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A Staged Accident is No Accident

A Staged Accident is No Accident - the case of *Aliyev v TD General Insurance Company*, 2023 CanLII 72660 (ON LAT)

By Michael Devito, Student-at-Law

Contributor: Damian Di Biase, Lawyer

Overview

What constitutes an "accident?" In a recent Licence Appeal Tribunal decision, Beard Winter's own Elisabeth van Rensburg was successful in a preliminary issue decision that confirms that a staged accident does not meet the definition of "accident" contained in section 3 of the Statutory Accident Benefits Schedule (the "Schedule").

Determining What Constitutes an Accident

On a preliminary issue motion of this nature, an applicant bears the onus of proving on a balance of probabilities that an incident meets the definition of an "accident".

In *Amos v. Insurance Corporation of British Columbia*[1], the Supreme Court of Canada set out a two-part test for determining whether an insured person was involved in an "accident" and thus entitled to statutory no-fault accident benefits.

The first part of this test is the "purpose test" which asks if the accident resulted from the ordinary and well-known activities to which automobiles are put. The second part of the test is the "causation test". In the context of a potentially staged accident, the focus is mainly on the purpose test. The purpose test presents a relatively low threshold since the accepted definition of "ordinary and well-known activities" is expansive. However, a staged accident does not pass the purpose test as orchestrating an accident does not fall under "ordinary and well-known activities" to which vehicles are put. The Tribunal has determined that a staged accident is an intentional act that is contrary to public policy and section 118 of the *Insurance Act* and is therefore excluded from the definition of an accident in subsection 3(1) of the *Schedule*.

The Non-Accident in Aliyev:

In *Aliyev*, the Applicant initially claimed that he was driving with two friends in a vehicle travelling southbound on Weston Road through its intersection with Fenmar Drive. The Applicant indicated that he was proceeding on a green light when a third-party travelling eastbound in a Bentley turned onto Weston Road from Fenmar Drive on a red light, thereby causing the collision.

However, as time progressed, the Applicant's description of the mechanics of the collision began to develop subtle variations upon subsequent retellings. Mr. Aliyev had consistently maintained that he was travelling southbound on Weston Road when the Bentley made a right-hand turn into his path, thereby causing the collision. However, he distanced himself from these statements at the Preliminary Issue Hearing and revised his evidence to be that he only assumed that the third-party driver intended to turn right. Mr. Aliyev's passengers also adopted the same revised narrative. The insurer and Mr. Aliyev obtained expert accident reconstruction reports. Both engineers testified that the damage and the reported actions of the drivers

1 *Amos v. Insurance Corporation of British Colombia*, [1995] 3 SCR 405

were incompatible with Mr. Aliyev's vehicle travelling south on Weston Road and the third-party driver turning right into its path

The Applicants chose not to call the third-party driver of the Bentley to testify at the hearing. As the only other direct witness to the collision, the third-party driver could have corroborated key aspects of Mr. Aliyev's and the other claimants' evidence. Ms. van Rensburg requested that the Tribunal draw an adverse inference due to the failure of the Applicant to call the third-party driver as a witness at the hearing. In *G.S. v. The Personal*[2], the Tribunal drew an adverse inference from the claimant's failure to call material eyewitnesses to the incident, noting that these witnesses would have had valuable firsthand knowledge of the incident that could have been helpful in corroborating the applicant's version of events. As a result, the Applicant was found not to have been involved in an "accident" under section 3 of the *Schedule*. His application seeking payment of denied accident benefits was dismissed in its entirety and he therefore has no valid claim for accident benefits arising out of the accident. As a result, the insurer will be seeking a repayment of accident benefits paid to Mr. Aliyev.

2 *G .S. v. The Personal*, 2020 Canlii 98734 (ON LAT) [G.S]

Conclusion

Ultimately, in light of all of the inconsistencies within Mr. Aliyev's own evidence, the lack of corroborating evidence, and the persuasive opinions of both expert engineers which directly contradicted all of the claimants' narratives, Adjudicator Lundy did not find that the Applicant met his onus to demonstrate on the balance of probabilities that he was involved in an accident.

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