

** Unedited **

Indexed as:

**Co-operator's General Insurance Co. v. Canadian
General
Insurance Co.**

Between

Co-operator's General Insurance Company, and
Canadian General Insurance Company

[1998] O.J. No. 2578
Court File No. 97-CV-136180

**Ontario Court of Justice (General Division)
Lax J.**

Heard: June 10, 1998.
Judgment: June 19, 1998.
(5 pp.)

Insurance — Automobile insurance, compulsory government schemes — Fault determination rules — Application.

This was an appeal by Co-operator's General Insurance Company from an arbitration award from a finding of liability. Co-operator's was the insurer for Ieraci. The respondent, Canadian General Insurance Company, insured Hanna. Hanna's truck was travelling in a curb lane when it went out of control on some ice. It slid into the passing lane and stopped. Part of the truck was on the median and the rear part was sticking into the passing lane. A car, driven by Chipman collided with the truck and then collided with Ieraci's vehicle. Ieraci's vehicle may have also collided with the truck. The Fault Determination Rules applied to loss transferred from one insurer to another. The Rules pertained to statutory accident benefits that were paid under the Insurance Act. The arbitrator concluded that based on the Rules, Ieraci was fully responsible for the accident. Co-operator's appealed since it disputed this conclusion.

HELD: Appeal dismissed. The Rules provided for chain reaction collisions. It also applied to multiple collisions where there was a separation between the primary collision between Chipman and Hanna and subsequent collisions. Since Ieraci's vehicle was in motion when it collided with Chipman's vehicle, Ieraci was fully responsible for the accident. The question as to whether Ieraci collided with Hanna's truck was irrelevant to the application of the Rule.

Statutes, Regulations and Rules Cited:

Fault Determination Rules, R.R.O. 1990, Reg. 668, ss. 3, 3(a), 5, 6, 6(2), 9, 9(2), 9(4), 9(4)(a), 9(4)(b), 11(1), 11(2).
Insurance Act, R.S.O. 1990, c. I-8, s. 275.

Counsel:

No counsel mentioned.

¶ 1 **LAX J.** (endorsement):— This appeal from the Award of Arbitrator Hudson concerns the application of the Fault Determination Rules, R.R.O. 1990, Reg. 668, ss. 1-28 ("the rules") to an accident involving vehicles insured respectively by the appellant, Co-operator's ("the Ieraci car"), and the respondent, Canadian General, ("the Hanna truck"). The Arbitrator determined that if Ieraci's car hit Hanna's truck, s. 6(2) applies; that ss. 9(4)(a) and (b) apply whether or not his vehicle hit the truck; and, that it was unnecessary to consider ss. 11(1) and (2). Counsel agree that these are the only rules which can apply to the facts of this accident. If the rules apply, the Ieraci vehicle is 100% at fault for the accident either under s. 6(2) if his car hit the truck and under s. 9(4) regardless of whether his car hit the truck. If the rules do not apply, s. 5 provides that fault is to be determined in accordance with the ordinary rules of law and will be determined in the pending tort action arising from this incident. The only disputed fact is whether the Ieraci car hit the truck.

¶ 2 The fault determination rules apply in certain circumstances for loss transfer from one insurer to another insurer with respect to statutory accident benefits which have been paid under the Insurance Act, R.S.O. 1990, c. I. 8, s. 275, as prescribed by regulation. Ontario Regulation 668 prescribes the fault determination rules and has been considered on two occasions by the Ontario Court of Appeal.

¶ 3 In *Jevco Insurance Co. v. Canadian General Insurance Co.* (1993), 14 O.R. (3d) 545 (C.A.) at 547, it was held that the scheme of the legislation is to provide for an expedient and summary method of reimbursing the first party insurer for payment of no-fault benefits from the second party insurer whose insured was fully or partially at fault for the accident. The fault of the insured is to be determined strictly in accordance with the rules and any determination of fault between the injured plaintiff and the alleged tortfeasor is irrelevant.

¶ 4 In *Jevco Insurance Company v. York Fire & Casualty Company* (1996), 27 O.R. (3d) 483 (C.A.) at 485, it was held that the purpose of the legislation is to spread the load among insurers in a gross and somewhat arbitrary fashion, favouring expedition and economy over finite exactitude. As was observed by Matlow J. in *Jevco Insurance Co. v. Halifax Insurance Co.*, December 20, 1994, unreported (Ont. Gen Div.), the rules set out a series of general types of accidents and to facilitate indemnification without the necessity of allocating actual fault, they allocate fault according to the type of a particular accident in a manner that, in most cases, would probably, but not necessarily correspond

with actual fault. It follows that the rules are to be liberally interpreted and applied. This is reinforced by s. 3 which makes clear that fault determination under the rules is indifferent to factors which would apply under the ordinary rules of tort law.

¶ 5 Section 6 is concerned with rear-end collisions. It applies when three requirements are met: the lead vehicle is "struck from the rear"; both cars are travelling in the same direction; and, both cars are travelling in the same lane. The Hanna truck was travelling in the curb lane when it went out of control on some ice, slid into the passing lane and came to rest with its front end on the grassy median and its rear end on the passing lane. The Chipman car came along and collided with the truck in the passing lane. Some minutes later, the Ieraci car came along in the passing lane, collided with the Chipman vehicle and may also have collided with the truck. Counsel are agreed that this rule can only apply if the Ieraci car hit the truck.

¶ 6 Mr. Rachlin argued that if the Hanna truck was struck at all, it was not "struck from the rear". I do not think that "struck from the rear" refers to the location on automobile "A" which is impacted by automobile "B". Rather, it refers to the manner in which automobile "B" collides with automobile "A". In other words, from the rear refers to the approach of the colliding vehicle in relation to the vehicle with which it collides. If this is so, it cannot matter that the Hanna truck was hit on its side as long as the Ieraci vehicle struck it from the rear. The point of impact is in any event irrelevant as s. 3 of the regulation states that fault is determined without regard to "the location of the point of contact between the insured's vehicle and any other automobile involved in the incident". If the Ieraci car hit the truck, the truck was nonetheless struck from the rear as required by this section.

¶ 7 Section 275 refers to "the automobiles involved in the incident". I agree with Mr. Rachlin that there can be "an incident" to which a rule may apply without a collision. I also agree that a vehicle cannot both be stopped and travelling at the same time. Nevertheless, s. 6(2) clearly contemplates that the rule applies whether automobile "A" is in motion or is stopped. This suggests to me that the word "travelling" as used in this section, must refer to a typical direction of travel within the roadway. As all vehicles were travelling in the same northbound direction, this requirement of the section is met.

¶ 8 Were the vehicles travelling in the same lane? Mr. Rachlin submits that the relevant time for determining this is prior to what he refers to as the "collision causing event" at which time the Hanna truck was in the curb lane and the Ieraci car was in the passing lane. But, this was seven to ten minutes before the Hanna truck lost control, slid into the passing lane and came to rest there. In order for s. 6 to apply, there must be a collision from the rear. There can only be a collision if both vehicles are in the same lane. While the section gives difficulty because of the apparent inconsistency between a vehicle which is travelling and one which is stopped, I am of the view that the relevant time for determination of fault under this rule must be at the time of collision. In any event, the "collision causing event" was the collision of the Chipman car with the Hanna truck. At this point in time, the vehicles were all in the same lane.

¶ 9 I would also note that the appellant's submission is answered by the direction given in s. 3(a). It states that the degree of fault of an insured is to be determined without reference to the circumstances in which the incident occurs. That being so, it seems to me that the respondent correctly submits that the manner in which the involved vehicles enter the lane in question, the length of time the lane is occupied and the vehicle orientation are all irrelevant in the determination of fault. I therefore agree with the conclusion of the learned Arbitrator that if the Ieraci vehicle collided with the truck, s. 6(2) applies and the Ieraci vehicle is 100% at fault.

¶ 10 Rule 9 deals with "chain reaction" collisions. The appellant submits that this rule cannot apply when there is a temporal separation, as there was here, between the first collision (Hanna and Chipman) and subsequent collisions (Ieraci and Chipman and/or Hanna). But this cannot be the case in view of rule 9(2). It provides that the degree of fault for each collision between two automobiles involved in the chain reaction is determined without reference to any related collisions involving either of the automobiles and another automobile. In my view, rule 9 is broad enough to include multiple collisions. Rule 9(4) deals with the situation where automobile "C" (the Ieraci vehicle) is in motion when the incident occurs. There is no disagreement that the Ieraci vehicle was in motion when it collided with the Chipman vehicle. Whether or not it also collided with the Hanna truck is irrelevant to the application of this rule. I agree with the conclusion of the learned Arbitrator that by virtue of section 9(4)(a) and (b), Ieraci is 100% at fault for the accident whether or not his vehicle hit Hanna's truck.

¶ 11 Although the Arbitrator found it unnecessary to consider s.11(1) and (12), I agree with the respondent that these sections do not apply to the facts of this accident. The appeal is therefore dismissed with costs.

LAX J.

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