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THE SUPREME COURT OF CANADA RULES ON LIABILITY COVERAGE FOR LOSS "ARISING DIRECTLY OR INDIRECTLY FROM THE USE OR OPERATION OF A MOTOR VEHICLE"

On October 19, 2007, the Supreme Court of Canada released two decisions confirming that coverage under motor vehicle liability policies will not be triggered where the use or operation of the tortfeasor's vehicle only contributes or adds to the injury, and there is no significant causal link between the use of the motor vehicle by the tortfeasor and the tort itself.

BACKGROUND

In *Citadel General Insurance Co. v. Vytlingam* 2007 SCC 46, the Plaintiff was motoring along a highway and was catastrophically injured when his vehicle was struck by a large boulder dropped from an overpass by the two tortfeasors. In *Lumbermens Mutual Casualty Company v. Herbison* 2007 SCC 47, the plaintiff was injured when a member of his hunting party who had been driving to a designated hunting spot stopped his truck, removed his rifle, loaded it, and shot the plaintiff in the leg after mistaking him for a deer. In each case, coverage would have arisen under the respective policies (as specified by section 239 of the Ontario *Insurance Act*) if the loss or damage arose "directly or indirectly from the use or operation" of the tortfeasor's vehicle.

In each of the decisions below, the Ontario Court of Appeal found the automobile liability insurers obliged to indemnify based upon an application of the principle previously established in *Amos v. Insurance Corporation of British Columbia* [1995] 3 SCR 405. In *Amos*, a case concerning entitlement to no-fault benefits, the Court established a ”relaxed causation" test and held that ICBC was required to provide benefits if: (1) the accident resulted from the ordinary and well-known activities to which automobiles are put (the "purpose test"); and (2) there was some nexus or causal relationship between the claimant and the ownership, use or operation of his vehicle (the "causation test").

THE RULING

In allowing the appeals, the Supreme Court of Canada rejected the *Amos* "relaxed causation" test as a catch-all template to resolve indemnity (as opposed to no-fault) coverage issues. The rulings clearly limited the scope of the *Amos* "purpose test" by interpreting "the ordinary and well-known activities to which automobiles are put" as limiting coverage only to motor vehicles actually being used as motor vehicles, and excluding coverage where a car is used for a non-motoring purpose. More significantly, the Court also made it clear that in the liability context, the *Amos* "causation test" was

insufficient, and that it was simply not enough to find that the use or operation of the tortfeasor's vehicle in some manner contributed to the injury. Rather, in order for damage to arise "directly or indirectly from the use or operation" of a vehicle, there must be a direct and unbroken causal link between the use of the vehicle and the injury complained of. Where the use of the vehicle is severable from the act that caused the damage, the causal link will not be established.

In place of the *Amos* test, the Supreme Court established the following two-part test to determine whether the loss could be said to have arisen "directly or indirectly from the use or operation" of a tortfeasor's vehicle: Firstly, is the claim in respect of a tort committed by the use of a motor vehicle as a motor vehicle and not for some other purpose? Secondly, is there an unbroken chain of causation linking the injury to the use and operation of the tortfeasor's vehicle which is shown to be more than simply fortuitous?

On application of that test, it was held in *Citadel General* that the use of the vehicle to transport the boulder to the overpass was wholly severable from the act of dropping the boulder onto the vehicle below. Similarly, in *Lumbermens Mutual*, there was no unbroken causal relationship between the use of the vehicle (which had been interrupted so that the hunting could commence), and the unintentional shooting of the plaintiff. Therefore, in both cases, the losses could not be said to have arisen directly or indirectly from the use of the vehicles, and no coverage was available under the policies.

Finally, the Supreme Court firmly rejected the proposition that that insurance coverage can be denied if the tortfeasor was engaging in criminal activity (as was the case in *Citadel General*). It stated that the insurer is selling peace of mind to its insured and coverage will properly be invoked despite criminality, as in the case of an insured person injured by a drunk driver for example.

PRACTICAL IMPLICATIONS FOR INSURERS

These are significant decisions for auto liability insurers in which the Supreme Court has decisively addressed the uncertainty in the law as to whether insurers had to provide coverage under motor vehicle policies for losses that were only remotely connected to the tortfeasor's car, and has confirmed that there must be a substantial causal link between such vehicles and the loss complained of.

As a result, it appears that automobile liability insurers may well see fewer and fewer claimants who seek to advance claims and trigger automobile policies by simply showing that the use a motor vehicle was in some minor way related to the negligent act which caused them harm.

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