

ARE CARS TO BLAME FOR EVERYTHING

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Cars are blamed for everything from urban blight to global warming. And, because of mandatory insurance, drivers are sued for all manner of accidents, no matter how tangential the involvement of a motor vehicle. The question then arises: when a motor vehicle is involved somewhere or somehow in the chain of causation leading to an injury, should an injured person be compensated by motor vehicle insurance? The British Columbia Court of Appeal recently addressed this question in *Hannah v. John Doe*, a case in which the facts were decidedly criminal. A woman returning to her car after grocery shopping had her purse snatched while walking in a Coquitlam parking lot. A passenger in a passing van reached through his window and grabbed her purse strap, causing her to fall and be dragged along the ground before the strap finally broke.

The culprits in the van managed to escape and the unfortunate Ms. Hannah brought a claim under the unidentified motorist or hit-and-run provisions of British Columbia's *Insurance (Vehicle) Act*. This is a statutory scheme that provides protection for injured persons in circumstances where the at-fault motorist's identity cannot be determined.

The question that the Court of Appeal posed was: did the injuries suffered arise, in the words of the statute, "out of the use or operation of a motor vehicle"? The Court answered affirmatively and, to understand their reasoning, it is necessary to consider precedent established by the Supreme Court of Canada that deals with the outer boundaries of what is considered the "use" of a motor vehicle.

Underlying this judicial history are both social and legislative trends. As the car became ubiquitous in modern life, legislatures responded by making insurance coverage mandatory and universal. However, other than workplace accidents there has not been a similar trend involving injuries to third parties suffered in non-motor vehicle circumstances.

Often, the only possible source of insurance coverage for injury is motor vehicle insurance. As a result, claimants and, in some cases, courts stretched beyond recognition the boundaries of what most people would consider to be use of a motor vehicle. This elastic approach arises from an understandable desire to compensate injured persons but comes at a cost of ignoring the ordinary meaning of words used in insurance policies.

The Supreme Court of Canada put a stop to this trend in twin 2007 decisions: *Citadel General Assurance Co. v. Vytlingam* and *Lumbermens Mutual Casualty Company v. Herbison*. In *Citadel*, the claimants were injured while driving their vehicle under an overpass. Two young gentlemen—described in the ruling as "high on alcohol and drugs"—dropped a large rock on the vehicle as it passed underneath causing severe injuries to the occupants. In *Lumbermens*, the claimant was injured in a hunting mishap. The claimant's companion had left his pickup truck and

fired mistakenly, believing the claimant to be a deer. In both cases, when heard by the Ontario Court of Appeal, insurance coverage was extended on the basis that, “but for” the use of a motor vehicle, neither accident would have occurred.

The Supreme Court of Canada firmly rejected this reasoning. It found that the mere presence of a motor vehicle somewhere along a lengthy chain of causation was not sufficient to extend insurance coverage. The Court applied a two-part test. First, to consider an injury as arising out of the use or operation of a motor vehicle, the purpose for which the vehicle was being used must be a well-known and ordinary use. The Court gave the example of using a vehicle as a diving platform into shallow water. This is not a usual purpose for a vehicle and would not satisfy the first part of the test.

The second part is that injuries caused must be proximate to the operation of the motor vehicle. The Court rejected the lower court’s reasoning in *Citadel* that the young hooligans’ use of a vehicle to bring a rock to the overpass had caused the subsequent vandalism and injuries. Likewise, in the hunting incident the Court found that, although the accident could not have occurred “but for” the shooter and the victim having driven to the scene, this was not a direct proximate outcome of the use of a motor vehicle.

In its *Citadel* judgment, the Supreme Court of Canada found that an earlier B.C. Court of Appeal decision, *Chan v. ICBC*, had also been wrongly decided. The facts in *Chan* were that a motorist was injured when an occupant of another oncoming vehicle threw a rock as the cars passed. The Supreme Court of Canada said that the act of throwing the rock was distinct from using the motor vehicle so the chain of causation was broken and could not satisfy the proximate cause aspect of the two-part test.

Returning to the purse snatching in *Hannah*. The defendants in this case argued that there could be no coverage under the hit-and-run statutory provisions (which use similar language to that in insurance policies e.g. “arising from the use or operation of a motor vehicle”) because what had occurred was an intentional or criminal act. They contended that the purpose test had not been satisfied because the use which the purse snatchers were making of a motor vehicle was not ordinary or expected. The proximate cause of Ms. Hannah’s injuries was the crime rather than use of a motor vehicle.

The B.C. Court of Appeal rejected this reasoning. They found that it was immaterial whether or not the actions of the motorist were intentional. On the facts before them, the vehicle containing the purse snatcher was moving, the movement of the vehicle was what caused the claimant to be dragged along, and therefore use of the vehicle was a proximate cause of the injuries. Coverage could not be excluded simply because the motorist had a criminal intent. Otherwise, coverage would be excluded for accidents resulting from other criminal incidents such as a bank robber fleeing the scene of a crime in a stolen vehicle.

For more information on these cases and motor vehicle insurance law in general, please contact **David Perry** by email at dperry@singleton.com.