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The inevitable accident "defence": A defence merely in name

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Overview

Is the inevitable accident defence truly a defence? This question has generated significant confusion within the personal injury bar. Some are of the view that a defendant seeking to rely on this defence must discharge a heavy burden to establish that they have done the utmost to prevent the subject accident. Others, however, contend that this "defence" is really just a denial of negligence, which places no persuasive burden on the defendant, let alone a heavy one. In *Zapata, Steve, et al v Reid, David et al,* 2025 ONSC 594 ("*Zapata*"), Justice Akazaki addressed this contentious area of law, providing some much-needed clarity for practitioners dealing with these cases.

The Facts

On July 17, 2017, David Reid ("Mr. Reid") had a seizure and lost control of his pickup truck while driving home from work on Highway 427. His truck collided with two vehicles, before hitting the one carrying Steve Zapata and Veronica Gonzalez Duque. At the time of the subject collision, Mr. Reid was receiving treatment for a type of brain cancer that caused him to experience seizures. The risks caused by his seizures led the Ministry of Transportation ("MTO") to suspend his driver's license in March 2016. However, after Mr. Reid produced a physician's letter attesting to his fitness to drive, the MTO reinstated Mr. Reid's license.

Mr. Reid died of brain cancer five months later and the plaintiffs commenced a personal injury action against Mr. Reid's estate. In response, the Estate brought a summary judgement motion to dismiss the suit on the basis that no trial was required to establish the circumstances of the accident and Mr. Reid's measures to prevent the seizure. The plaintiffs opposed this motion, arguing that a heavy burden rests with the Estate to disprove negligence and that, at trial, the court could determine that Mr. Reid ought not to have been driving, in order to eliminate the risk of causing a collision, by virtue of his illness.

Approaches to the defence of "inevitable accident"

The outcome of the dispute depended on which approach to the defence of "inevitable accident" should be applied.

The plaintiffs' argument was premised on earlier decisions that continue to inform the present application of this principle. This strand of caselaw stands for the principle that establishing an inevitable accident entails an affirmative defence obligation requiring the defendant to establish they have done the utmost to prevent the accident. In their submission, that standard of care meant Mr. Reid should not have been driving if there remained some risk of recurrence of a seizure.

The Estate, on the other hand, argued that the Supreme Court of Canada's decision in *Rintoul v. X-Ray and Radium Industries Ltd*., 1956 CanLII 16 (SCC) ("*Rintoul*"), stands for the preposition that, where a *prima facie* case of negligence is established, the defendant can discharge its burden of proving that the accident was not caused by his negligence by showing that the accident was inevitable.

While the Court confirmed that *Rintoul* remains the leading authority on the meaning and application of the inevitable accident defence, it held that the Estate erroneously read in the requirement for a *prima facie* case of negligence to be established against the defendant. It further clarified that the defence is a misnomer – it is not a defence at all. Instead, it is simply a denial of negligence.

Relying on *Rintoul*, the Court held that the Estate's plea of inevitable accident raises three subsidiary issues, particularly the:

a. Defendant's burden of proof;

b. Applicable standard of care,

c. Application of the burden of proof and standard of care

Defendant's Burden of Proof

While *Rintoul* refers to a defence burden, this decision must not be read as transferring the common law legal burden from the plaintiff to the defendant where inevitable accident is pled. Rather, Justice Cartwright held that the defence burden in this context is a burden of explaining an improbable event. Therefore, the burden cast on a defendant who pleads that an accident was inevitable is an evidentiary one situated within the factual narrative of a particular case, rather than a legal burden.

The legal burden remains, therefore, with the plaintiffs to establish that Mr. Reid breached his duty of care while driving with the risk of seizure. While the parties' experts differed on whether his doctors ought to have his license suspended, they agreed that Mr. Reid could not have done more to prevent

the seizure beyond adherence to medical advice and following a regimen of anti-seizure medication. Accordingly, at trial, a finding of negligence might have been possible, if it weren't for the undisputed evidence that Mr. Reid was faultless in his observance of medical advice and anti-seizure medication.

The Applicable Standard of Care

The modern formulation of an inevitable accident in negligence law is "one that reasonable care by the actor would not have avoided." Put more simply, it is an accident that occurred despite the defendant's exercise of reasonable care. The fact that the defendant could have done more than what was objectively reasonable could not form the basis of liability.

In Mr. Reid's case, there was no negligence in his driving. The fact that he lost control of his truck and struck other vehicles in circumstances beyond his control did not give rise to a higher duty than other users of the road. Negligence law manages and allocates reasonable risk but does not eliminate it or impose strict liability.

The Highway Traffic Act applies the principles of negligence law to accidents on public highways and precludes a defence onus of disproving negligence in a collision between motor vehicles. Therefore, the fact that the defendant could have done more than what was objectively reasonable cannot form the basis of liability and courts cannot impose an onus on the defendant to disprove negligence.

Application of the Burden of Proof and Standard of Care

Based on the above, the plaintiffs bore the legal burden of proof to prove Mr. Reid's negligence. The allegation against him was that he chose to drive despite the managed risk of seizure. The evidence undisputably supported the finding that Mr. Reid suffered a seizure despite having acted on the advice of physicians and following the recommended treatment regimen. Therefore, no issue of a defence evidentiary burden to prove the excuse or explanation applied. Since the legal burden of proof always remained with the plaintiff, the estate was under no obligation to disprove Mr. Reid's negligence.

In its decision, the Court held that the fact that a reasonable person knows or ought to knows that treatment can stop working does not make it unreasonable to drive with that risk and that holding as such would effectively operate as a strict liability regime for low-risk cases. The only strategy for avoiding the accident recommended by the plaintiffs' expert was for Mr. Reid to refrain from driving. Given Mr. Reid's physical condition, the Court did not find this to be a reasonable precaution and declined to find him liable for deciding to resume driving after the MTO, informed by the opinion of Mr. Reid's treating physician, lifted the suspension on his license. Mr. Reid had no cause or basis to question the dosage of the anti-seizure medication. There was no evidence from either expert that the upping of the dosage after the crash indicated that the physicians had been titrating the dose or that Mr. Reid knew of any insufficiency. As such, the action against Mr. Reid's Estate was dismissed.

Conclusion

In *Zapata*, Justice Akazaki clarifies that the inevitable accident "defence" is not, in fact, a formal defence to a negligence claim, akin to contributory negligence or voluntary assumption of risk. Rather, this *plea,* as it is more aptly described in this decision, is simply a denial of negligence. A possible explanation for the confusing treatment of this principle as carrying a high burden on the defence is that the issue arises typically in cases already involving a reverse onus on the defendant to disprove negligence, such as those involving rear-end collisions in snowy and icy road conditions. However, a closer look at Supreme Court jurisprudence on the issue reveals that a *plea* of inevitable accident is simply a denial of negligence that places no persuasive burden on the defendant. However, it may carry evidentiary burdens depending on the particular facts of the case.

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