

Court File No. SC-21-0386

ONTARIO  
SUPERIOR COURT OF JUSTICE  
Brampton Small Claims Court

BETWEEN:

SAHIL SINGLA

Plaintiff

and

CERTAS HOME AND AUTO INSURANCE COMPANY  
and DESJARDINS FINANCE

Defendants

Mohit Popli: L/P Representative of the Plaintiff

Regan Desjardins LLP:

Attention\ : Kyle W. McNerney: Lawyers for the Defendants

In person trial Heard:/ spoken to July 22, August 23, September 10, 2024

The trial took place before J. Brian McNulty, Deputy Judge, at Brampton Small Claims Court. I requested the Representatives of the Parties to file submissions by October 18, 2024. Submissions were filed by the Defendants only.

## REASONS FOR JUDGMENT

Case and Statutes considered:

- a) *Courts of Justice Act*, R.S.O. 1990, c. 43, generally considered
- b) *Insurance Act*, R.S.O. 1990, c. I. 8
- c) Various other insurance related case law dealing with the issue of misrepresentation by an insured and the impact on policy coverage.

[1] In this Action the Plaintiff seeks to recover from the Defendants the sum of \$31,000.00 in damages by reason of denial of coverage under a certain policy of automobile insurance he carried with the Defendant "Certas," following an accident involving the vehicle covered.

[2] At an early stage of this Action the claim against the Defendant Desjardins Finance, was dropped. The Action proceeded to trial against Certas only.

### ISSUES

[3] Whether the Defendant Certas, in all the circumstances, was justified in denying the Plaintiff coverage under the subject Policy, and, if not, what compensation should the Plaintiff recover thereunder. The Defendant Certas takes the position that under the provisions of the *Insurance Act*, R.S.O. 1990, c. I.8, and under the terms of the Policy itself, the Plaintiff made misrepresentations regarding the circumstances of the accident that justified denial of coverage.

### EVIDENCE

[3a] There were two voluminous Document Briefs entered into evidence at the outset of this trial. The first is the Plaintiff's Document Brief running 134 pages. That was entered as Exhibit No. 1. The second is the Defendant's Document Brief, consisting of 13 Tabs, and running hundreds of pages.

[4] Under Policy No. XD655846, Certas had agreed to insure an automobile owned by the Plaintiff; namely, a 2017 Volkswagen Jetta bearing VIN No. 3VW2B7AJ0HM361088, ("the Jetta").

[5] The Plaintiff's own testimony at Trial was that he was only recently licensed to drive at the time of the Jetta acquisition and arrangements for its insurance.

[6] Late in the night, about 12:30 p.m. on December 8, 2019 the Plaintiff was operating the Jetta with a passenger therein. His evidence is that he was travelling in the southbound lanes of Goreway Drive approaching its intersection with Intermodal Drive in the City of Brampton, Ontario. That's where the accident in question occurred.

[7] Subsequently the Plaintiff would state to Certas that prior to this accident the Jetta was in sound mechanical condition with no prior damage thereto. This statement would prove to be false. More on this below.

[8] The Plaintiff's recorded statement to Certas, and his testimony at trial, was that as he approached the intersection, a third-party motor vehicle; namely a 2017 Hyundai Elantra operated by a certain Mr. Arshdeep Singh, made a right hand turn, at a high rate of speed from Intermodal Drive onto Goreway, causing a collision between the two vehicles. Ironically, the Hyundai too was insured by Certas.

[9] The evidence of the Plaintiff is that following the collision, the police were not called to the scene. Both vehicles were towed away from the scene by private tow truck companies, the names of which, the Plaintiff just happened to have on his cell phone. Both vehicles were towed to a nearby Collision Reporting Centre.

[10] The police were contacted from the Collision Centre, and a report was written up based primarily on the representations provided by the Plaintiff. That report, bearing file no. PR190446840. That report appears at Tab 2 of the Plaintiff's Document Brief, (Exhibit #1). This report noted discrepancies in the stories of both drivers as to how the collision occurred.

[11] As it would turn out, the diagrammatic depiction of the accident produced in the police report (again, based on the description of events by the Plaintiff) would prove to be entirely inconsistent with that produced by the accident reconstruction expert that Certas engaged to investigate this collision. More about that later.

[12] The accident was reported to Certas by both the Plaintiff and Mr. Singh, the operator of the Hyundai struck by the Plaintiff. Again, and this is significant! Neither of them contacted emergency services following the collision, they simply had their vehicles towed to a Collision Centre. And they allegedly did this notwithstanding that both vehicles would subsequently be written off as a *total loss*. Who doesn't call emergency services in such circumstances? I can think of two people only.

[13] The Plaintiff testified that at the time of the collision he got out of his vehicle and approached the driver of the vehicle he struck. The Plaintiff said that he observed that the front air-bag of that vehicle had deployed upon impact. He says he got the driver's name of the Hyundai at the time. Although the Plaintiff clearly had his cell phone in his hand, as he called a towing company listed in his contacts, no photos of the collision site were taken. No police were called. Really!

[14] Subsequent to the accident report/claim of the Plaintiff, Certas opened its own investigation. This investigation from the initial stages would raise eyebrows.

[15] The initial exchanges between the Plaintiff and Certas represented then by its investigator, Maria Loureiro was conducted by telephone, in English, and was, with the knowledge and consent of the Plaintiff recorded. That transcript is in evidence as Exhibit No. 2, Tab 12, (the Defendant's Document Brief).

[16] This transcript is 92 Pages long. A lot was asked of Certas; a lot was answered by the Plaintiff. I am not going to review this transcript in detail. Suffice it to say, things were said by the Plaintiff in the course thereof that caused Ms. Loureiro to question the version of the collision as represented by the Plaintiff. Things were just not adding up.

[17] The plaintiff would have the court believe that he was unduly harassed, purposely confused, and manipulated into making the statements he made by tactics employed by Ms. Loureiro. Nonsense! I have read the transcript, and nothing in the exchange supports such a characterization. It's beyond euphemism to say that the Plaintiff was not being entirely candid during this exchange. More importantly, as the evidence at trial would show, he made outright misrepresentations as to the circumstances of the accident that would lead Certas to deny coverage under his policy. I find, that the Plaintiff was evasive, contradictory, and most probably lying throughout this exchange.

[18] This exchange would cause Ms. Loureiro to put the matter to an internal panel of investigators at Certas. She did not make the decision to deny coverage herself; the panel did. But it too did not rush to decision on the issue of coverage. Before

doing so, it decided to hire the services of an expert in accident reconstruction who would be provided with the findings, and observations of Certas, including the recorded exchange between the Plaintiff and Ms. Loureiro mentioned above.

[19] For that purpose Certas turned to Jenish Forensic Engineering. Mr. William H. Jennings, who has over 30 years of experience in automobile accident investigation, and reconstruction, testified at trial as to its investigation, and findings arising therefrom. The nature of its investigation and its report thereon are in evidence at Tab 13 of the Defendants' Book of Documents (Exhibit No. 2). This report is extensive. It includes the object and scope of their investigation, numerous photographs of both vehicles involved in the subject collision, data from the on board recorders of both vehicles, and its conclusions, regarding the collision itself. At trial Mr. Jennings walked the court through the contents of this report.

[20] I need not go into the details of that Report; suffice it to say, its findings were totally at odds with the Plaintiff's version of how this collision occurred.

[21] The Plaintiff had stated in his exchange with Ms. Loureiro of Certas that as he was travelling south on Goreway, the Hyundai vehicle which he struck approached the intersection at Intermodal Drive "at a high rate of speed," did not stop at a red light, and made a right hand turn into the Plaintiff's lane thereby causing the collision.

[22] As stated above, Mr. Jennings had access to this statement as part of his investigation. He knew what the Plaintiff's version was. He had examined both vehicles at the yard to which they had been towed.

[23] Again, the details of this Report do not have to be recounted in this judgment. I find, Mr. Jennings entirely qualified to testify on this accident, and I accept the conclusions that he made.

[24] Those conclusions are set forth at page 16, paragraph 10 of his Report (again, found at Tab 13 of the Defendant's Document Brief). Of the six conclusions reached, a couple are worth repeating, (and I paraphrase here).

- a) The damage patterns on both vehicles indicated that the collision did not occur in the manner consistent with the Plaintiff's version;
- b) The event data from the Hyundai that the Plaintiff struck, showed that it was not "travelling at a high rate of speed" as the Plaintiff stated, but was in fact stopped, and not turning right into the intersection in question;
- c) Although the Plaintiff stated to Certas that at the time of the collision both airbags of the Hyundai had deployed; none had; and finally;
- d) Although the Plaintiff stated to Certas that there was no prior damage to his Jetta, there was, in fact, significant damage to the left side thereof that was totally unrelated to the impact of the subject collision.

[25] The conclusions of this Report fully support the position of Certas that the Plaintiff had made numerous misrepresentations regarding the circumstances of this accident entitling it to investigate, and ultimately deny coverage.

[26] In reaching its conclusion, to deny coverage Certas, as it was entitled to do, relied upon the provisions of the *Insurance Act*, R.S.O. 1990, c. I.8 section 233 (1)(c). That section provides that a claim by an insured is invalid and indemnity is forfeited in the following circumstances:

- a) Where an insured gives false particulars or knowingly misrepresents an facts required to be stated in an application for insurance;
- b) Contravenes a term of the contract or commits a fraud; or
- c) Makes a willfully false statement in respect of a claim under the contract.

[27] The Plaintiff provided no evidence to refute the finding of Mr. Jennings' Report, nor could he explain away the numerous inconsistencies between his recorded statement of events, and those set out in that Report.

[28] In conclusion, I find, that Certas has provided significant evidence that the motor vehicle accident did not occur as reported and that the Plaintiff willfully made false statement(s) in respect of a claim under the contract. As such, the claim by the Plaintiff is invalid, and his right to recover indemnity is forfeited.

[29] I therefore order that the Plaintiff's claim be dismissed with costs to the Defendant Certas which I fix at \$4,650.00 pursuant to section 29 of the *Courts of Justice Act*, R.S.O. 1990, c 43. Post judgment interest shall run on this cost award at the *Courts of Justice Act* rate until payment in full.

*Ordered accordingly,*

END OF DOCUMENT

Dated this 21<sup>st</sup>, day of December, 2024



J.B. McNulty, D.J.

Release Date: January 3, 2025