

**ONTARIO
SUPERIOR COURT OF JUSTICE
BRAMPTON SMALL CLAIMS COURT**

B E T W E E N :

SHAFIQ UR REHMAN RAJA

Plaintiff

- and -

THE PERSONAL INSURANCE COMPANY

Defendant

REASONS FOR DECISION

JENNEY D.J.

Heard: January 7th, 2025

The Plaintiff in person

Kyle McNerney for the Defendant

- (1) The Plaintiff is a real estate agent in the Regional Municipality of Peel. The Defendant is the insurance provider for the Plaintiff's personal vehicles. The Plaintiff has brought this claim against the Defendant for \$24,116.01 in damages.
- (2) On November 29th, 2022, the Plaintiff was stopped for a red light on McLaughlin Road in Brampton when his 2006 Bentley was struck from behind by a 2013 Ford C-Max. The Plaintiff obtained a repair estimate of \$19,101.01 from Atlas Auto

Collision Centre in Brampton (hereafter referred to as "Atlas"), and filed a claim for this amount with the Defendant. This claim was denied by the Defendant pursuant to section 233(1)(c) of the Insurance Act.

- (3) The Plaintiff asks this court to order the Defendant to pay to him this \$19,101.01 estimate, along with a rental car bill of \$5,010.45 from Elegant Car Rental in Brampton. for a total of \$24,111.46. The Plaintiff acknowledged in his testimony that he has not actually incurred any of these expenses, as the repairs were not performed and the rental car bill has not been paid. He is not out of pocket from the accident.
- (4) The main issue to determine is whether or not the Defendant was justified in denying insurance coverage to the Plaintiff or if it should be required to do so. Section 233(1)(c) of the Insurance Act states as follows:

"Misrepresentation or violation of conditions renders claim invalid

233 (1) Where,

(a) an applicant for a contract,

(i) gives false particulars of the described automobile to be insured to the prejudice of the insurer, or

(ii) knowingly misrepresents or fails to disclose in the application any fact required to be stated therein;

(b) the insured contravenes a term of the contract or commits a fraud; or

(c) the insured wilfully makes a false statement in respect of a claim under the contract,

a claim by the insured is invalid and the right of the insured to recover indemnity is forfeited. R.S.O. 1990, c. I.8, s. 233 (1)."

- (5) It is the position of the Defendant that the Plaintiff wilfully made false statements with respect to his claim in breach of section 233(1). The Defendant takes the

position that the Plaintiff 'staged' the accident in order to have the Defendant cover the repair cost of previous damage to the vehicle.

- (6) This matter was originally scheduled for trial on October 9th, 2024. It was adjourned after two of the Plaintiff's witnesses failed to attend despite each having been properly served with a Summons to Witness. These two witnesses are Akachi Donald-Irechukwu (hereafter referred to as "Akachi"), who was the driver of the Ford who struck the Plaintiff's vehicle, and Marco Sawah (hereafter referred to as "Marco"), the owner of Atlas. The presiding Deputy Judge Latimer found both witnesses in contempt that day and ordered that they attend at today's trial.
- (7) Despite this finding and this Order, neither witness attended today. The Plaintiff alleged that the Defendant intimidated Akachi not to attend, which the Defendant vehemently denied. I do not find that the Defendant intimidated the witness; to the contrary, the Defendant would likely have wanted the opportunity to cross-examine her. I find it more likely that Akachi chose not to attend either trial date because she did not wish to testify on the record and under oath with respect to her role in this matter.
- (8) The Plaintiff advised this court that Marco was available by telephone. He was apparently at work at Atlas, which is approximately a ten (10) minute drive from the courthouse. I did not permit Marco to testify via telephone: this would be unacceptable even if there hadn't already been an Order from Deputy Judge Latimer requiring him to attend in person. For reasons known only to the Plaintiff and/or Marco, after learning that he would not be permitted to testify via telephone, Marco did not make the approximately ten (10) minute drive to the courthouse to testify in person.
- (9) The Plaintiff testified that his two adult children were with him in the vehicle at the time of the collision. Neither of these individuals were included on the Plaintiff's List of Witnesses. The Plaintiff offered to have his daughter testify by telephone

but I again did not permit this. Neither of the Plaintiff's children attended to testify in person, although apparently available to do so.

(10) The Defendant chose to investigate the Plaintiff's insurance claim due to disparities between the statements made by the Plaintiff and Akachi. For example, in the self-reporting collision report, Akachi stated that the accident took place on Remembrance Drive, while the Plaintiff stated that it took place on McLaughlin Drive.

(11) Both drivers also originally stated that they did not know each other. They later admitted that they had a business relationship prior to the accident. The Plaintiff is a real estate agent who had previously shown Akachi and her husband "about 20" different houses.

(12) It came out during the trial that Akachi's husband was apparently in the Ford vehicle when it struck the Plaintiff, but that he chose to duck down and stay in the vehicle after the accident, seemingly to avoid contact with the Plaintiff. This odd behaviour was not explained. Nor was the husband summoned to court, although he clearly would have also been a witness to what allegedly occurred in the accident.

(13) The Plaintiff also originally stated that he did not know Marco. He later acknowledged that Atlas had previously repaired one of the Plaintiff's other vehicles, a Mercedes.

(14) In addition, the Defendant discovered that the Plaintiff had briefly telephoned Atlas a few hours prior to the accident. This call was made when the Plaintiff was within a few kilometers of the business.

(15) The Plaintiff entered into evidence correspondence between himself and GIO (the General Insurance Ombudservice) wherein he complained that he was "without a car" and that he has "no more money to feed my two kids and wife".

He later acknowledged in his evidence that his family has (and had) four vehicles – the Bentley, the Mercedes, a Maserati, and a fourth car which was not identified at trial. He acknowledged also that all four members of the family – he, his wife, his adult son and his adult daughter – simply drove whichever cars they chose whenever they wished. This was therefore a clear misrepresentation made by the Plaintiff in writing to GIO – obviously he had three other vehicles available to him – and gave me reason to be concerned about his credibility.

(16) The three cars identified above – the Bentley, the Mercedes, and the Maserati – had all been involved in accidents, and Atlas had been involved in repairing at least one of them. This history, combined with the above concerns about the misrepresentations made by the Plaintiff and/or Akachi, constituted enough red flags for the Defendant to retain an engineer, William Jennings, to prepare a Collision Reconstruction Report. This Report was served upon the Plaintiff and filed with the court in accordance with the Rules.

(17) Mr. Jennings testified at trial. Evidence was given with respect to his qualifications as an expert, which evidence was not seriously challenged by the Plaintiff. I accepted Mr. Jennings as an expert in this matter.

(18) Mr. Jennings was very forthright in his testimony, to the extent where he voluntarily brought to the court's attention the existence of a typographical error in his report (the typo was "5 meters" when it ought to have been "55 meters"). His evidence was undisturbed in cross-examination. I accept his testimony throughout.

(19) Mr. Jennings testified that the accident could not have happened the way it was described by Akachi. Nor could the accident have caused the damages set out in the Atlas estimate. (This may be why neither witness elected to attend court even after having been previously summoned and found in contempt for failing to attend.) For example:

(20) Photos and videos from the accident show the vehicles still touching after the collision. Mr. Jennings testified that this would not have been possible due to “restitution”. The force of the rear vehicle striking the front vehicle would have pushed the two vehicles apart, and they would have come to rest apart from one another. Mr. Jennings further clarified that this would be true even if the Plaintiff had been anticipating the collision and braking hard at the time of impact. The logical inference is that the vehicles were purposefully brought together and then photographed / videoed in contact with each other.

(21) Mr. Jennings further testified that the collision could not have caused the damages claimed by the Plaintiff as set out in the Atlas estimate. The Ford vehicle was equipped with an Event Data Recorder (EDR) which is designed to record any event that meets or exceeds an impact speed change of 8 km/h. Akachi self-reported (and later stated in a discussion with the investigator for the Defendant, who also testified) that she was driving at about 60 km/h, possibly 50 km/h, when she struck the Plaintiff’s vehicle. However, the EDR did not record any such event. If there was an impact between the vehicles that day – and the photos / video confirm that the vehicles were at least touching – it took place at a speed of less than 8 km/h.

(22) Mr. Jennings further testified that both vehicles exhibited evidence of prior and unrelated damage, as well as poor quality prior repairs. This included but is not limited to damage to the front right corner of the Ford, and left rear corner of the Bentley. This is essentially the point of impact.

(23) It is the position of the Defendant that the collision was misrepresented by the Plaintiff in breach of section 233 of the Insurance Act. Contrary to the original statements made by the Plaintiff to the Defendant, the collision took place between two drivers who had a previous business relationship, who were driving vehicles that had previous damage / poor repairs at that particular point of impact, and within a few hours after the Plaintiff made a telephone call to Atlas

while driving in the area. Significantly, the estimated damage to the Plaintiff's vehicle is not at all consistent with a collision at 8 km/h or less.

(24) The expert evidence of Mr. Jennings is compelling and convincing while the evidence of the Plaintiff is not. I am satisfied that the Plaintiff did in fact breach section 233 of the Insurance Act, and that the Defendant was correct in choosing to deny coverage. As such, I find in the Defendant's favour.

(25) The Plaintiff's Claim is hereby dismissed with costs.

(26) If the parties are not able to resolve the issue of costs between them, they may make written submissions to the Court by no later than February 14th, 2025.

13th January, 2025



Small Claims Court Deputy Judge T. Jenney