

** Unedited **

Indexed as:

Canadian General Insurance Co. v. Jevco Insurance Co.

Between

Canadian General Insurance Company, Plaintiff, and
Jevco Insurance Company, Defendant

[1994] O.J. No. 2389
Action No. 14843/91U

**Ontario Court of Justice - General Division
Toronto, Ontario
Matlow J.**

October 21, 1994.
(3 pp.)

Insurance-- No-fault benefits — Multiple insurers, whether insurer has equitable right to recover from another insurer all or part of no-fault benefits paid to victims.

The plaintiff and defendant both provided insurance coverage to a third party who was held liable for a certain death. Because the benefits payable under the plaintiff's policy exceeded those under the defendant's, the claimants elected to seek payment from the plaintiff pursuant to section 268(5) of the Insurance Act. Having made the payment, the plaintiff now sought contribution from the defendant.

HELD: The no-fault provisions of the Insurance Act constituted a comprehensive code determining the rights of insured persons against their insurers and the rights of insurers against other insurers. Section 275 provide for a right of indemnification under limited circumstances. The Act did not provide for an equitable right of contribution in circumstances such as the present.

Statutes, Regulations and Rules cited:

Insurance Act, R.S.O. 1990, c. 1.8, ss. 268(5), 275.
Gregory P. Heckel, for the Plaintiff.
Lawrence M. Foy, for the Defendant.

¶ 1 **MATLOW J.** (endorsement):— The question submitted for determination is answered in the negative. Judgment is to issue dismissing this action with costs to be

assessed or, at the option of the defendant, to be fixed by me in chambers at a time to be appointed.

¶ 2 The issue raised on this motion is whether the plaintiff has an equitable right to recover from the defendant all or part of certain no-fault death and funeral expense benefits paid by it to certain persons arising out a certain death. The recipients of those benefits were entitled, pursuant to the legislated scheme of no-fault benefits, to recover such benefits from both the plaintiff and from the defendant pursuant to two separate and different policies of insurance issued by each of them.

¶ 3 Because the benefits payable under the plaintiff's policy fortuitously provided for the payment of greater sums than those payable under the defendant's policy, the claimants understandably elected to seek payment from the plaintiff rather than from the defendant as was their absolute right pursuant to section 268(5) of the Insurance Act, R.S.O. 1990, c. 1.8.

¶ 4 Having made such payment, the plaintiff now seeks contribution from the defendant which, as a matter of good fortune based on the claimants' election, has so far been spared from making any payment.

¶ 5 In my view, the no-fault provisions of the Insurance Act were intended to constitute a comprehensive code determining the rights of insured persons against their insurers and the rights of insurers against other insurers. This code includes a provision set out in section 275 that specifies certain limited circumstances in which an insurer which pays no-fault benefits is entitled to be indemnified by another insurer. The circumstances of the case at bar do not fall within this provision.

¶ 6 Accordingly, I draw the inference that the Legislature intended that there should be no equitable right of contribution in cases such as this and, where there is no statutory right of indemnification, a no-fault insurer such as the plaintiff is left without recourse.

¶ 7 It may well be that the law as I have interpreted it imposes an unfair burden on generous and co-operative insurers against whom claimants will be more likely to elect in cases where there is multiple coverage. Nevertheless, if the law requires amendment, it must be done by the Legislature and not by the courts.

MATLOW J.

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