

Samoila v. Prudential of America General Insurance Co. (Canada) (1999), 89 A.C.W.S. 578 (Ont. S.C.J.).

Proposition of Law:

Insurance – No-fault automobile insurance – No-fault benefits – Disability benefits (loss of income payments) – Entitlement – Plaintiff’s motor vehicle was struck in the rear by another motor vehicle – Defendant paid benefits to insured for five years – Defendant terminated payments on basis that valid policy was not in effect at time of accident and sought repayment of benefits from plaintiff – Mediation failed, plaintiff brought action against defendant and defendant brought third party proceedings against insurer of other motor vehicle involved in accident – Plaintiff brought motion for interim order directing defendant to continue pay benefits – Motion granted; defendant ordered to pay into court weekly income benefits of \$341.56 – O. Reg. 283/93 provides first insurer that receives completed application for benefits is responsible for paying benefits to insured person pending resolution of any dispute as to which insurer is required to pay benefits – Section 281 of Insurance Act provide that if mediation fails, insurer is to pay statutory accident benefits in accord with last offer of settlement that it had before failure until otherwise agreed by parties or ordered by court or by arbitrator – Absent consent of parties, court has jurisdiction to order amount to be paid – O. Reg. 283/95 applied and defendant was first insurer that received completed benefits application – To set amount for defendant to pay at zero which was insurer’s last offer of settlement before mediation failed, would undermine mediation process.