant:

Mr. John A. Tamming

Counsel for the Respondent:

Mr. Derek E. Wilson

ISSUE

The issue before the court on this motion relates to the wording of the Statutory Accident Benefits Schedule (Bill 59), section 25(2)(1), and whether pursuant to that section of the schedule, the insurer is required to pay death benefits to more than one person.

FACTS

The facts of this case are not in dispute. The applicant is the mother of Tiffany John. Tiffany John was tragically killed in an automobile accident at the age of eight, on the 2nd day of August, 1997. The applicant is the wife of the child's father, Hubert John.

At the time of the motor vehicle accident, Hubert John was insured by the respondent insurer. Following the accident, he applied for payment of the death benefits and his entitlement is not denied.

The respondent takes issue with its claim by the applicant, refusing to pay more than one death benefit.

DISPOSITION

The application is dismissed. The respondent is not required to make a further payment to the applicant.

REASONS

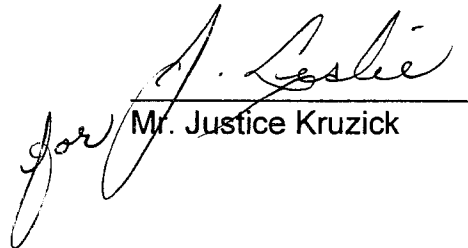
Counsel for the applicant has ably argued that there is ambiguity in the wording of the section and argues that the ambiguity, if any, should be construed in favour of the insured: see *Argentini et al. v. Wellington Insurance Company* (1995), 26 O.R. (3d) 408. As I read the provisions of s. 25(2) 5(i) of the schedule in issue, the benefit is payable to only one insured and I so find. If the Legislature had intended to provide payment to more than one person, the wording would reflect that intention. In that case, the legislation would provide for payment to "a person or persons." It does not do so.

By comparison, s. 25(2) paragraph 2 of the schedule reflects the intention to benefit "dependants" and is pluralized. Also, section 25(2) paragraphs 3 and 5(iii) makes provision for benefits payable among the "persons entitled" and the plural "dependants" is used. Similarly in section 25(2) paragraph 1, even though the wording "spouse" is used singularly, s.25(4) goes on to qualify that if more than one spouse qualifies, the benefit is to be split equally. Had the drafter intended more than one person to benefit here, I find they would have so provided: see *Jarvis v. Allstate Insurance Co.*, [1996] O.I.C.D. No. 148. When I

read the section on which the applicant relies, in conjunction with the other provisions in the schedule, I conclude the intention was to benefit only one dependant: see *Jarvis v. Allstate* (supra).

Both counsel relied upon the principle of statutory interpretation, *expressio unius est exclusio alterius*, which means to express one thing is to exclude the other. Although there is no expressed exclusion, I find when the schedule is read as a whole, the exclusion is implied: see Driedger on Construction of Statutes, Third Edition, Butterworths Canada. The silence in the wording must be compared to the language expressed: see Dreidger, supra.

For all of these reasons the application fails. Given the fact that there is no case law on the point and that the arguments before me were novel, I make no order as to costs.


Mr. Justice Kruzick

Dated at Owen Sound, this
28th day of July, 1998.