CITATION: Singh v. Region Municipality of Peel Police Services Board, 2023 ONSC 7119
COURT FILE NO.: CV-18-2326
DATE: 2023 12 18

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	)	
JARNAIL SINGH, KAMALROOP DULAY, A. DULAY MINOR BY HIS LITIGATION GUARDIAN KAMALROOP DULAY, GURSHAWN SINGH, AND A. DULAY, MINOR BY HER LITIGATION GUARDIAN KAMALROOP DULAY, ANMOL SINGH	)	*Nicolas Canizares,* for the Plaintiff
Plaintiffs	)	
- and -	)	
REGION MUNICIPALITY OF PEEL POLICE SERVICES BOARD POLICE CONSTABLE STEVE LAING POLICE CONSTABLE DAMIAN SAVINO STATE FARM MUTUAL INSURANCE	)	*Eugene G. Mazzuca* and *Anthony H. Gatensby,* for the Defendants, Police Services and Constanbles, and *David Zarek* for the Defendant State Farm Mutual Insurance
Defendants	)	
	)	**HEARD:** May 15, 2023, by video conference

REASONS FOR DECISION

Emery J.

[1] Jarnail Singh suffered a single gunshot wound from a police revolver while driving a motor vehicle in reverse down a driveway at 13 Velvet Grass Lane in Brampton, Ontario on January 27, 2012. As a result of that gunshot or the subsequent collision with another vehicle, the bullet or a fragment of that bullet lodged against his spine, leaving Mr. Singh with a permanent spinal cord injury. As a result of this injury, Mr. Singh has lost the control and function of his legs.

[2] Mr. Singh has brought this action against the Peel Regional Police Service and Officers Laing and Savino (the "Peel defendants") to seek damages in tort. He has also joined State Farm Mutual Insurance Company as the insurer that would be contractually liable to provide Mr. Singh with accident benefits coverage if his injuries or impairment come under the terms of his automobile insurance policy on the date of loss. Mr. Singh seeks damages, payment or indemnity for the accident benefits that State Farm has denied him.

[3] State Farm now brings this motion for summary judgment to have the action dismissed as against it. State Farm takes the position that Mr. Singh suffered his injuries from a cause outside the definition of the term "accident" under s. 3(1) of the Statutory Accident Benefits Schedule ("SABS").

[4] Mr. Singh opposes the motion. So do the Peel defendants, who seek to have State Farm remain a party.

Evidence

[5] On January 27, 2012, the 21 Division Street Crime Gang Unit of the Peel Regional Police was investigating a known heroin dealer, Dalbir Dhillion (hereinafter "Dhillion"). Two undercover officers, the defendants Laing and Savino, observed what they believed to be a drug transaction between Dhillion and Mr. Singh. In the course of their investigation, Officers Laing and Savino followed Mr. Singh as he drove a white Nissan vehicle to a residential home located at 13 Velvet Grass Lane in Brampton.

[6] Mr. Singh parked the Singh vehicle in between two other parked vehicles in the driveway leading up to the front of the garage at 13 Velvet Grass Lane. Officers Laing and Savino arrived in separate vehicles and parked those vehicles on the street to the right and left of the driveway.

[7] Officers Laing and Savino were in plain clothes. They approached the Singh vehicle on foot, with Officer Laing approaching on the driver's side and Officer Savino approaching on the passenger side at the same time. Officers Laing and Savino have testified that they identified themselves as police officers, with their badges in hand, and ordered Mr. Singh to exit his vehicle.

[8] Officers Laing and Savino both reported that they observed Mr. Singh to reach into his jacket pocket to remove something while he remained in the driver's

seat. In response, they began knocking on the windows of his vehicle, asking to see his hands and again demanding that he exit the vehicle. Officers Laing and Savino then observed Mr. Singh discarding the contents he had removed from his pocket into the centre console of the vehicle.

[9] What happened next is tragic. Mr. Singh inserted his car key into the ignition and started his vehicle. He quickly shifted the vehicle into reverse and backed down the driveway at an accelerated speed. Officer Savino was standing in a narrow space between the passenger side of Mr. Singh's vehicle and the vehicle parked to the right of it and was clipped by the passenger side mirror of the Singh vehicle.

[10] To avoid further injury, Officer Savino bent down and moved to his left. Upon losing sight of Officer Savino and anticipating that he was pinned or had possibly been run over by Mr. Singh's vehicle, Officer Laing drew his firearm and fired one shot at Mr. Singh.

[11] Officer Laing testified that he discharged his firearm at the driver's side window. He noted that the bullet entered the back side of Mr. Singh's left chest. Upon being shot, Mr. Singh's body went limp while his vehicle continued in reverse down the driveway, then proceeded backwards across the street where it collided with another vehicle parked in the opposite driveway. The impact of the collision

between the Singh vehicle and the second vehicle in the opposite driveway was significant enough to propel the parked vehicle into an SUV parked in front of it.

[12] The glass of the driver's side window of the Singh vehicle had been shattered by the bullet Officer Laing had fired at Mr. Singh. When Mr. Singh's vehicle came to a stop, Officers's Laing and Saverino broke the remainder of the glass from the driver's window, opened the door and pulled Mr. Singh out of the vehicle. They placed him face down on the ground and handcuffed him. After calling an ambulance, they proceeded to drag him across the street to one of the police vehicles to take him to the hospital. When he proved too heavy to lift, the officers remained with him until the ambulance arrived.

[13] A search of Mr. Singh's vehicle and jacket revealed multiple folded pieces of paper containing significant quantities of heroin and crystal methamphetamine. He was subsequently charged with multiple drug possession offences, as well as assault with a weapon, assault with intent to resist arrest, obstructing police and dangerous operation of a motor vehicle.

[14] Mr. Singh later stood trial on these charges before Justice T.A. Bielby. For reasons found at 2017 ONSC 1176, he was convicted of the drug possession charges but not of the charges for driving dangerously or of obstructing or assaulting a police officer.

[15] The collision(s) involving the Singh vehicle that night were investigated by the Major Collision Bureau. It did not investigate the shooting itself, as the shooting was investigated by the Special Investigations Unit (SIU). The Major Collision Bureau confirmed that "the physical evidence found at the scene is consistent with a collision between the white Nissan (on the passenger side) with the pedestrian as the white Nissan reversed sharply down the driveway." The pedestrian noted is Officer Savino. The Major Collision Bureau also confirmed that "the white Nissan continued down the driveway of 13 Velvet Grass Lane, across Velvet Grass Lane itself, and the rear of the vehicle collided with the rear of the parked Camry, which was pushed into the Highlander, which was pushed into the garage door at 14 Velvet Grass Lane."

[16] Mr. Ken Wright of the Major Collision Bureau confirmed that Mr. Singh sustained a gun shot wound but had no collision related injuries. He reported that Mr. Singh's vehicle had sustained very minor damage to the rear end from the collision with the other vehicle. All of the vehicles involved in the incident sustained minor damage.

[17] State Farm has introduced evidence that Mr. Singh was shot with a .40 caliber hollow point bullet. This type of bullet is considered to be a large caliber bullet. Melinda Baxter, an associate lawyer with the law firm representing State

Farm, filed two affidavits sworn on July 11, 2022 and April 20, 2023. Ms. Baxter attached the *National Law Enforcement & Corrections Technology Centre Informational Brief, July 1997 Hollow-point Ammunition and Handguns: The potential for large temporary cavities, June 11, 2007* (the "NLECTC Information Brief") that she discusses in those affidavits. According to the NLECTC Information Brief, the intent of a hollow point bullet is to increase in diameter on impact with an object, which is more effective at rapidly incapacitating a person. Larger caliber bullets will expand to a larger diameter and penetrate further. Hollow point bullets impart all of their kinetic energy to the surrounding tissue, causing serious injury and increased wound severity.

[18] Mr. Singh was taken to Sunnybrook Health Sciences Centre where he was treated by the neurosurgical team. Medical reports show that Mr. Singh suffered a serious injury because a fragment of the hollow point bullet became lodged within his spinal canal. The location of this bullet fragment has rendered Mr. Singh paraplegic from the waist down.

[19] State Farm has denied Mr. Singh's application for accident benefits that he has claimed under the applicable policy.

Position of the parties

State Farm (the moving party)

[20] State Farm takes the position on this motion that there is no genuine issue requiring a trial to prove, on the balance of probabities, that Mr. Singh's paraplegia was caused by the gunshot fired by Officer Laing, and not by an accident directly involving an automobile. State Farm submits that the bullet fragment lodged against Mr. Singh's spine because he was shot, and not because of any automobile accident.

Responding parties

[21] Mr. Singh takes the position that State Farm has not satisfied the court there is no genuine issue requiring a trial. He refers to the evidence on the record that his vehicle had reversed at an accelerated speed down the driveway of 13 Velvet Grass Lane and across the street to collide with a parked car. It is just as likely that the collision between his vehicle and a parked vehicle caused the bullet or a fragment of it to lodge next to his spine. He submits that reversing a vehicle is an ordinary and well-known activity of operating a motor vehicle, no matter if it results in a rear end collision.

[22] The neurosurgical team at Sunnybrook determined that it was too dangerous to attempt to remove the bullet fragment. This left Mr. Singh with a permanent spinal cord injury. This is the injury for which Mr. Singh seeks damages or indemnity for the accident benefits that State Farm has denied. He states that it is not possible to determine whether the bullet fragment became lodged within his spinal canal at this stage. Mr. Singh submits that it is a genuine issue requiring a trial for this court to determine whether the bullet fragment caused his paraplegia when:

a. the hollow point bullet entered his torso;

b. his vehicle rear-ended the parked car across the street in the opposite driveway; or

c. the police officers pulled him out of his vehicle and placed him on the ground, face down and applied handcuffs behind his back; or when the two officers dragged him across the street before leaving him to wait until the ambulance arrived.

[23] Mr. Singh submits all of the facts flowed from the act of reversing the vehicle to leave the driveway at 13 Velvet Grass Lane. Reversing the vehicle is a normal, ordinary and well-known activity for the use and operation of an automobile and falls within the meaning of “accident” and that the subsequent collision with

another vehicle caused the impairment. Mr. Singh submits that the direct cause of the impairment is a question of fact for a court to determine on a full and complete record at trial.

[24] Mr. Singh also states that the cause of his impairment requires a diligent determination based on a full record because the SABS are considered to be remedial legislation that ought to be interpreted in his favour.

[25] The Peel defendants submit that State Farm has not shown there is no genuine issue requiring a trial. They submit a trial is required to determine whether there is no causal connection between the direct use and operation of Mr. Singh's vehicle and the injury and required medical services at issue.

Issues and law

[26] The questions to answer on this motion are :

1. Is this motion suitable for summary judgment?

2. Does the claim fall inside the definition of an "accident" for the plaintiff to claim statutory benefits from State Farm under the SABS?

Summary judgment

[27] The approach on a motion for summary judgment is set out in *Hryniak v. Mauldin*, 2024 SCC 7 and is well known. For the purposes of this motion, the principles most applicable are the requirements that each party must put their best foot forward on the motion, and that the court is entitled to presume all evidence that would be available at trial is before the court.

[28] The key issue on a summary judgment motion is whether the motions judge can make a just determination on the evidence to resolve the dispute, even though the evidence is not equivalent to a full record at trial. The summary judgment procedure must be found to be a fair process to make these determinations. There will be no genuine issue requiring a trial unless the process allows for the motions judge to make the necessary findings of fact, allows the judge to apply the law to the facts, and is a proportionate, more expeditious and less expensive means to achieve a just result.

[29] The ability of the court to determine whether there is a genuine issue requiring a trial turns on whether State Farm has shown that Mr. Singh's injury was not caused by an accident within the meaning of the policy. State Farm must therefore show that this motion is suitable to prove that Mr. Singh is not entitled to accident benefits, because his impairment was not caused by the direct use of

operation of a motor vehicle, or that the chain of events involving that use or operation was broken by an intervening event. On this motion, whether State Farm has provided the necessary evidence to make the finding that Mr. Singh's injury was not caused by an accident within the meaning of the SABS is the central issue.

[30] While the plaintiff always has the onus of proving his case, the evidentiary burden on a motion for summary judgment is on the moving party, in this instance State Farm, to show there is no genuine issue requiring a trial.

Meaning of "accident"

[31] The access point to successfully claim accident benefits from an insurer under a standard automobile insurance policy in Ontario after 1996 is through the definition of "accident" in s. 3(1) of the SABS. State Farm brings this motion for summary judgment to have the court find there is no genuine issue that Mr. Singh was not injured in an accident as that term is defined, and therefore has no cause of action for indemnity under the policy. Under s. 3(1), the term "accident" for the purposes of the SABS "means an incident in which the use or operation of an automobile *directly* causes an impairment…"[*emphasis added*]

[32] The law for extending or denying coverage for an accident under an insurance policy has evolved since coverage for accident benefits became a feature in automobile insurance. This is partly due to the changes in the wording

of the particular policy in a case, whether in the contractual language of the policy or the statutory terms that form part of it. It is also partly due to the changes in the jurisprudence.

[33] *Amos v. Insurance Corporation of British Columbia*, [1995] 3 S.C.R 405 (SCC) was one of the first appellate decisions to consider the interpretation of accident benefits coverage. The appeal in *Amos* was brought by an injured party who had been shot by assailants while they chased his car in another vehicle. The plaintiff made a claim for accident benefits for his injuries from *ICBC* under a policy extending accident benefits to him under the prevailing legislation in British Columbia. In *Amos*, the Supreme Court of Canada developed the two part test for determining coverage:

1. Did the incident arise out of the ordinary and well-known activities for which automobiles are used? This has become known as the “purpose” test;

2. Was there some nexus or causal relationship between the claimant’s injuries and the ownership, use or operation of his motor vehicle? This became known as the “causation” test.

[34] The Court of Appeal reformulated the test for accident benefits coverage available to a claimant under the standard automobile policy terms under Ontario

legislation after 1996 in *Chisholm v. Liberty Mutual Insurance Group* [2002] O.J. No. 3135 (Ont. C.A.). In *Chisholm*, the plaintiff had been injured when he had been shot while in his car by an unknown assailant. He was insured for accident benefits under a policy written by the Liberty Mutual Group for rehabilitation and other statutory benefits if injured in an accident within the meaning of that term.

[35] Liberty Mutual brought a motion to determine a legal question before trial under Rule 21.01(1) as the insurer. The motions judge held that the plaintiff had not been injured in an accident involving the direct use or operation of an automobile within the meaning of the term “accident” as defined under the SABS, but by the gunshot. Laskin J.A. wrote the following on behalf of the court at paras. 29 and 30:

> [29] Put differently, even accepting that the use of Chisholm's car was a cause of his impairment, a later intervening act occurred. He was shot. An intervening act may not absolve an insurer of liability for no-fault benefits if it can fairly be considered a normal incident of the risk created by the use or operation of the car -- if it is "part of the ordinary course of things". See J.G. Fleming, The Law of Torts, 9th ed. (North Ryde, NSW: LBC Information Services, 1988) at p. 247. Gun shots from an unknown assailant can hardly be considered an intervening act in the "ordinary course of things". The gun shots were the direct cause of his impairment, not his use of his car.
>
> [30] The motions judge and the Financial Services Commission have essentially adopted the same test of direct causation by relying on a definition of direct cause in Black's Law Dictionary: "The [page786] active, efficient cause that sets in motion a train of events which brings about a result without the intervention of any force started and working actively from a new and independent source." See, for example, *Petrosoniak v. Security National Insurance Company*, supra. Applying this definition, the motions judge correctly concluded that "there was not an unbroken chain of events." Instead "the shooting constituted an intervening

> act, independent of the vehicle's use or operation which clearly broke the chain of causation", thus disentitling Chisholm to accident benefits.

[36] At paragraph 31, Laskin J.A. continued:

> [31] On similar facts, several arbitrators at the Financial Services Commission have reached the same result. See, for example*, Hanlon v. Guarantee Company of North America* (1997), O.I.C. Appeal P95-00003, *Zurich Insurance Company v. Lenti* (1998), O.I.C. Appeal P98-00030, *Elensky v. Royal & SunAlliance Insurance Company of Canada* (2001), F.S.C.O. A00-000720 and *Sarkisian v. Co-operators General Insurance* (2001), F.S.C.O. A99-000966. Conceivably road accidents may occur where there is more than one direct cause of a victim's injuries and one of the direct causes is the use or operation of an automobile. That, however, is not the case here. The only direct cause, the only effective cause of Chisholm's injuries, was the gun shots.

[37] Justice Laskin further expressed the view that the *Amos* test for causation no longer applied. Even if it did, Laskin J.A. was dubious whether the plaintiff in *Chisholm* could satisfy it. He distinguished the test for the most in part because of the change in the SABS legislation since 1996, where the SABS requires that the incident be shown to be a “direct” cause of the injuries or impairment to be an “accident.”

[38] The Court of Appeal followed *Chisholm* with *Greenhalgh v. ING Halifax Insurance Co.*, 2004 CanLII 21045 two years later. The facts in *Greenhalgh* involved a young woman whose car had become stuck down a country road on a cold winter’s night. The young woman had left her car to walk back to some farmhouses she had seen earlier in her travels to seek help. While walking back in search of a farmhouse, she had become disoriented in the darkness and had

strayed off the road. After nine or ten hours of wandering, the young woman had fallen into an ice covered river and had lost her boots. As a result, she suffered severe frostbite that caused the loss of her fingers and amputation of her legs below her knees.

[39] The young woman claimed accident benefits from her insurer. When the claim was refused, she brought her action for damages or indemnity. To resolve the issue, the parties agreed to make a stated question to the court under Rule 22 to determine whether the plaintiff had suffered an impairment as a result of an accident as defined under the SABS.

[40] The motions judge in *Greenhalgh* answered that question in the affirmative and the insurer appealed. On appeal, the Court of Appeal took the opportunity to explain that the purpose test under *Amos v. ICBC* remained part of the analysis under Ontario law, but the causation test no longer applied because of the change to the language in the regulation. The Court held that the words “direct cause” shortened the link between the use or operation of an automobile and the occurring of the impairment. Instead, claims under the SABS should be determined using the causation test formulated by the Court in *Chisholm*.

[41] The causation test was redefined in *Greenhalgh* to therefore require the following elements:

a. did the incident arises out of the use or operation of an automobile (the “purpose” test)?

b. did such use or operation of an automobile directly cause the impairment (known as the “causation” test)?

[42] The underpinnings of this test is formulated by Laskin J.A. in *Chisholm* when he stated at paragraph 24:

> [24] That brings me to Chisholm's final submission, a submission that, in my view, goes to the heart of this appeal because it focuses on the meaning of "directly causes". Chisholm submits that the use or operation of his car is a direct cause of his injuries because he would not have been wounded unless he had been confined in his car. In substance, Chisholm contends that the direct cause requirement can be satisfied by the "but for" test of causation. But for being in his car he would not have been injured. I do not accept this submission.

[43] State Farm relies on two decisions of the Supreme Court released in 2007 that have a bearing on the causation issue before this court. The first is *Citadel General Assurance Co. v. Vytlingam*, 2007 SCC 46 (SCC). In *Vytlingam*, the family of plaintiffs were driving on a U.S. Interstate highway in North Carolina when two “thrill seekers” dropped a boulder from an overpass on to their car, causing them injury. The defendants had transported the rocks to the overpass by their own motor vehicle, and were woefully underinsured. The plaintiffs brought their

action against Citadel Assurance as their own insurer under the Ontario Policy Change Form 44R to engage the inadequately insured provisions of their policy.

[44] Citadel Assurance challenged the causal connection between the use or operation of the tortfeasors motor vehicle and the plaintiff's injury. At paragraphs 25 and 29, Justice Binnie held as follows:

> 25 As stated, the OPCF 44R requires the tortfeasor whose conduct is the subject matter of the indemnity claim be at fault as a *motorist*. The majority judgment in the Court of Appeal, with the greatest of respect, did not focus on this issue. The error appears as well in *Herbison v. Lumbermens Mutual Casualty Co.* (2005), 2005 CanLII 19665 (ON CA), 76 O.R. (3d) 81 (C.A.), a case argued before us at the same time as the present appeal and whose reasons are delivered concurrently. Juriansz J.A. observed in his dissent in the instant case:
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> > We live in a car culture. People use cars to get to the places where they cause or suffer damage. "But for" the use of cars, they would not be at those places and would not cause or suffer the damage. [para. 73]
>
> I agree. His colleagues on the Ontario Court of Appeal in effect applied a "but for" test on the coverage issue, but that is not the correct test. For coverage to exist, there must be an unbroken chain of causation linking the conduct of the motorist as a motorist to the injuries in respect of which the claim is made.
>
> …
>
> 29 The claimant must implicate the vehicle in respect of which coverage is claimed in a manner that is more than merely incidental or fortuitous: *Law, Union & Rock Insurance Co. v. Moore's Taxi Ltd.*, 1959 CanLII 81 (SCC), [1960] S.C.R. 80. In that case, a taxi company had contracted to deliver developmentally impaired school children door to door. Its driver had negligently parked on the opposite side of the street, leaving a child to cross to its home unassisted, in the course of which the child was severely injured. The parents recovered against the taxi company and the taxi company sued its insurer for indemnification under a comprehensive policy that excluded coverage for loss arising out of the use of a motor vehicle. In these circumstances, Ritchie J. concluded that the driver's failure to escort the child across the street was *severable* from the "use or operation" of the insured vehicle (thus requiring the defendant insurer to pay up) stating:

> . . . the motor vehicle was stationary at the time of the accident and the chain of causation originating with its use was severed by the intervening negligence of the taxi driver whose failure to escort the boy across the street was the factor giving rise to the [insured]'s liability. [Emphasis added; p. 85.]

Interestingly, in subsequent cases under *motor vehicle* policies, the outcome has been different. In *Lefor (Litigation guardian of) v. McClure* (2000), 2000 CanLII 5735 (ON CA), 49 O.R. (3d) 557 (C.A.), an adult dropped off her children on the wrong side of the street, but it was held that the motorist chain of causation was not broken. A similar result was reached by the British Columbia Court of Appeal in *Wu v. Malamas* (1985), 1985 CanLII 235 (BC CA), 67 B.C.L.R. 105, and the Quebec Court of Queen's Bench in *Legault v. Compagnie d'assurance générale de commerce* (1967), 1967 CanLII 642 (QC CA), 65 D.L.R. (2d) 230. These cases are very fact specific. However, if the vehicle's involvement is held to be no more than incidental or fortuitous or "but for", and is ruled severable from the real cause of the loss, then the necessary causal link is not established.

[45] The Supreme Court in *Vytlingham* held that the liability for the cause of action against the defendants came from dropping rocks from an overpass, not from carrying those rocks in the defendants' automobile. The tort of wrongfully dropping rocks that had been carried there by a car was independent of transporting them to the scene of the crime. The tort itself broke the chain of causation. As a result, it was held that the causal connection was not made out on the facts. While the injured parties were entitled to accident benefits from their insurer for injuries sustained during the use of their own car (at para. 14), the wrongful act of the tortfeasors and not the use of a motor vehicle was the cause of those injuries.

[46] Similarly, in *Lumbermens Mutual Casualty Co. v. Herbison*, 2007 SCC 47 (SCC), the court found there was no coverage for third-party liability. In that case,

a driver had exited his truck, removed his rifle, loaded it and shot another member of his hunting party. The plaintiff in *Herbison* sought payment for damages from the shooter's automobile insurer that provided liability coverage "arising from the ownership or directly or indirectly from the use or operation" of an automobile owned by the insured under s. 239 of the *Insurance Act*. In that case, the legislation required the victim to demonstrate that the injury arose from the ownership, or directly or indirectly from the use or operation of the defendants automobile.

[47] The court held that the shooting was an act that was independent of the ownership, use or operation of the vehicle. Even under the relaxed standard to show causation under s. 239, it did not eliminate the requirement of an unbroken chain of causation. The shooter's act of shooting outside his vehicle was an act outside of the ownership, use or operation of his vehicle and thus an interruption of that ownership, use and operation.

[48] The case of *North Waterloo Farmers Mutual Insurance Company v. Samad,* 2018 ONSC 2143, was an appeal of a decision of the Licence Appeal Tribunal (the "LAT") regarding accident benefits coverage to the respondent insured. Justice Thorburn, writing at the time as a judge of the Divisional Court

hearing the appeal, neatly summarized the considerations to apply on the causation test:

> [12] What will amount to direct causation will depend on the circumstances. However, some of the following considerations may provide useful guidance in ascertaining whether or not it has been established in a given case:
>
> (a) the ”but for” test can act as a useful screen;
>
> (b) in some cases, the presence of intervening causes may serve to break the link of causation where the intervening events cannot be said to be part of the ordinary course of use or operation of the automobile; and
>
> (c) in other cases it may be useful to ask if the use or operation of the automobile was the dominant feature of the incident; if not, it may be that the link between the use or operation and the impairment is too remote to be called “direct”. (*Greenlhalgh* paras 11 and 12)

[49] At paragraph 13 in the *North Waterloo Farmers* case, Justice Thorburn also states that:

> [13] There may be more than one direct cause; it is not necessary that all of the causes be part of the use or operation of the automobile.

[50] The most recent pronouncement of the causation issue on the standard automobile policy in Ontario was given by the Divisional Court in *Madore v. Intact Insurance Company*, 2023 ONSC 11 (Div. Ct.) on the appeal of a decision made by the LAT. In *Madore*, the plaintiff had suffered grievious injuries from falling off the roof of his holiday trailor in the course of cleaning it. The plaintiff subsequently claimed accident benefits from his insurer. On the standard wording of the statutory

coverage for accident benefits, the Divisional Court ruled that the LAT had erred at law when it had rejected the claim for being outside the scope of the use or operation of a motor vehicle. The Divisional Court held that this accident had occurred within the definition of the term “accident” under the policy.

[51] As Justice Stewart wrote in *Madore*, “the link to be drawn therefore is between the “use and operation” of the automobile and the “impairment”. *Madore* did not need to show a direct physical connection between the cause of the injury and an automobile.

Analysis

The causation test considered

[52] I have little difficulty in finding that the purpose branch of the test is met on the record for this motion. The incident resulted from ordinary and well known activities for the operator of a motor vehicle to perform, among them reversing direction to exit a driveway, or as Bielby J. found at Mr. Singh’s criminal trial, to drive away from individuals who have caused the driver to fear for his safety. Indeed, Mr. Singh had shifted gears to put the Singh vehicle in reverse prior to the gunshot. The Singh vehicle had started backing down the driveway before Officer Laing discharged his firearm. It is the causation branch of the test where the court

must find there to be no genuine issue for trial for State Farm to be successful on its motion for summary judgment.

[53] Dr. A. MacDonald, trauma team leader, confirmed in his consulting note dated January 27, 2012 that Mr. Singh sustained a single gunshot wound with "the entry wound being the left posterior axillary line at approximately the 6th to 7th thoracic vertebrae level. There were no exit wounds." Dr. MacDonald also confirmed that a "CT of the thoracic and lumbar spine showed left facet/pedicle/lamina L1 minor fracture, with the bullet inside the canal at the T12-L1 level", in addition to the fact that "the gunshot wound to the left chest also caused a left hemopneumothorax, lung contusion, liver contusion, rib fractures (8th to 10th ribs) and a diaphragmatic injury."

[54] A Medical Imaging Report for Mr. Singh was attached as exhibit "E" to the affidavit of Andrew Hardie Ballantyne dated December 20, 2022. Mr. Ballantyne describes himself as a lawyer sharing office space with Mr. Canizares, counsel of record for Mr. Singh, and he filed the affidavit in response to the motion. In his affidavit, Mr. Ballantyne describes a large bullet fragment that can be seen centered within the spinal canal behind the L1 vertebral body on the X-ray film taken on February 14, 2012. The X-ray was reviewed by Dr. Robert Yeungm staff

radiologist and ordered by Dr. Todd Graham Mainprize. The attending physician was Dr. Peter Chu.

[55] Dr. Colleen McGillivray, a consultant in Physical Medicine and Rehabilitation, wrote in a report dated February 21, 2012 that "Jarnail Singh is a 34 year old, left-hand dominant male who suffered a traumatic spinal cord injury, secondary to a gunshot wound. As a result, a bullet remains lodged between T12 and L1 in the spinal canal." Dr. Moylan, a resident in physiatry, also wrote the consultation report with Dr. McGillivray dated February 21, 2012. This report was written on Mr. Singh's transfer from Sunnybrook to Toronto Rehab-Lyndhurst Centre for inpatient rehabilitation.

[56] None of these physicians gave affidavits about the actual cause of Mr. Singh's impairment beyond the gunshot noted on their notes and consultation reports attached to Mr. Ballantyne's affidavit. It is important to distinguish between the injury to Mr. Singh from the gunshot to his chest, and the impairment he suffered when the bullet or a fragment that found its way to his spinal cord.

[57] Neither State Farm or any of the responding parties to the motion filed an affidavit from any expert on the dynamics of the evening of January 27, 2012, or expert evidence of the forces that would have or could have lead to his impairment of the spinal cord injury that has left him paraplegic. Mr. Canizares candidly admits

that he has not obtained a medical report that addresses the precise cause of this impairment.

[58] The evidentiary record has focused on the facts about how Mr. Singh was shot by police and how his body went limp while carrying the hollow point bullet in his chest as it travelled backwards until it collided with the car parked in the opposite driveway. It is unknown from the evidentiary record when the bullet or any fragment of that bullet became lodged against his spine. There is no evidence whether the gunshot was a dominant cause of imposing the bullet or a fragment of it against the spinal canal, or if that was caused by the car crash. This is important evidence to make any finding that the gunshot was the only direct cause of Mr. Singh's impairment, or that it was one of two or more causes of his injury for which he seeks accident benefits. See *Chisholm* at paras. 29 and 31, and *North Waterloo Farmers* at paras 12(a) and 13. In my view, colliding with another vehicle, particularly when a driver has suffered a life threatening injury while operating the vehicle, may support a finding of causation between the use or operation of the motor vehicle and the operator's impairment within the meaning of *Madore*.

[59] It is noteworthy that it has been held that the SABS must be interpreted generously as they are considered to be remedial in nature, and are designed to serve as consumer protection legislation. In keeping with the direction from the

Court of Appeal in *Tomec v. Economical Mutual Insurance Company*, 2019 ONCA 882 at para. 42 and in *Madore* at paras. 48 and 49, the definition of "accident" must be interpreted in a manner consistent with the substantive objective of the legislation to reduce economic dislocation and hardship to victims of a motor vehicle accident.

[60] This gap in the evidentiary record on the substantive issues leads me to conclude that this motion is not suitable for summary judgment. Even if suitable, I would find that State Farm has not filed evidence that satisfies me there is no genuine issue requiring a trial on the second question. Either way, I do not consider it necessary for Mr. Singh to show that there is a triable issue to defeat this motion. For this reason, the motion must be dismissed.

Partial summary judgment discouraged

[61] Although partial summary judgement was not argued as a reason to dismiss the motion, it is important to raise it if it will provide guidance to others.

[62] State Farm is seeking partial summary judgment to have the plaintiff's claim dismissed in isolation to his claims made against other defendants.

[1] The direction of the Court of Appeal to take a cautious approach to granting partial summary judgment was clearly set out in *Butera v. Chown, Cairns LLP* 2017 ONSC 783 and *Baywood Homes Partnership v. Haditaghi,* 2014 ONCA 450.

[2] The Court in *Butera* also noted that partial summary judgment raises other problems that run contrary to the stated objectives underlining the availability of summary judgment in *Hryniak*. I take this to mean those objectives that encourage summary judgment as a fair and just process to allow the court to adjudicate a dispute between the parties on the merits, compared to the fact finding process at a conventional trial. The Court in *Butera* summarized its concern over defeating those objectives if partial summary judgment is not discouraged on the following terms:

1. Such motions cause a resolution of the main action to be delayed;
2. A motion for partial summary judgment may be very expensive;
3. Judges would be required to spend time hearing partial summary judgment motions and writing comprehensive reasons on an issue that does not dispose of the action entirely; and
4. The record available on hearing a motion for a partial summary judgment would likely not be as expansive as the record at trial, therefore, increasing the danger of inconsistent findings.

[3] After highlighting these concerns, the Court of Appeal then states at paragraph 34 that a motion for partial summary judgment should be considered a rare procedure and reserved for an issue or issues as follows:

> [34] When bringing a motion for partial summary judgment, the moving party should consider these factors in assessing whether the motion is advisable in the context of the litigation as a whole. A motion for partial summary judgment should be considered to be a rare procedure that is reserved for an issue or issues that may be readily bifurcated from those in the main action and that may be dealt with expeditiously and in a cost effective manner. Such an approach is consistent with the objectives described by the Supreme Court in *Hryniak* and with the direction that the Rules be liberally construed to secure the just, most expeditious, and least expensive determination of every civil proceeding on its merits.

[63] In *Butera*, the Court reviewed its decisions in *Baywood* and in *Canadian Imperial Bank of Commerce v. Deloitte and Touch,* 2016 ONCA 922. That review included the potential risk of duplicative or inconsistent findings at trial if partial judgment was granted, and whether granting partial summary judgment is advisable in the context of the litigation as a whole. In each of those cases, the Court held that it was inadvisable to grant partial summary judgment.

[64] On this motion, there are several of the dangers present if summary judgment was granted.

[65] First, the motion for summary judgement has delayed the prosecution of this action.

[66] Second, the motion for partial summary judgement has been expensive to all parties, and in particular the plaintiff. This is because the parties will have to prepare and to litigate the same issues not once but twice.

[67] Third, the record available on hearing this motion was clearly not as expansive as the record will be at trial. The evidence to meet the causation test will come from various experts called by different parties. This evidence may not have been as readily available to all parties on motion as it will be at trial.

[68] Even had State Farm been successful to have the action dismissed as against it on this motion, the claim Mr. Singh is making against the Peel defendants would remain for trial. In that claim, the Peel defendants have raised an issue of set off for collateral benefits that Mr. Singh has claimed or might have claimed under s. 267.8 of the *Insurance Act*. See also *Carrol v. McEwan*, 2028 ONCA 902 and *Cadieux v. Cloutier*, 2018 ONCA 903. Where there are claims and defences of this nature that remain outstanding after partial summary judgment, the danger of inconsistent findings at a later trial is increased.

Conclusion

[69] The motion is dismissed. The parties have advised me that they have agreed on costs. If necessary, they may submit a Consent signed by all counsel

to my judicial assistant at melanie.powers@ontario.ca if they require an Order fixing those costs.

Emery J.

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COURT FILE NO.: CV-18-2326
DATE: 2023 12 18

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

JARNAIL SINGH, KAMALROOP DULAY, A. DULAY MINOR BY HIS LITIGATION GUARDIAN KAMALROOP DULAY, GURSHAWN SINGH, AND A. DULAY, MINOR BY HER LITIGATION GUARDIAN KAMALROOP DULAY, ANMOL SINGH

Plaintiffs

- and -

REGION MUNICIPALITY OF PEEL
POLICE SERVICES BOARD
POLICE CONSTABLE STEVE LAING
POLICE CONSTABLE DAMIAN SAVINO
STATE FARM MUTUAL INSURANCE

Defendants

REASONS FOR DECISION

Emery J.

Released: December 18, 2023