

## Hit by an Uninsured Car in Ontario, who do you sue?

What happens when a pedestrian is hit by an uninsured car? What if that pedestrian does not have her own car (i.e. at home) and therefore she has no insurance coverage herself?

And what happens if the pedestrian is sprawled on the front hood of the uninsured car when together, they immediately hit a taxi that is properly waiting to make a left hand turn at that same intersection?

Which insurance company will respond to the pedestrian's tort lawsuit seeking damages? Will it be the taxi's insurance company or will it be the Motor Vehicle Accident Claims Fund (MVACF)?

This was the situation in **Seetal v. Quiroz** (2009 Ontario Superior Court of Justice). The answer in that case was that the taxi's insurance company will respond to the pedestrian's lawsuit for damages by offering the \$200,000 statutory minimum coverage for tort claims.

In Seetal, the taxi's insurance company was Lombard. They did provide Accident Benefits coverage to the pedestrian after this accident, although at this motion they argued that they did so in error.

There were a number of motions in Seetal that were heard at the same time. Interestingly, one of the motions was a summary judgment motion brought by Lombard – who won (i.e. their insured taxi driver bore no liability for the subject accident) and had the action dismissed against their insured taxi driver. That summary judgment motion was not even contested because the evidence was that the taxi was properly waiting in the intersection waiting to turn left when it was struck by the uninsured car (with the pedestrian on the front hood).

However, on the issue of whether Lombard's insurance policy responded to the pedestrian's tort claim, the issue was whether the taxi was involved overall with the pedestrian's accident. After going through his analysis, Mr. Justice Perell found that the taxi was involved in the accident – the focus was on the short time elapsed between the pedestrian's initial impact and the taxi collision, as well as the location of the taxi in the intersection being near the uninsured car's path of travel.

The result of Seetal is that the pedestrian's lawsuit will seek damages against Lombard's \$200,000 insurance coverage limits.

Readers should note that the Motor Vehicle Accident Claims Fund is insurance of "last resort". It is a fund which provides \$200,000 in insurance coverage to any tort lawsuit arising from a motor vehicle accident in Ontario. So if you are in a motor vehicle accident in Ontario (i.e. as a pedestrian) and no one involved in the accident has insurance available, you can sue the MVACF and they are required to respond and make their policy limits of \$200,000 available.

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