Tea Time Gone Wrong: Spilled Tea in Car Not an Automobile Accident

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In *M.P. v. Allstate Insurance Company of Canada*,[1] a recently released preliminary issue decision of the Licence Appeal Tribunal (the "LAT"), the LAT considered the definition of "accident" in s. 3(1) of the Statutory Accident Benefits Schedule – Effective September 1, 2010 (the "SABS").

Subsection 3(1) of the SABS defines "accident" as follows:

> *"accident" means an incident in which the use or operation of an automobile directly causes an impairment or directly causes damage to any prescription eyewear, denture, hearing aid, prosthesis or other medical or dental device*

Facts

The applicant claimed to have been involved in an automobile accident in March 2017. She went to a fast food restaurant drive-through and purchased a cup of tea. The beverage was handed to her in a tray. She placed the tray on her passenger seat and drove off until she came to a red traffic light and stopped.

After stopping, she noticed the lid was not properly on the cup of hot tea. She stated that she lifted the cup out of the tray and placed it in front of her as she wanted to secure the lid before placing it in the cupholder. She held the cup with her left hand and tried to secure the lid by pressing down on it with her right hand. The tea then spilled on her, causing her injury. She made a claim for accident benefits.

[1] 2020 ONLAT 18-012641/AABS.

Insurer's Arguments

The insurer denied that the incident was an "accident", based on the intervening act of the applicant being scalded by a hot cup of tea from the fast food restaurant.

The insurer argued that the negligence of the fast food restaurant's employee in not securing the lid and the applicant's attempt to secure the lid were what caused the tea to spill on her. It argued that these were independent intervening acts which caused her injuries, not the use or operation of a motor vehicle.

Applicant's Arguments

The applicant, on the other hand, submitted that her tea spilled on her while she was operating her vehicle, and that there was no intervening act. She had wanted to put the tea from the tray to her cupholder when it spilled on her. She submitted that having a beverage in a vehicle and using a cupholder are part of the ordinary course of using a vehicle.

The applicant relied on the decision of *Dittmann v. Aviva Insurance Company*,[2] in which the plaintiff spilled hot coffee on her lap while transferring it from a drive-through window into her vehicle cupholder. The plaintiff applied for accident benefits. Her insurer argued that she was not involved in an "accident" pursuant to s. 3(1) of the SABS. The Court in that case, however, agreed with the plaintiff that but for the plaintiff's use of her car, she would not have been using the drive-through and but for her seatbelt, she would have been able to avoid the hot coffee. The Court found no intervening act.

Decision

The LAT found that the applicant's impairment was not caused by an "accident" pursuant to the SABS.

Adjudicator Thérèse Reilly noted that the facts of *Dittmann* did not mention the lid being improperly secured or that a restaurant employee was negligent in securing the lid. Adjudicator Reilly found that the failure of the restaurant employee to place the lid securely on the cup was a cause of the problem.

Adjudicator Reilly also reasoned that the applicant did not have to move the cup in her attempt to secure the lid. She noted that the applicant could have chosen to leave the cup where it was and then try to secure the lid. She reasoned that it was out of the ordinary

[2] 2016 ONSC 6429, aff'd 2017 ONCA 617, leave to appeal to SCC dismissed 2018 CanLII 12956.

and not necessary for the claimant to lift the cup out of the tray and then place it in front of her and attempt to secure the lid.

In short, Adjudicator Reilly found that the actions of the employee and the applicant were intervening acts that caused the applicant's injuries and broke the causation link.

In arriving at this decision, Adjudicator Reilly noted that the applicable legal test to determine whether an "accident" has occurred is:

i. **Purpose Test:** Did the accident result from the ordinary and well-known activities to which automobiles are put?
ii. **Direct Causation Test:** Was the use or operation of the vehicle a direct cause of the injuries? If the use or operation of a vehicle was a cause of the injuries, was there an intervening act or intervening acts that resulted in the injuries that cannot be said to be part of the "ordinary course of things." An intervening act will absolve an insurer of liability if it cannot fairly be considered a normal incident of the risk created by the use or operation of the vehicle.

The insurer conceded that the applicant was operating her vehicle in a way in which it would ordinarily be used.

However, Adjudicator Reilly agreed with the insurer that the employee and the applicant's actions in securing the lid, as well as the spilling of the tea, were the dominant features of the applicant's injuries, and that the vehicle did not cause her to spill the tea. The use or operation of the vehicle was not the direct cause of the injuries.

Conclusion

This decision is an important reminder that, in order for an incident to constitute an "accident" pursuant to the SABS, it is not enough to show that an injury was inflicted in an automobile or that an automobile was involved in the incident. The use or operation of the vehicle must have *directly* caused the injury and there must be an unbroken chain of causation.