



**WORKPLACE SAFETY AND INSURANCE  
APPEALS TRIBUNAL**

**DECISION NO. 455/17**

**BEFORE:** B. Kalvin : Vice-Chair

**HEARING:** February 14, 2017, at Toronto  
Oral

**DATE OF DECISION:** February 22, 2017

**NEUTRAL CITATION:** 2017 ONWSIAT 551

**APPLICATION FOR ORDER UNDER SECTION 31 OF THE *WORKPLACE  
SAFETY AND INSURANCE ACT, 1997***

**APPEARANCES:**

**For the applicant:** D. Malone, Lawyer

**For the co-applicant:** P. Tyborski, Lawyer

**For the respondent:** D. Di Iorio, Lawyer

**Interpreter:** N/A

**Workplace Safety and Insurance  
Appeals Tribunal**

505 University Avenue 7<sup>th</sup> Floor  
Toronto ON M5G 2P2

**Tribunal d'appel de la sécurité professionnelle  
et de l'assurance contre les accidents du travail**

505, avenue University, 7<sup>e</sup> étage  
Toronto ON M5G 2P2

## REASONS

### (i) Introduction

[1] These are the reasons for the decision of the Workplace Safety and Insurance Appeals Tribunal with respect to an application under section 31 of the *Workplace Safety and Insurance Act* (the “WSIA”). The application is brought by Economical Insurance Company (“Economical”) for a determination that Mr. Suleiman (the “respondent”) is entitled to claim benefits under the insurance plan established by the WSIA. Economical also seeks a determination that the respondent’s right to sue Mr. Morassutti and 5352893 Ontario Inc. operating as Morassutti Carpenters Inc. (Morassutti Carpenters) in a civil action filed in the Ontario Superior Court of Justice at Toronto, Ontario, as Court File No. CV-14-516617 is extinguished by the WSIA.

### (ii) Background

[2] The facts giving rise to this application are not in dispute and are as follows.

[3] On January 3, 2013, the respondent was driving a motor vehicle that was involved in a two motor-vehicle accident. The other vehicle was driven by Mr. Morassutti. The motor vehicle being driven by the respondent was owned by his employer Lima’s Gardens & Construction Inc. The vehicle was insured under a motor vehicle insurance policy issued by Economical. At the time of the accident, the respondent was a worker and was in the course of his employment for Lima’s Gardens and Construction Inc., which is a Schedule 1 employer under the WSIA.

[4] The motor vehicle driven by Morassutti was owned by Morassutti Carpenters, which is also a Schedule 1 employer under the WSIA. Mr. Morassutti is a director of Morassutti Carpenters.

[5] Following the accident, the respondent filed a civil action against Mr. Morassutti and Morassutti Carpenters seeking damages for personal injuries sustained in the accident. The respondent also initiated a claim for statutory accident benefits under section 268 of the *Insurance Act* to Economical, that is, to the insurer who had issued the insurance policy for the motor vehicle he was driving at the time of the accident. In order to receive statutory accident benefits from Economical, the respondent was required to sign an assignment of workers’ compensation benefits in favour of Economical. In other words, the respondent agreed to assign to the applicant any benefits he might receive as a result of any claim initiated under the WSIA. After the assignment of workers’ compensation benefits was executed, Economical began paying the respondent the statutory accident benefits prescribed in the *Insurance Act*.

[6] After Economical began paying the respondent statutory accident benefits under the *Insurance Act*, it applied to this Tribunal for a determination under section 31(1)(c) of the WSIA that the respondent is a person who “is entitled to claim benefits under the insurance plan,” that is, under the WSIA. The reason that the applicant seeks this determination is that under the *Insurance Act* and Regulations, an insurer is not required to pay statutory accident benefits to a person who “is entitled to receive benefits under any workers’ compensation law or plan.” Thus, the applicant seeks a determination under section 31(1)(c) in order to be relieved of its obligation to pay statutory accident benefits to the respondent. Further, if the applicant is successful in its application, the respondent may be entitled to pursue his claim with the Board, and if the

respondent obtains benefits from the Board, then the applicant would be entitled to restitution pursuant to the assignment of benefits executed by the respondent.

**(iii) Analysis**

[7] As noted, the application is brought under section 31 of the WSIA. That provision reads as follows:

31(1) A party to an action or an insurer from whom statutory accident benefits are claimed under section 268 of the Insurance Act may apply to the Appeals Tribunal to determine,

- (a) whether, because of this Act, the right to commence an action is taken away;
- (b) whether the amount that a person may be liable to pay in an action is limited by this Act; or
- (c) whether the plaintiff is entitled to claim benefits under the insurance plan.

(2) The Appeals Tribunal has exclusive jurisdiction to determine a matter described in subsection (1).

[8] Economical seeks a determination under section 31(1)(c) that the respondent is a person entitled to claim benefits under the WSIA. Entitlement to benefits under the WSIA is governed by section 13, which provides that a worker is entitled to benefits for an injury if that injury results from an accident “arising out of and in the course of employment.” Subsections 13(1) and (2) read as follows:

**13(1)** A worker who sustains a personal injury by accident arising out of and in the course of his or her employment is entitled to benefits under the insurance plan.

**(2)** If the accident arises out of the worker’s employment, it is presumed to have occurred in the course of the employment unless the contrary is shown. If it occurs in the course of the worker’s employment, it is presumed to have arisen out of the employment unless the contrary is shown.

[9] Economical also claims that the respondent’s right to sue is taken away by section 28 of the WSIA. Subsections 27 and 28 prohibit an injured worker who is entitled to benefits under the WSIA from suing a Schedule 1 employer, a director or executive officer of a Schedule 1 employer, and another worker of a Schedule 1 employer if that worker was also in the course of employment. These provisions read as follows:

**27(1)** Sections 28 to 31 apply with respect to a worker who sustains an injury or a disease that entitles him or her to benefits under the insurance plan and to the survivors of a deceased worker who are entitled to benefits under the plan.

**(2)** If a worker’s right of action is taken away under section 28 or 29, the worker’s spouse, child, dependant or survivors are, also, not entitled to commence an action under section 61 of the Family Law Act.

**28(1)** A worker employed by a Schedule 1 employer, the worker’s survivors and a Schedule 1 employer are not entitled to commence an action against the following persons in respect of the worker’s injury or disease:

1. Any Schedule 1 employer.
2. A director, executive officer or worker employed by any Schedule 1 employer.

...

(3) If the workers of one or more employers were involved in the circumstances in which the worker sustained the injury, subsection (1) applies only if the workers were acting in the course of their employment.

[10] Economical's application was supported by Morassutti and Morassutti Carpenters. Further, Economical's application was not opposed by the respondent.

[11] I am satisfied that the evidence supports the application sought by Economical. In particular, it is not in dispute that at the time of the accident, the respondent was a worker who was employed by a Schedule 1 employer. The evidence also establishes that the respondent was in the course of his employment when the accident occurred. Since he was a worker in the course of his employment at the time of the accident, the respondent is a person who is entitled to claim benefits under the WSIA, and Economical is entitled to a determination to that effect.

[12] Further, the evidence reveals that Morassutti Carpenters is a Schedule 1 employer and that Mr. Morassutti is a director of that employer. Accordingly, the respondent's right of action against Mr. Morassutti and Morassutti Carpenters is taken away by section 28(1) of the WSIA.

**DISPOSITION**

[13]

The application is granted:

1. The respondent is entitled to claim benefits under the insurance plan established by the WSIA with respect to injuries he sustained in the accident that occurred on January 3, 2013.
2. The respondent's right to commence an action against Mr. Morassutti and Morassutti Carpenters for injuries sustained in the accident that occurred on January 3, 2013, is taken away by the WSIA.

DATED: February 22, 2017

SIGNED: B. Kalvin