
Is A Plaintiff Entitled To Double Recovery Of Income Loss Benefits?

Reported Case:	<i>Vandekop v. Personal Insurance Company of Canada</i>
Citation:	2009 ONCA 511
At Issue:	Is a plaintiff entitled to double recovery of income loss benefits? What is the meaning of income benefits "available" to the insured?
The Court:	Ontario Court of Appeal
Judgment Rendered:	June 24, 2009
Factual Summary:	The plaintiff was injured in a car accident on February 17, 1997. At that time, she was 44 years old. Subsequently she applied for long-term disability benefits and statutory accident benefits (income replacement benefits). The claim for long-term disability benefits was settled on a lump sum basis. The accident benefit carrier sought to deduct the lump sum amount.
Trial Decision:	<p>The Court held that the insurer had the onus to prove that settlement of the LTD benefits claim was unreasonable in all the circumstances.</p> <p>The Court found that the insurer had failed to establish "beyond dispute" that the plaintiff was entitled to the hypothetical payments and to the quantum of those hypothetical payments had the settlement not been entered into.</p> <p>The insurer's failure to lead evidence to demonstrate that, if the settlement of the LTD claim could be set aside, the plaintiff would be entitled to LTD was fatal to a claim to deductibility of those benefits.</p> <p>The Court rejected the submission that the legislature would, without clear wording, oblige an injured party caught between two insurance companies to pursue litigation where the only benefit of the litigation would accrue to the automobile insurer.</p>
Appeal	<p>The Court of Appeal approved of the trial finding that a LTD lump sum was not deductible from SABS payments, at least in circumstances of this case.</p> <p>The Court found that the LTD was not "available" to her. To treat LTD benefits as being available would effectively oblige an insured to litigate with a collateral benefits insurer, at their own risk and expense, for the benefit and at the discretion of, their accident benefits insurer. In the Court's view, SABS places no such obligation on an insured.</p>