Citation: Anderson v. Economical Insurance, 2024 ONLAT 22-011735/AABS

Licence Appeal Tribunal File Number: 22-011735/AABS

In the matter of an application pursuant to subsection 280(2) of the *Insurance Act*, RSO 1990, c I.8, in relation to statutory accident benefits.

Between:

Clive Anderson

Applicant

and

Economical Insurance

Respondent

DECISION

ADJUDICATORS: **Jeremy A. Roberts and Gareth Neilson**

For the Applicant: Clive Anderson, Applicant
Ryan O'Connor, Counsel

For the Respondent: Colin MacDonald, Counsel

HEARD: by Videoconference: November 22, 2023

OVERVIEW

[1] Clive Anderson, the applicant, was involved in an automobile accident on May 17, 2022, and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the "*Schedule*"). The applicant was denied benefits by the respondent, Economical Insurance, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

[2] On November 16, 2023 the applicant withdrew issues 3(a), 3(b) and 3(c) as listed in the AABS order of June 6, 2023. The hearing proceeded on the preliminary issue and the respondent's request for costs.

ISSUES

[3] The issues in dispute are:

i. Was the applicant involved in an "accident" as defined in section 3(1) of the *Schedule*?

ii. Is the respondent entitled to costs of $1,000.00 per day pursuant to section 19.6 of the *Licence Appeal Tribunal Rules, 2023* ("Rules")?

RESULT

[4] We find that the applicant was not involved in an "accident" as defined under section 3(1) of the *Schedule*.

[5] We find that the respondent is not entitled to costs of $1,000.00 per day pursuant to section 19.6 of the Rules.

ANALYSIS

Background

[6] On the day of the alleged accident, a series of events took place which we will refer to as "the incident". Details of the incident, to which both the respondent and applicant agreed, were corroborated by cell phone and dash cam footage. Firstly, an individual (the "assailant") and the applicant were involved in an incident of road rage, where the assailant felt that the applicant had cut him off. The assailant pursued the applicant back to his apartment parking lot, threatened the applicant with a knife, and then attempted unsuccessfully on several occasions to run over the applicant with his car. Subsequently, the assailant

damaged the applicant's car with a tire iron prior to departing the scene. At this stage, the applicant charged at the assailant's car, made contact with the car, and was injured. However, there are two possible scenarios as to how the applicant became injured:

A. The assailant backed his car into the applicant.

B. The applicant ran into the assailant's car.

[7] The question for the Tribunal to consider was two-fold: (1) which scenario do we believe most likely occurred; and (2) does that scenario and the subsequent injury constitute an "accident" as defined in section 3(1) of the *Schedule*?

The applicant was not involved in an "accident" as defined in section 3(1) of the Schedule

[8] We find the applicant was not involved in an accident because the incident fails to satisfy the "causation test" (i.e., was the injury caused by the use of a motor vehicle).

[9] In order to determine whether an "accident" has occurred, the Tribunal relies on *Greenhalgh v. ING Halifax Insurance Co., 2004* Carswell Ont 3426, which set out a "purpose" and "causation" test which much be satisfied. The purpose test identifies that the vehicle must have been used in a normal fashion (i.e. was the vehicle being used in a way that is consistent with the normal use of the vehicle). The causation test has three parts which must be met:

i. The applicant must prove that "but for" the use of the vehicle, they would not have sustained an injury;

ii. He must establish whether or not there were any intervening events which broke the chain causation; and

iii. He must prove that the vehicle was the dominant feature of the accident.

[10] The onus is on the applicant to prove his case.

[11] In considering the two scenarios, we believe that scenario B (that the applicant ran into the assailant's car) is more likely. The applicant argued that the assailant's car reversed into him either by being in reverse or by being in neutral and sliding backwards towards a drain culvert. The respondent argued that the footage of the incident clearly showed that the vehicle's reverse lights were not illuminated and that there was little evidence to support the applicant's claim that

the car slid backwards. In considering the evidence, we agree with the respondent. The footage available clearly demonstrates that the car was not in reverse, and the most likely alternative is that the applicant ran into the vehicle and was subsequently injured (either by falling or tripping over a nearby cement curb).

[12] When applying the purpose test to the accepted scenario, we find that the applicant meets the purpose test.

i. The applicant argued that the vehicle at the moment of the incident was being used in a normal fashion and whether the car was parked or moving slightly at the time of the incident, the driver had control of the vehicle, satisfying the test.

ii. The respondent argued that the assailant's vehicle was being used as a weapon at the time of the incident. Dashcam footage provided by both parties shows that the vehicle in question had attempted to strike the applicant on multiple occasions. The respondent cited *Travis v Aviva* as an example where a vehicle being used as a weapon is not considered normal use and therefore this incident does not meet the purpose test.

iii. We agree with the applicant that the purpose test has been met. While the dashcam footage shows that the vehicle was at one point being used as a weapon, at the time of the incident where the alleged injury occurred, it is clear that the vehicle was being used in a normal fashion.

[13] When applying the causation test to the accepted scenario, we find that the applicant does not meet any of the three parts of the test.

i. The "but for" test

a) The applicant argued that "but for" the assailant's reckless actions while driving his car, he would not have had to chase the assailant, which resulted in his injury.

b) The respondent argued that the applicant pursued the assailant's car, which was the precipitating action for the injury, not the assailant's use of his car. In other words, the injury would not have happened "but for" the applicant's decision to chase the assailant, which does not satisfy the test.

c) We agree with the respondent here. We have accepted that the applicant had contact with the assailant's car, but that was from his

conscious decision to pursue the assailant. But because the video evidence shows him running at the vehicle, we do not accept the argument that the injury would not have happened “but for” the use of an automobile.

ii. Intervening events test

a) The applicant argued that that the entire incident beginning with the road rage and ending with his injury was a chain and there were no intervening acts. By this logic, he argued that his injury was caused by both his and the assailant’s use of motor vehicles throughout the incident.

b) The respondent argued that there were many intervening events throughout the incident. For example, the assailant’s decision to smash the applicant’s car with a tire iron was an intervening act that spurred the applicant’s decision to pursue the assailant. By this logic, we cannot consider the incident as a whole and the last portion, whereby the applicant pursued the assailant, should be considered in isolation.

c) We agree with the respondent. While the incident began and included the use of motor vehicles, multiple intervening events occurred, which both parties documented. We find that these events sever the chain of causation, and the applicant does not meet this test.

iii. Dominant features test

a) The applicant argued that the vehicle was the dominant feature of the incident and therefore meets the test. The applicant relies on decisions made in *Economical v Caughy, DS v TD and Madore v Intact.* The *Caughy* decision found that that an accident can take place even if the automobile is not being used in an ordinary fashion. Similarly, both the *DS and Madore* decisions help define what constitutes an ‘accident’ under the SABS. The applicant argues that the circumstances surrounding how the applicant was injured are not relevant because the vehicle remains the dominant feature of the incident.

b) The respondent countered that the vehicle was being used as a weapon and that the applicant attacked the vehicle and therefore the

dominant feature was not the vehicle but rather the applicant and the other driver.

c) We agree with the respondent that the dominant feature was not the vehicle but rather the applicant and the assailant. Both drivers exited their vehicles on more than one occasion. The applicant was the target of the assailant and then the applicant pursued the assailant's vehicle. In our opinion, the vehicle in this situation was passive and it was the applicant and the other driver that were the dominant features of the incident.

[14] While the applicant met the purpose test, he failed to satisfy any of the three parts of the causation test. Therefore, we find that this incident is not an "accident" as described under section 3(1) of the *Schedule*.

Is the respondent entitled to costs of $1,000.00 per day pursuant to section 19.6 of the Rules?

[15] We do not find that the respondent is entitled to costs because we do not find that the applicant acted unreasonably, frivolously, vexatiously, or in bad faith.

[16] The onus is on the respondent to prove that, under section 19.1 of the Rules, the applicant acted "unreasonably, frivolously, vexatiously, or in bad faith".

[17] The respondent did not provide the Tribunal with any submissions or arguments related to the claim for costs.

[18] The applicant argued that this incident was clearly disturbing and unfortunate and resulted in an injury. He argued that it was not unreasonable to believe that he was entitled to accident benefits.

[19] We find that there is no compelling evidence to prove that the applicant behaved unreasonably, frivolously, vexatiously, or in bad faith. The respondent is not entitled to costs of $1,000.00 per day pursuant to section 19.6 of the Rules.

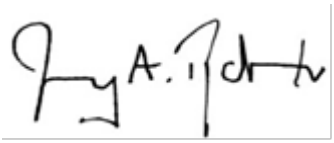
ORDER

[20] Our orders are as follows:

i. The applicant was not involved in an accident as defined in section 3(1) of the Schedule.

ii. The respondent is not entitled to costs of $1,000.00 per day.

Released: March 5, 2024



Jeremy A. Roberts
Vice-Chair

Gareth Neilson
Adjudicator