



Man Attacked by Thugs was in Car "Accident", Gets Benefits

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An Ontario Superior Court judge has ruled that an accident benefits claimant, whose loss occurred when he was assaulted by thugs at a gas station, was involved in an "accident" for the purpose of the SABS.

In [Downer v. The Personal Insurance](#), Mr. Downer drove his Jeep into a gas station with the intention of purchasing gas. His engine was running. After separating money for a gas purchase from other money in his wallet, he was assaulted by a number of assailants. In the course of the attack, his assailants entered the vehicle and tried to pull Mr. Downer from the vehicle. One of his assailants tried to put the gear of the vehicle into park but Mr. Downer, in a struggle with one of the assailants, was able to put the vehicle into gear and move the vehicle away from the assailants and out of the gas station. In the course of driving away, the plaintiff believed that he may have hit or run over one of the assailants, an aspect of the incident which may contribute to his current medical issues.

As a result of the incident, Downer applied to The Personal for accident benefits. The insurer paid some benefits and then determined that he was not entitled to any because he was not involved in a motor vehicle "accident", as that term is defined in the SABS. The present provision, which applies to accidents on or after November 1, 1996, reads in the SABS as follows:

"accident" means an incident in which the use or operation of an automobile directly causes an impairment or directly causes damage to any prescription eyewear, denture, hearing aid, prosthesis or other medical or dental device; [emphasis added]

The claimant sued his insurer, which then moved for summary judgment.

The motions judge held that Downer was involved in an accident for the purpose of claiming accident benefits. The judge referenced the Supreme Court of Canada's two-part test in [Amos v. ICBC](#):

1. Did the accident result from the ordinary and well-known activities to which automobiles are put? (the "Purpose Test"); and
2. Is there some nexus or causal relationship (not necessarily a direct or proximate causal relationship) between the plaintiff's injuries and the ownership, use or operation of his vehicle; or is the connection between the injuries and the ownership, use or operation of the vehicle, merely incidental or fortuitous? (the "Causation Test").

The judge also noted that the second part of the test in *Amos* was modified by Ontario's Court of Appeal in [Greenhalgh v. ING Halifax Insurance](#):

"Is there a direct or proximate causal relationship between the plaintiff's injuries and the ownership, use or operation of his vehicle or is the connection between the injuries and the ownership, use or operation of the vehicle, indirect or merely incidental or fortuitous?"

With respect to the first part of the test, the motions judge held that pulling into a gas station in order to purchase fuel is an activity to which all vehicles are put. Accordingly, the the first part of the test was

satisfied.

With respect to the second part of the *Amos* test, the judge took note of the following, undisputed facts:

The insured had not physically left the car but was in his vehicle and the engine was running when he was assaulted.

There was no temporal distance between the end of the use of the car and the injuries.

The logical and probable inference from the facts was that the assailants were intent on taking possession of and seizing control of Mr. Downer's vehicle while Mr. Downer was in possession and control of his vehicle.

The incident included Downer's belief that he may have run over one of the assailants with his vehicle, which he asserted was one of the causes of his post-incident depression and anxiety.

The motions judge found that, based on these facts, there was a direct or proximate causal relationship between the plaintiff's injuries and the ownership, use or operation of his vehicle. He found that Downer's use of the car had not ended before injury was suffered and that the incident that he said caused his impairments was not an intervening act.

The *Downer* case is another example of how judges and arbitrators alike have been dealing with the complexities of deciding whether someone was involved in a motor vehicle accident. It will be interesting to see whether The Personal appeals this decision.