

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For decisions released the week of July 28 - August 1, 2008

Injury Must be the Result of an Accident: “Ya shoulda’ been there . . . !”

Makvala Omarashvili v. Echelon General Insurance Company, FSCO A07-001589, May 20 and 21, 2008 – Arbitrator Miller

MVC December 31, 2005. Applicant (“Mrs. O”) alleges injured while in right rear seat of vehicle driven by driver (“Mr. T.”) and applied for Accident Benefits. Application denied. Mediation failed and matter moved on to Arbitration. The issue was whether Mrs. O was injured as a result of an “accident” as defined in section of 2(1) of the SABS.

At Arbitration, Mrs. O indicated that she resided in Mr. T’s house. Her evidence was that she was a back seat passenger with Mrs. T. in the vehicle Mr. T was driving. Mrs. O indicated that a vehicle driven by Mrs. Y severely struck the vehicle she was in. There was significant damage to the vehicle that struck them. Despite naming several witnesses, no collateral witnesses gave evidence for Mrs. O.

The Insurer pointed out that in Mr. T’s Self Reporting Collision Report, the witness box was left blank. The insurer called an engineer, Mr. Kodsí. Kodsí noted that the damage allegedly sustained by the vehicles was not consistent with the photos of the damaged vehicles. While one vehicle sustained little damage, the other sustained damage along the entire width of the vehicle with damage to multiple components. The damage pattern was also one foot higher than it ought to have been. The expert concluded that it was his view the reported damage was not caused by the vehicle driven by Mrs. Y.

Arbitrator Miller noted that the onus rests on the applicant to show that her injuries are the result of an accident as defined under the SABS. Mrs. O identified witnesses but chose not to call them. Similarly, she did not respond to the report of the engineer by providing her own report. There were also discrepancies in her evidence with documentary evidence – for example the “blank witness report box” completed by Mr. T. Arbitrator Miller found that Mrs. O had not met the burden to claim that her injuries were a result of an MVC.

Implications:

Accident Benefits under SABS legislation is intended for those who have been in ‘accidents’. There will always be those insurers and other persons who attempt to manipulate the system for corporate or personal gain. Reasonable steps to ensure that opportunistic charlatans are weeded out of the system must occur with focused vigilance to ensure that all those injured in accidents continue to have access to benefits. To paraphrase Arbitrator’s Miller’s decision . . . **“Ya shoulda’ been there . . . !” (if you really are entitled to benefits).**

Accessing Arbitration Decisions

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