CITATION: North Waterloo Farmers Mutual Insurance Co. v. Samad, 2018 ONSC 2143
DIVISIONAL COURT FILE NO.: 156/17
DATE: 20180404

ONTARIO

SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

P. SMITH J., THORBURN J. and MATHESON J.

BETWEEN:	)	
	)	
NORTH WATERLOO FARMERS MUTUAL INSURANCE COMPANY	)	*Kadey Schultz*, for the Appellant
Appellant	)	
	)	
– and –	)	
	)	
KHURAM SAMAD	)	*Samia Alam*, for the Respondent Samad
	)	
and	)	
	)	
THE FINANCIAL SERVICES COMMISSION OF ONTARIO	)	*Me-Hae Hur*, for the Respondent FSCO
	)	
Respondents	)	
	)	
	)	**HEARD** at Toronto: March 27, 2018

THORBURN J.

AMENDED REASONS FOR DECISION

OVERVIEW

[1] This Application for Judicial Review arises out of an incident where the insured, Khuram Samad ("Mr. Samad") exited his vehicle and went around to the passenger side of the van to close the rear door. As he had his hand on the sliding door, he was shoved, slipped on the ice and fell into the ditch. He returned to his automobile and drove away. He was seriously injured as a result of the fall.

[2] Mr. Samad sought compensation from his insurer pursuant to the *Statutory Accident Benefits Schedule- Effective September 1, 2010* ("SABS*").* The Applicant insurer, North

Waterloo Farmers Mutual Insurance Company (‘the Insurer”) contested his right to benefits. The operative provision of the Schedule is section 3(1) which reads as follows:

> Accident means an incident in which *the use or operation of an automobile directly causes* an impairment or directly causes *damage*. (Emphasis added)

[3] On April 1, 2016, the Arbitrator found that Mr. Samad was involved in an “accident” as defined by subsection 3(1) of the *SABS* and was therefore entitled to SABS benefits.

[4] The Insurer appealed.

[5] On March 2, 2017, the Director’s Delegate of the Financial Services Commission of Ontario dismissed the Insurer’s appeal of the Arbitrator’s Order.

[6] The Insurer now seeks Judicial Review of the Director’s Delegate’s decision. The Insurer claims the Director’s Delegate’s decision to uphold the Arbitrator’s Order was unreasonable in that,

a. Use of a personal vehicle for a prohibited purpose is not part of the ordinary “use or operation of an automobile” and the Insured was not covered for use of his vehicle as a taxi; and

b. The accident was not directly caused by the operation of a vehicle because the assault was an intervening event breaking the chain of causation, and the assault was the dominant reason for the injuries sustained.

RELEVANT LEGISLATION

[7] Since 1990, the system of motor vehicle accident compensation in Ontario has been premised on an "exchange of rights" principle. The legislature has restricted the right of innocent accident victims to maintain a tort action against the wrongdoer in exchange for enhanced no-fault accident benefits from their own insurer. (*Meyer v. Bright* (1993), 1993 CanLII 3389 (ON CA), 15 O.R. (3d) 129, 110 D.L.R. (4th) 354 (C.A.) and *Sullivan Estate v. Bond* (2001), 2001 CanLII 8584 (ON CA), 55 O.R. (3d) 97, 202 D.L.R. (4th) 193 (C.A.).)

[8] Section 268(1) of the *Insurance Act*, R.S.O. 1990, c. I.8 provides that,

> 268(1) Every contract evidenced by a motor vehicle liability policy, including every such contract in force when the Statutory Accident Benefits Schedule is made or amended, shall be deemed to provide for the statutory accident benefits set out in the Schedule and any amendments to the Schedule, subject to the terms, conditions, provisions, exclusions and limits set out in that Schedule.

[9] The Schedule governing this provision, s. 3(1) of O. Reg. 116/16 -- Statutory Accident Benefits Schedule - Accidents On or After November 1, 1996, defines the term "accident" 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.

[10] Unlike its predecessor statutes, s. 3(1) of the *Statutory Accident Benefits Schedule - Accidents On or After November 1, 1996*, O. Reg. 403/96 the incident must *directly* cause an impairment.

[11] In *Greenhalgh v. ING Halifax Insurance Co*., 2004 CanLII 21045 (ON CA) 72 OR (3d) 338; 243 DLR (4th) 635; 13 CCLI (4th) 292 Labrosse J.A. for the Court held that the language of the provision involves a consideration of two questions:

> 1. Did the incident arise out of the use or operation of an automobile? (The purpose component); and
>
> 2. Did such use or operation of an automobile directly cause the impairment? (The cause component).

[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". (*Greenhalgh* paras 11 and 12)

[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.

[14] The above principles are not in dispute on this application, only their application to these circumstances.

BACKGROUND FACTS

Mr. Samad's Insurance Policy

[15] Mr. Samad insured his 2005 Dodge Caravan, with North Waterloo Farmers Mutual Insurance Company. He was insured for personal use, mainly to use his vehicle to get to and from work.

[16] Use of Mr. Samad's vehicle as a taxi service was contrary to the contract of insurance approved by the Financial Services Commission of Ontario and the Statutory Conditions set out under the *Insurance Act*, O. Reg. 777/93.

[17] Mr. Samad nonetheless used his vehicle as a taxi service on December 31, 2012.

What Happened to Mr. Samad

[18] Wendell Gee and two friends called for a taxi to pick them up at a grocery store in Newmarket and drive them to a house party. Mr. Samad picked them up to drive them to their destination.

[19] There was an argument between Mr. Samad and the passengers about the address of the destination.

[20] Mr. Samad stopped his vehicle facing south on the west side of Yonge Street, near the intersection of Yonge and Savage Road/Sawmill Drive, in Newmarket.

[21] Mr. Samad was punched in the face by Mr. Gee, who was the front seat passenger. Mr. Samad attempted to grab Mr. Gee, but he was restrained by a passenger sitting in the rear of the vehicle. Mr. Samad told the passengers to get out of the vehicle.

[22] The passengers left the vehicle but left the door open. Mr. Samad got out of the vehicle with the motor running, and went around to the back passenger side of the vehicle to close the door as the door did not close automatically.

[23] As Mr. Samad was at the back door of his vehicle with his hand on the door, Mr. Gee shoved Mr. Samad. Mr. Samad fell into the ditch between the shoulder and the sidewalk.

[24] After the assault, Mr. Samad returned to his vehicle and drove 2.5 kilometres north.

[25] He stopped and called 911 because of the increased pain in his leg. Mr. Samad told the 911 operator he sustained injuries as a result of being pushed into the ditch. The York Regional Police attended at the scene of the incident. PC Murray's notes taken on the evening of the accident indicate the male passenger in the rear seat (Mr. Gee) pushed Mr. Samad to the ground.

[26] Mr. Hamad suffered injury to the shoulder leaning on the van door and the leg closest the door.

[27] Mr. Gee was convicted of assault causing bodily harm and Mr. Samad received some compensation from the Criminal Injuries Compensation Board.

The Cause(s) of Mr. Samad's Injuries

[28] At the hearing below, evidence was adduced regarding the events giving rise to the claim for SABS. Mr. Samad has not denied that the shove was part of the cause of his injuries. On his application for compensation from the Criminal Injuries Compensation Board, Mr. Samad said he was pushed, causing him to lose his footing and fall down into the ditch. Mr. Samad also sued Mr.

Gee for damages "as a result of the injuries he sustained in the above-noted assault". In his Application for Accident Benefits (OCF-1) dated January 8, 2013, he told North Waterloo that: "I was physically assaulted by the passenger in my vehicle."

[29] At the Hearing before the Arbitrator, Mr. Samad agreed that he lost his footing after he was pushed on the ice and was injured due to his fall. When asked what caused his injuries Mr. Samad said, "It's like all of everything." He said the push while he was trying to close the door was only one of many factors.

[30] At the FSCO Hearing, Mr. Samad also said his injuries were caused by a combination of factors. He said, "it's like there was like three factors there which I can see that one was like the push is for sure there and I was holding the handle and it's a sliding door…there's ice too on the floor, on the thing also like, so it was too instant, like I was closing the door because that sliding door is when you have it, it's stick a little bit on your body like to just close it…like there was three things at a time."

[31] When asked if he felt that the assault was the main factor that caused his injuries, he replied, "It was one of the factors yes."

The Arbitrator's Decision

[32] The FSCO Arbitrator correctly held that in accordance with the Court of Appeal decision in *Greenhalgh v. ING Halifax Insurance Co*., 2004 CanLII 21045(ONCA), there were two issues to be resolved:

a. Whether the incident arose out of the ordinary use or operation of an automobile (the purpose component); and

b. Whether the use or operation of the automobile directly caused the impairment (the causation component)?

[33] The Arbitrator held that stopping vehicles to pick up and drop off passengers was part of the ordinary use and operation of an automobile. (No one raised the issue of Mr. Samad's use of his vehicle as a taxi.)

[34] The Arbitrator concluded that the use or operation of the automobile was a direct cause of Mr. Samad's impairment because:

a. the damage would not have occurred had he not been using his vehicle;

b. there can be more than one direct cause, and in this case the assault was only one direct cause of his injuries; and

c. "[T]he dominant feature is that aspect of the situation that most directly caused the injuries. I am satisfied that in this case, there is not one dominant feature that is the cause of the [the insured's] impairment…it is the entire series of events that started with the use or operation of the automobile and ended in an injury…I do not feel that you can isolate either

> the assault by one of the passengers or the slipping on the ice by the Applicant from the entire chain of events which was tied into the use and operation of the automobile."

Appeal to the Director's Delegate

[35] The Insurer appealed to the Director's Delegate who upheld the Arbitrator's decision.

[36] In his decision dated March 2, 2017, the Director's Delegate held that the use of a vehicle as a taxi was an ordinary and well-known activity. Again, no issue was raised by the Insurer that this use contravened the terms of the insurance policy.

[37] In dealing with the cause, the Director's Delegate agreed that the decision of the Arbitrator contained "very little analysis, simply finding that the intervening act of the assault by one of the passengers or slipping on the ice was insufficient to disentitle Mr. Samad".

[38] He acknowledged that "in the vast majority of cases, assaults are seen as intervening acts, so the vehicle is only the location of the assault and not a direct cause of any impairment resulting from the assault." He cited *Downer v. The Personal Insurance Company*, 2012 ONCA 302 (CanLII) and *Martin v. 2064324 Ontario Inc.*, 2013 ONCA 19 as assault cases where the vehicle was found to be merely the location for the assault[1].

[39] However, he noted that there can be more than one direct cause of an impairment and that in this case, "the use or operation of the van continued during the course of the incident, and that slipping on the ice while so engaged was not an intervening event. Mr. Samad not only planned to continue operating the van as he was closing the sliding van door, he did continue operating the van, despite his broken leg. Further…slipping on ice while using or operating a vehicle is also part of the ordinary course of things."

[40] The Director's Delegate further held that, "the Arbitrator was correct in finding that the use or operation of the vehicle was not simply incidental to the assault but contributed to the impairment. … Mr. Samad was still in the process of using or operating his vehicle when the combination of the assault and the slippery ice contributed to his slip and fall."

[41] He concluded that, "There was no one dominant cause and the Arbitrator therefore correctly concluded that the use or operation of the automobile was a direct cause of the impairment."

THE ISSUE

[42] The issue on this Application for judicial review is whether the Director Delegate's decision to uphold the Arbitrator's decision was reasonable.

---

[1] In *Downer*, the plaintiff was physically assaulted by unidentified assailants while sitting in his car at a gas station. In *Martin*, The plaintiff alleged that he was assaulted by two unknown men in a parking lot, forced into the trunk of his car, then forced into the front seat of the car when his assailants had difficulty working with the car's standard transmission, and assaulted again as he assisted them with shifting the gears. He alleged that the assailants forced him out of the car in another parking lot, assaulted him again and drove over his right foot as they drove off.

[43] The Insurer submits that the Director's Delegate made reviewable errors in deciding that the Arbitrator:

> A. applied the proper test to determine whether the incident arose out of the ordinary use or operation of an automobile; and in
>
> B. his characterization and application of the causation test by;
>
> i. Incorrectly determining that the but-for requirement for causation had been met;
>
> ii. Failing to properly apply the test in deciding whether the injuries resulted from an intervening act; and
>
> iii. Failing to consider the dominant feature aspect of the direct causation test.

[44] The insurer raises, for the first time, the use of the automobile as a taxi.

THE STANDARD OF REVIEW

[45] The parties agreed at the hearing that the appropriate standard of review is reasonableness.

[46] Reasonableness is the appropriate standard of review on an application for judicial review of a Delegate's decision on the interpretation of statutes regarding entitlement to no-fault motor vehicle accident benefits in Ontario. This includes the *Insurance Act* and the SABS. (*Gordyukova v Certas Direct Insurance*, 2012 ONCA 563 at paras15-18; *Pastore v Aviva Canada Inc.*, 2012 ONCA 642 at paras 26, 59, 68; *Allstate Insurance Co. of Canada v. Klimitz,* 2015 ONCA 698 at para 4; *Francis v Dominion of Canada General Insurance Co.*, 2016 ONSC 6566 (Div Ct) at para 3; *Whipple v Economical Mutual Insurance Co.*, 2012 ONSC 2612 (Div Ct) at para 3 and *Kumar v Coachman Insurance Co.*, [2004] OJ No 2494 (Div Ct) at para 2.)

[47] More particularly, the Court in *Whipple* held that the standard of review was reasonableness when determining whether the insured was injured in an "accident" under subsection 2(1) of the *SABS- Accidents on or After November 1, 1996*, Ontario Regulation 403/96 for the following reasons:

> There is a strong privative clause. The fact that the legislation also provides an option to insureds that includes access to the courts does not detract from the force of the privative clause once the option of arbitration before the Commission is selected. The purpose of the arbitration procedure is to provide a specialized and efficient dispute resolution process. The question at issue, while a question of law, necessarily invokes this specialized expertise in the context of interpretation of the home statute. Furthermore, we do not see this issue of law as being of central importance to the legal system as a whole given that the applicable test is well established. Lastly, the fact that the courts also have expertise in this area also does not detract from the specialized expertise of the Arbitrator and the Director's Delegate.

> We note that this conclusion has been confirmed by a series of decisions of this Court in respect of the specific issue involved in the current proceeding: see, for example, the most recent decision, *Kumar v. Coachman Insurance Co.*, [2004] O.J. No. 2494 (Ont. Div. Ct.).

[48] Moreover, as noted by the court in *State Farm Mutual Automobile Insurance Co. v. Federico*, 2014 ONSC 109 at para. 7, once an insured chooses FSCO arbitration, the arbitrator has exclusive jurisdiction, and thereby becomes "solely tasked" with considering the matter in the first instance.

[49] In this case, the appropriate standard of review is reasonableness given the presence of a privative clause, the fact that adjudication is done using a special administrative regime in which the decision-maker has special expertise, and the legal issue to be addressed, namely whether Mr. Samad was in an "accident" as defined in the legislation. Deference is warranted as the administrative tribunal has developed particular expertise in the application of a general common law or civil law rule in relation to the specific statutory context". This means the decision must fall within the range of possible conclusions which are defensible in respect of the facts and the law (*Dunsmuir v. New Brunswick* [2008] 1 S.C.R. 190)

ANALYSIS OF THE ISSUES

A. How to Interpret the Statute

[50] The statute and regulations are remedial and should be interpreted in a way that best enables the attainment of its objects. (*Interpretation Act*, R.S.C. 1985, c. I-21)

[51] Laskin J.A. for the Court in *Chisholm v. Liberty Mutual Insurance Group*, 2002 Carswell Ont. 2652 (ONCA) noted that,

> The 1996 Schedule reflects a government policy decision. The government decided to circumscribe the insurance industry's liability to pay no-fault benefits by holding it responsible only for injuries directly caused by the use or operation of a car.

B. The Central Issue

[52] The central issue in this case is whether Mr. Samad was involved in an "accident" pursuant to the Schedule where the use or operation of an automobile directly caused the impairment.

C. Was the Arbitrator's Interpretation of "Ordinary Use or Operation of a Vehicle" Reasonable?

[53] The purpose component will be satisfied where the vehicle in question is being operated in a manner that is consistent with the ordinary use and well-known activities of vehicles. The test is to be applied in a contextual manner. (*Greenhalgh v. ING Halifax Insurance Co.*, 2004 CanLII 21045 (ON CA), at para. 11.)

[54] The Applicant Insurer submits for the first time on this Application for Judicial Review, that the Arbitrator did not turn his mind to the Certificate of Insurance which shows that North Waterloo issued an OAP 1 which does not insure a taxi. The Applicant submits that its use as a taxi cab was not within the "ordinary use of the vehicle" and that both the Arbitrator and Director's Delegate erred in finding the purpose test was met.

[55] The purpose of Judicial Review is not to re-hear the evidence but to determine whether the Director's decision on the meaning of "accident" was reasonable. The decision is to be rendered on the basis of the evidence before the Arbitrator. A party cannot raise an entirely new argument which has not been raised below and in relation to which it might have been necessary to adduce evidence at trial. (*Perka v. R.*, [1984] 2 S.C.R. 232 at 240)

[56] Moreover, in analyzing the purpose component, the question is simply whether the incident arose from the "ordinary and well-known activities" to which vehicles are put. (*Economical Mutual Insurance Company v. Caughy*, 2016 ONCA 226, para. 17[2]; *Davis v. Aviva Canada Inc.*, 2017 ONSC 6173 (S.C.J.), at para. 11 and *16-000131 v. TD Insurance Meloche Monex*, 2017 CanLII 43837 (ON LAT), at paras. 34 – 35 and *I.C. and Intact Insurance*, 2017 CanLII 69443 (ON LAT), at para. 34.)

[57] The reasoning was explained by Binnie J. in *Citadel General Assurance Co. v. Vytlingam*, [2007] 3 S.C.R. 373, 2007 SCC 46 as follows:

> "the ordinary and well-known activities to which automobiles are put" was simply "that someone who uses a vehicle *for a non-motoring purpose* cannot expect to collect motor vehicle insurance. If, for example, a claimant got drunk and used her car as a diving platform from which to spring head first into shallow water, and broke her neck, she could not reasonably expect coverage from her motor vehicle insurer, even though, in a sense, she "used" her motor vehicle.
>
> …
>
> The fact that transportation in this case was for a criminal purpose no more excludes coverage than the fact that Farmer may have been driving his vehicle on the night in question while impaired. Innocent drivers (or pedestrians) should not be denied indemnity if struck by (to give a further example) a getaway car "transporting" bank robbers from the crime scene. In all these cases, the tortfeasor, regardless of his or her subjective reasons for climbing into the car, is at fault as a motorist.
>
> …

[2] In *Economical Mutual Insurance Company v. Caughy*, the respondent sustained serious spinal cord injuries when he tripped over a motorcycle parked near his trailer and hit his head on his trailer. The causation element was satisfied since "the parking of the motorcycle in the circumstances that evening was the dominant feature in the incident and not simply ancillary to it," or merely the venue where it occurred.

> *The OPCF 44R is a big tent and not much will be excluded as aberrant to the use of a motor vehicle as a motor vehicle.* (Emphasis added)

[58] The Insurer's argument about use of the vehicle as a taxi that was not covered by the insurance policy was never put to the Arbitrator or Director's Delegate although the Insurer knew what the vehicle was being used for. In any event, as the Arbitrator noted, Mr. Samad "was driving his van in the ordinary and well-known activities to which automobiles are put. The taxi was being used for its ordinary purpose, which was to pick up and transport passengers." As was the case in *Citadel* where the person committed a crime while operating a vehicle, an insured may use or operate a vehicle regardless of whether that use was consistent with the policy provisions.

[59] The Arbitrator's conclusion is consistent with the case law and the Director's Delegate's decision to uphold his conclusion on this issue was reasonable.

D. **Was Direct Causation Established?**

[60] The Court of Appeal in *Greenhalgh v ING Halifax Insurance*, [2004] O.J. No. 3485 (C.A.), para. 12 provided the following considerations to provide guidance in ascertaining whether or not direct causation has been established:

i. The "but for" test can act as a useful screen;
ii. 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
iii. 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".

[61] The Insurer submits that the Arbitrator's decision was not reasonable as none of the above considerations were met and the Arbitrator's reasons on the issue of whether there was an intervening case (in this case, the assault) were inadequate.

I. The But-For Test

[62] In *Chisholm v. Liberty Mutual Group, 2002 CanLII 45020 (ON CA),* paras. 20 and 35, Laskin J.A. confirmed that the "but for" test is only intended to eliminate from consideration factually irrelevant causes and does not conclusively establish causation.

[63] Arbitrator Arbus followed this reasoning in stating that the "but-for" test is an exclusionary test to rule out irrelevant causes without establishing legal causation on its own. The Arbitrator held that had Mr. Samad not been using his vehicle , he would not have been hurt.

[64] We agree with the Director's Delegate's conclusion that Arbitrator Arbus correctly determined that the "but-for" test was met in this case.

II. Was Use of the Vehicle a Direct Cause of Impairment?

[65] A "direct cause" is a cause or an act that sets in motion an uninterrupted chain or train of events or the first in a row of blocks after which the rest fall down without the assistance of any other act or intervention of any other force. If an unbroken chain of events involving the use or operation of an automobile leads to an injury, the injury can be said to have been directly caused by the incident. (*Chisholm v. Liberty Mutual Group*, [2002] O.J. No. 3135 (C.A.) at para. 27 and *Petrosoniak and Security National Insurance Co.* (FSCO A98-000198, November 2, 1998), at p. 7.)

[66] There need not be one direct cause, and a direct cause need not be the most immediate cause. (*Wawanesa Mutual Insurance Company and Webb* (FSCO Appeal P11-00015, July 18, 2012), p. 6.)

[67] Arbitrator Arbus heard Mr. Samad's evidence that his injuries were caused by a combination of factors. "[I]t's like there was like three factors there which I can see that one was like the push is for sure there and I was holding the handle and it's a sliding door…there's ice too on the floor, on the thing also like, so it was too instant, like I was closing the door because that sliding door is when you have it, it's stick a little bit on your body like to just close it…like there was three things at a time."

[68] He determined that Mr. Samad's use and operation of a motor vehicle was a direct cause of his impairment.

[69] On appeal, the Director's Delegate found the Arbitrator provided little analysis, simply finding that the acts of assault and slipping on ice were not intervening acts that should preclude Mr. Samad from asserting that his use and operation of the vehicle was a direct cause of his impairment. He therefore gave the parties the opportunity to address the intervening act of assault to address where to draw the line.

[70] The Director's Delegate considered the cases of *Chisholm, State Farm and Souchuk* (FSCO Appeal P02-00039, January 8, 2004 and *Federation Insurance Company and Saad* (FSCO Appeal PP03-00017, January 8, 2004, and noted that in accordance with those cases, slipping and falling in the middle of a journey is not an intervening event.

[71] The Director's Delegate acknowledged that in the vast majority of cases, assaults are seen as intervening acts as the vehicle is merely the location of the assault and not a direct cause of any impairment resulting from the assault. (*Golizadeh and Motor Vehicle Accident Claims Fund* (FSCO A13-014896, April 10, 2015), p. 4.) The fact that an injury was sustained where a vehicle was located is not enough to entitle an insured to benefits. Use or operation of the vehicle must be a direct cause of the injuries.

[72] He held that in this case, the vehicle was not merely the location and opportunity for the injury. This incident occurred when Mr. Samad was shoved while attempting to close the van door and slipped on ice. He suffered injury to the shoulder leaning on the van door and the leg closest the door. This is consistent with Mr. Samad's own evidence that his injuries resulted from a number of things happening at the same time: his operation of the vehicle, icy conditions and the assault.

[73] The Director's Delegate noted the findings of the Arbitrator that:

a. Mr. Samad drove to pick up passengers, pulled over and asked the passengers to leave his vehicle. They did, leaving the car door open.

b. He got out of the van to close the car door, intending to drive away.

c. While he was at the back of the vehicle with his hand on the door, he was shoved and slipped on the ice.

[74] For these reasons, he upheld the Arbitrator's decision that the use or operation of the vehicle continued throughout because Mr. Samad's operation of a motor vehicle set in motion a chain of events leading to a result without any later intervening act.

[75] In respect of the Insurer's submission as to the adequacy of reasons, we note that the Director's Delegate allowed further submissions on this point.

[76] Moreover, the lack of discussion on a particular point does not mean the evidence was not considered and weighed. (*State Farm v. Movahedi*, [2001] O.J. No. 5099 (Div. Ct.) at para. 3 and *Certas Direct Insurance and Kwatemaa* (FSCO Appeal P06-00022, February 28, 2008), p. 7.)

[77] The issue for this court is whether the decision as a whole, is reasonable. A challenge to the sufficiency of reasons forms part of the reasonableness analysis; it is not a freestanding basis to quash a decision. The reasons must be read together with the record and the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes. (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, 3 S.C.R. 708, at paras. 14-16 and 18.)

[78] Reasons should be read as a whole and not overly dissected or parsed, and need not address all issues raised by the parties. The reasons need only "adequately explain" the basis for decision, allowing the reviewing court "to understand why the tribunal made its decision and permit [the court] to determine whether the conclusion is within the range of reasonable outcomes". (*Newfoundland Nurses*, at para. 16.)

[79] In reviewing a decision, the Director's Delegate properly sought to supplement the decision maker's reasons before seeking to subvert them. The effort to supplement the reasons included considering the record and reasons which could be offered in support of the decision. (*Newfoundland Nurses*, at paras. 11-12; *Dunsmuir*, at para. 48.)

[80] For these reasons, we find that the Director's Delegate's decision to uphold the Arbitrator's finding that the use or operation of the vehicle was a direct cause of impairment as there was an unbroken chain of events, was reasonable.

III. Was the Assault was the Dominant Cause of the Impairment?

[81] The Insurer submits that the Director Delegate's decision to uphold the Arbitrator's decision was unreasonable because the assault was the dominant cause of impairment. The Insurer notes that Mr. Samad never denied that an assault took place and that the basis for criminal charges, the application for compensation from the CICB and for his civil claim for damages was that he was assaulted.

[82] In *Chisholm*, the Court of Appeal held that the dominant feature is that aspect of the situation that most directly caused the injuries.

[83] The Arbitrator found Mr. Samad was still in the process of using or operating his vehicle when the combination of his hand on the door of the vehicle, the assault and the icy conditions under foot contributed to his slip and fall. There was no evidence to suggest that one factor was the dominant factor in causing impairment.

[84] On the basis of the evidence adduced, it was reasonable for the Director's Delegate to conclude that the Arbitrator's decision that the assault was not the dominant factor resulting in his impairment should be upheld.

a. There was no evidence that the assault was a greater cause of impairment than the act of closing the door and having his hand in the handle and that Mr. Samad was standing on ice;

b. The Arbitrator noted that the injuries sustained while Mr. Samad was leaning to close the door, and he suffered injury to the shoulder leaning on the van door and the leg closest the door; and

c. Mr. Samad's own evidence was that his injuries resulted from a number of things happening at the same time: his operation of the vehicle, the icy conditions and the assault.

[85] Moreover, contrary to the assertion by the Insurer, the Arbitrator's decision does not reverse the evidentiary onus as Mr. Samad adduced evidence as to the causes and the Arbitrator accepted that the assault was not the only direct cause of Mr. Samad's injuries but it was rather, the combination of his hand on the vehicle, the ice below his feet and the shove that resulted in his injury. This was a conclusion that was open to him to make.

CONCLUSION

[86] The Arbitrator's decision and the Director's Delegate's decision to uphold must fall within the range of possible conclusions which are defensible in respect of the facts and the law.

[87] The Arbitrator had evidence before him upon which to reasonably conclude that the use or operation of the automobile was a direct cause of Mr. Samad's impairment because:

a. The damage would not have occurred had he not been using and/or operating his vehicle;

b. His use and operation of the vehicle was a direct cause of Mr. Samad's impairment; and

c. The assault is not the dominant feature that caused Mr. Samad's impairment.

[88] The Director's Delegate's decision that there was an entire series of events that started with the use or operation of the automobile and ended in an injury was reasonable and the result is within the range of acceptable outcomes, which are defensible in respect of the facts and law.

[89] For these reasons, the Application for judicial review is dismissed.

[90] On the consent of both parties, costs are payable to the Respondent in the amount of $25,000.00 all inclusive.

Thorburn J.

I agree

P. Smith J.

I agree

Matheson J.

Released: April 4, 2018

CORRECTION NOTICE

Amended decision: The text of the original judgement was amended on May 14, 2018 and the description of the correction is appended.

May 14, 2018: The amount in paragraph 90 was replaced by $25,000.00.

CITATION: North Waterloo Farmers Mutual Insurance Co v. Samad, 2018 ONSC 2143
DIVISIONAL COURT FILE NO.: 156/17
DATE: 20180404

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

P. SMITH J., THORBURN J. and MATHESON J.

NORTH WATERLOO FARMERS MUTUAL INSURANCE CO
Applicant

– and –

KHURAM SAMAD

Respondent

REASONS FOR DECISION

Released: April 4, 2018