

Financial Services
Commission
of Ontario

Commission des
services financiers
de l'Ontario



FSCO A14-005158

BETWEEN:

JIA QING REN

Applicant

and

JEVCO INSURANCE COMPANY

Insurer

DECISION ON A PRELIMINARY ISSUE

Before: Arbitrator Barry S. Arbus, Q.C.

Heard: In person at ADR Chambers on September 9, 2015 and October 1, 2015

Appearances: Ms. Michelle Linka and Ms. Tanya Shaheen for Mr. Jia Qing Ren
Mr. Thomas Hughes for Jevco Insurance Company

Issues:

The Applicant, Mr. Jia Qing Ren, was involved in an incident (“the Incident”) on August 9, 2012 that gives rise to the dispute between the parties. He applied for statutory accident benefits from Jevco Insurance Company (“Jevco”), payable under the *Schedule*.¹ The parties were unable to resolve their disputes through mediation, and the Applicant, through his representative, applied for arbitration at the Financial Services Commission of Ontario under the *Insurance Act*, R.S.O. 1990, c.I.8, as amended.

¹ The *Statutory Accident Benefits Schedule – Effective September 1, 2010*, Ontario Regulation 34/10, as amended.

The parties requested that this Hearing be restricted to one preliminary issue and the Hearing of all other issues be postponed until determination of the preliminary issue.

The issue in this Preliminary Issue Hearing is:

1. Was the Applicant involved in an accident as defined by Section 3(1) of the *Schedule*?

Result:

1. The Applicant was involved in an accident as defined by Section 3(1) of the *Schedule*.

EVIDENCE AND ANALYSIS:

Background

On August 9, 2012, the Applicant was driving his Mazda RX-8 vehicle in a plaza at Markham and Finch Roads. He observed a large tractor-trailer in front of him and stopped his vehicle. The Applicant claims that the tractor-trailer then backed into his vehicle, colliding with the right front bumper of his vehicle and causing the impairments claimed by him.

After the Incident, the Applicant and the driver of the tractor-trailer called the police and the two drivers then went to the Self-Reporting Collision Centre and filled out a description of the Incident. The Applicant ultimately also provided a video of the Incident from his dashboard video recorder, although there is a time lag of seven or eight seconds between the two videos produced.

The Applicant's Position

Section 3(1) of the *Schedule* reads:

“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.

The Applicant submits that in order to satisfy the definition of an accident, it is well settled law that there are two tests that must be met as stated by the Court of Appeal in *Greenhalgh v. ING Halifax*.² First: did the Incident arise out of the use or operation of an automobile (the “purpose test”); and second, did the use or operation of the automobile directly cause the impairment (the “causation test”)? The Applicant argues that both tests have been met in that the Incident arose out of the ordinary and well-known activities to which automobiles are put and, secondly, the impairment suffered by the Applicant resulted as a direct link of causation and that the Incident in question was the direct cause of the impairment suffered by the Applicant.

To support the Applicant’s position, the Applicant’s Counsel supplied not only the oral evidence of the Applicant, but also the video evidence taken from his dash-cam, together with the Self-Reporting Collision Reports submitted by both the Applicant and Carlos Chevez, the driver of the tractor-trailer in question.

The Insurer’s Position

The Insurer takes the position that, in fact, an accident did not occur. The Insurer claims that the evidence itself does not support the Applicant’s position.

The Insurer claims that the evidence of the Applicant was not conclusive in that the evidence of the video had gaps which, according to the Applicant, covered a period when the truck backed into his vehicle. The Insurer’s evidence was based on the video camera recording which at no time showed an impact between the car and the tractor-trailer, and supplemented with the testimony of Bibyana Pinto, an adjuster with Intact Insurance, who concluded with her supervisor that, in fact, there was no collision.

² *Greenhalgh v. ING Halifax Insurance Co.* 2004 CanLII 21045 (ON CA)

The strongest evidence for the Insurer was that of Mr. Sam Kodsí, who is an expert in accident reconstruction. He stated that in his opinion there was no collision between the truck and the vehicle driven by the Applicant. Mr. Kodsí, though, did admit that although the major part of the damage shown on the vehicle was likely not caused by impact with the truck, he did state that it is possible that some of the damage to the Applicant's vehicle could have been caused by the Incident.

Summary

It is indeed unfortunate that Mr. Chevez was not present to give evidence at the Hearing because his review of the Incident would clearly have been important. I do find the Self-Reporting Collision Reports filed by the Applicant and by Mr. Chevez to be most informative.

In Mr. Chevez's report, he indicated that the vehicle drove into the truck.

Both reports, therefore, seem to conclude that there was, in fact, contact between the vehicles in question. Once there has been contact between the two vehicles, I am satisfied that the first test, which is the purpose test, has been met in that there is a direct causal link between the two vehicles; i.e., a collision in the ordinary use or operation of a vehicle. Clearly, the second test, which is the causation test, which asks whether the use and operation of the automobile directly caused the impairment, has also been met, in that there was a collision that caused the impairments.³

Conclusion

In conclusion, I am satisfied that the Applicant was able to satisfy the purpose test and the causation test, and I am satisfied that the Applicant was involved in an accident as defined by Section 3(1) of the *Schedule*.

³ The extent of the impairments is an issue for the Hearing Arbitrator to decide.

EXPENSES:

The question of expenses related to this Preliminary Issue Hearing is deferred to the Hearing.

December 4, 2015

Barry S. Arbus, Q.C.
Arbitrator

Date

Financial Services
Commission
of Ontario

Commission des
services financiers
de l'Ontario



FSCO A14-005158

BETWEEN:

JIA QING REN

Applicant

and

JEVCO INSURANCE COMPANY

Insurer

ARBITRATION ORDER

Under section 282 of the *Insurance Act*, R.S.O. 1990, c. I.8, as amended, it is ordered that:

1. The Applicant was involved in an accident as defined by Section 3(1) of the *Schedule*.
2. The question of expenses related to this Preliminary Issue Hearing is deferred to the Hearing.

Barry S. Arbus, Q.C.
Arbitrator

December 4, 2015

Date