

COURT OF APPEAL FOR ONTARIO

CITATION: Sidhu v. State Farm Mutual Automobile Insurance Company, 2014  
ONCA 920  
DATE: 20141223  
DOCKET: C57027

Sharpe, van Rensburg and Pardu JJ.A.

BETWEEN

Harinder Kaur Sidhu

Plaintiff (Respondent)

and

State Farm Mutual Automobile Insurance Company

Defendant (Appellant)

Todd J. McCarthy, for the appellant

Francis J. Burns, for the respondent

Heard and released orally: December 16, 2014

On appeal from the judgment of Justice Myrna L. Lack of the Superior Court of Justice, dated December 12, 2012.

ENDORSEMENT

[1] The appellant argues that the trial judge erred in dismissing two motions for a mistrial and that her instructions to the jury regarding certain statements made by plaintiff's counsel in his jury address were inadequate.

[2] A trial judge's decision on a mistrial motion is entitled to deference on appeal. In our view, the reasons of the trial judge reveal no error of law or principle.

[3] The first ruling related to the scope and content of the cross-examination of the State Farm adjuster. The trial judge was not satisfied that there was an intentional breach of her earlier ruling and she was satisfied that an appropriate instruction to the jury could undo any damage.

[4] The second ruling dealt with a number of complaints as to the plaintiff's closing address to the jury. The trial judge specifically addressed the references to Canada Pension Plan ("CPP") benefits, the "big lie", and the irrelevance of the conduct of State Farm. She concluded that any harm or prejudice could be appropriately dealt with by a clear instruction to the jury.

[5] She then proceeded to deliver what we regard as a clear instruction on each point. She instructed the jury "this case is not about the conduct of State Farm". She indicated that plaintiff's counsel should not have made any reference to the conduct of State Farm and specifically told the jury "you should disregard any such suggestions". She appropriately directed the jury to its task by stating "your focus in this case is on the issue of Mrs. Sidhu's entitlement to benefits, not State Farm's conduct".

[6] With reference to the "big lie", she admonished plaintiff's counsel, stating "he should not have made those comments to you, they were totally inappropriate. You should disregard them."

[7] Finally, with respect to the CPP benefits, again, she instructed the jury that plaintiff's counsel "should not have mentioned that to you". She further instructed the jury that there was no evidence about the CPP program, or what the Canada Pension authorities had decided or why. She added "it has nothing to do with the issues that you have to decide. You should completely disregard whether or not Mrs. Sidhu is entitled to or receives Canada Pension. It's just not relevant."

[8] This was a hotly contested jury trial. We are not persuaded that, as the appellant suggests, the trial judge lost control of this trial. She dealt with objections as they were made. She delivered clear and prompt rulings on the mistrial application. We are not persuaded that she failed to appreciate the significance or impact of the contested submissions made by plaintiff's counsel. Her jury address was clear on all points and we are satisfied that the jury would have properly understood their task, what they were not consider and what they were to consider.

[9] The appellant also argues that the trial erred in awarding interest at two per cent per month on overdue payments. At the time of the plaintiff's accident, the *Statutory Accident Benefits Schedule – Accidents on or After November 1,*

1996, O.Reg. 403/96 provided that an insurer had to pay interest on unpaid benefits at the rate of two per cent per month, compounded monthly. As of September 1, 2010, that provision was replaced by a *Statutory Accident Benefits Schedule – Effective September 1, 2010*, O.Reg. 34/10 which reduced the applicable rate of interest to one per cent per month, compounded monthly.

[10] However, s. 2(2) of the 2010 schedule provides that interest shall be paid under that regulation in the amount determined under the previous schedule. Therefore, s. 2(2) of the new schedule changes the procedure for claiming benefits and the payment of benefits, but does not change substantive rights such as the rights to the former two per cent interest rate. See *Federico v. State Farm Insurance Company*, 2013 CarswellOnt. 6347, at para. 64 (F.S.C.O.).

[11] The appellant did not pursue the argument that child benefits paid under the Canada Pension Plan should have been deducted from the statutory accident benefits awarded.

[12] For these reasons then, the appeal is dismissed.

[13] The respondent is entitled to her costs of the appeal, which we fix at \$15,000, inclusive of disbursements and applicable taxes.

*Alto 9 May 9A*

*Ken Ruby JA*

*Harding A.*