

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For the week of February 22-26, 2010

Insurer to pay accident benefits to uninsured pedestrian even though its insured did not cause or contribute to the collision

Seetal et al. v. Quiroz et al; The Minister of Finance, on behalf of the Motor Vehicle Accident Claims Fund, Intervenor (2010), 97 O.R. (3d) 780.

MVC June 27, 2005. Seetal was a pedestrian struck by an uninsured driver who ran a red light. Seetal remained on the hood of the car until it collided with a taxi. Taxi driver did not cause or contribute to the collision. Seetal, having no automobile policy under which to claim accident benefits, applied to Lombard as it was the insurer for the taxi. Owner and operator of vehicle which struck Seetal did not defend claim. Motor Vehicle Accident Claims Fund would not enter defence so Seetal amended claim to name taxi driver, owner and Lombard. Taxi driver and owner were successful in having the claims against them dismissed. Lombard sought to have portions of claim against it struck out. Denied. The Court held that Lombard, and not the Fund, was liable for the statutory minimum of \$200,000 liability insurance and it was obliged to pay accident benefits because the taxi it insured was involved in the collision.

It is settled law that if a plaintiff is entitled to accident benefits under an insurer's motor vehicle policy then she is entitled to uninsured motorist coverage from the same insurer. Lombard asserted that it was not obliged to pay accident benefits but rather had done so by mistake and it should not be deemed to be liable for tort liability insurance as a result of that mistake. The Court disagreed. Lombard was obliged to pay accident benefits.

Every automobile policy shall be deemed to provide for accident benefits. (Section 268(1) *Insurance Act*). All automobile insurance policies must include uninsured motorist coverage for persons insured under the contract, which includes an insured who is struck by an uninsured vehicle. (Sections 265(1) and (2), *Insurance Act*). Where a non-occupant does not have her own insurance and recovery against the automobile that struck her is unavailable then she has "recourse against the insurer if any automobile involved in the incident from which the entitlement to SABS arose." Involvement in an accident can include a person who caused or contributed to the accident or it can be a person against whom the injured person might reasonably be considered as having a cause of action.

Seetal was an insured person under the contract and it was reasonable for Seetal to sue the taxi driver and owner. The Court stated that this interpretation of involvement in an accident was consistent with "the integrated scheme of no-fault automobile insurance benefits."

Implications:

Ultimately it does not matter to the insured which insurer (for example, Lombard or the Fund) is responsible for liability insurance where the limits are the same. However, from an accident benefits perspective, this case will make it more difficult for an insurer to deny or forestall payment of accident benefits due to what it may characterize as its insured's lack of connection to the collision.

Accessing Arbitration Decisions

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