



Citation: Janes v. TTC Insurance Company Limited, 2025 ONLAT 23-011571/AABS

Licence Appeal Tribunal File Number: 23-011571/AABS

In the matter of an application pursuant to subsection 280(2) of the *Insurance Act*, RSO 1990, c I.8, in relation to statutory accident benefits.

Between:

Kathleen Janes

Applicant

and

TTC Insurance Company Limited

Respondent

DECISION

ADJUDICATOR:

Christopher Yan

APPEARANCES:

For the Applicant:

Sean Brown, Counsel
Jean-Claude Rioux, Counsel

For the Respondent:

Stephen Sargent, Counsel
Rhema Kang, Counsel

HEARD by Videoconference:

November 12, 2024

OVERVIEW

- [1] Kathleen Janes, the applicant, was involved in an incident on August 20, 2023, while traveling as a passenger on a Toronto Transit Commission bus (the “TTC bus”). The applicant sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “Schedule”). The respondent, TTC Insurance Company Limited, denied benefits and the applicant applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

ISSUE

- [2] The sole issue in dispute is:
- i. Is the applicant entitled to accident benefits pursuant to s. 268(1.1) of the *Insurance Act*, R.S.O. 1990, c. I.8, as amended?

RESULT

- [3] Section 268(1.1) of the *Insurance Act* does not apply to preclude the applicant from receiving statutory accident benefits.

ANALYSIS

- [4] I find that section 268(1.1) of the *Insurance Act* does not apply in the circumstances to disentitle the applicant from receiving statutory accident benefits.
- [5] Section 268(1.1) of the *Insurance Act* states:
- No statutory accident benefits are payable in respect of an occupant of a public transit vehicle, in respect of an incident that occurs on or after the date this subsection comes into force, if the public transit vehicle did not collide with another automobile or any other object in the incident *[emphasis added]*.
- [6] The applicant was a passenger on the TTC bus that was traveling on a roadway where roadwork was in progress. As part of the roadwork, sections of the road had been milled below the surface, leaving manhole covers elevated relative to the road surface. The incident occurred when a wheel of the TTC bus drove over one such raised manhole cover.

- [7] The parties disagree that the raised manhole cover was “any other object” and that the incident was a “collision” for the purposes of s. 268(1.1) of the *Insurance Act*.
- [8] At the outset of the hearing, I invited submissions from counsel on which party bears the onus of establishing coverage under the legislation. Ordinarily, consistent with the principle set out in *Scarlett v. Belair Insurance*, 2015 ONSC 3635, the applicant bears the burden of proving entitlement unless a statutory exclusion shifts that burden to the insurer. Here, however, the parties ultimately took the position that the matter is, at its core, a pure exercise of statutory interpretation. The question, therefore, turns less on a typical onus analysis and more on whether, on the undisputed facts, the incident falls within the scope of the statutory language at issue.
- [9] In conducting this statutory interpretation, I note that I was not presented with any expert evidence on road infrastructure, and there is no precise information about the height of the raised manhole cover in question. The parties made no submissions on whether these evidentiary gaps might affect the scope of the analysis or the onus framework, leaving me to rely on my own common understanding of road features and vehicle movement to ground my analysis. Despite these omissions, I must determine how the governing legislation applies based on the facts presented and in light of established interpretive principles.

The raised manhole cover constitutes “any other object” for the purposes of s. 268(1.1) of the Insurance Act

- [10] I find that the raised manhole cover constitutes “any other object” for the purposes s.268(1.1) of the *Insurance Act*.
- [11] The applicant argues that the raised manhole cover, while ordinarily part of the roadway, was transformed into a distinct “object” when it was raised above the road surface due the milling of the surrounding road surface during roadwork. The applicant submits that the raised manhole cover should be treated as separate and distinct from the continuous roadway surface once it became temporarily elevated rather than as an integral part of the road.
- [12] The respondent argues that the raised manhole cover, even when elevated, is an integral part of the roadway infrastructure and does not fall within the meaning of “any other object” under s. 268(1.1). The respondent also distinguishes the cases relied upon by the applicant, noting these cases involve different policy language specifying “moving or stationary” objects, which is absent from section 268(1.1).

- [13] In assessing whether the raised manhole cover constitutes “any other object,” the *Insurance Act* does not provide a definition for “object.” Therefore, it is essential to apply the modern approach to statutory interpretation: *Bell Express Vu v. R.*, [2002] S.C.R. 559, *Rizzo & Rizzo Shoes Ltd.*, 1998 CanLII 837 (SCC). The proper approach to statutory interpretation requires considering the plain and ordinary meaning of the words used by the legislature, in their context, and with regard to the purpose the legislation was intended to accomplish. This modern approach, as outlined by Driedger and endorsed by the Supreme Court of Canada in *Bell Express Vu* instructs that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament” (para. 26).
- [14] The Divisional Court in *Nash v. Aviva*, 2022 ONSC 6723, reinforced that in administrative proceedings, decision-makers must apply the modern approach to statutory interpretation to discern a provision's meaning and intent without “reverse-engineering” toward a desired outcome. This requires reading the words in their entire context, in their grammatical and ordinary sense, and harmoniously with the Act's scheme, purpose, and legislative intent, avoiding interpretations that are merely plausible or expedient.
- [15] I agree with the applicant and find that in the plain and ordinary sense, “object” suggests a separate, tangible thing. I accept the applicant's argument that the raised manhole cover, a distinct iron structure, became elevated during roadwork, creating a temporary, independent feature within the roadway. This physical separation, and difference in elevation, transformed the raised manhole cover into an item no longer seamlessly integrated with the continuous road surface. Moreover, I accept the applicant's submissions and take notice that a manhole cover can be installed or removed independently, serving an additional purpose of providing underground access. Unlike an incidental bump in the asphalt or a pothole, the raised manhole cover created an independent feature and can reasonably be interpreted as “any other object” for the purposes of section 268(1.1).
- [16] I am not persuaded by the respondent's argument that even when elevated, the raised manhole cover remains an integral part of the roadway infrastructure and cannot fall within the meaning of “any other object” under section 268(1.1). Even if I accept the respondent's position that the raised manhole cover serves a function as part of the roadway, I do not find that the raised manhole cover necessarily loses its status as “any other object” merely because it is partially embedded in the road.

- [17] The cases the respondent relies on are distinguishable from the facts in this matter as they focus on whether contact with the roadway itself, as a continuous surface, constitutes a collision with any other object, and not whether contact with a distinct, embedded feature like the raised manhole cover can qualify as such.
- [18] For example, the respondent relies on the Supreme Court of Canada decision in *London Guarantee and Accident Co. v. Sowards*, 1923 CanLII 2 (SCC). In this case, a vehicle initially drove over a culvert and later struck a hole which resulted in the vehicle overturning. However, *Sowards* does not address whether the vehicle's initial contact with the culvert could be classified as a collision with an object. Instead, the Supreme Court's analysis focused on whether the overturning of the vehicle and impact with the roadbed constituted a collision with an object. Thus, while *Sowards* involved driving over a roadway feature, the decision did not analyze whether a distinct object embedded in or on the roadway could be treated as "any other object." The court ultimately found that overturning and striking the highway itself did not meet the definition of collision under the policy at issue. Thus, *Sowards* does not assist in determining whether a distinct object, temporarily embedded within the roadway, can still qualify as "any other object."
- [19] In interpreting the meaning of the words "any other object," I decline to adopt the respondent's argument that an object cannot qualify as "any other object" because it is part of the roadway. The statutory language in section 268(1.1) of the *Insurance Act* does not impose such a limitation. The phrase "any other object" is broad and unqualified, and there is no requirement in the statute that an object must not also serve as part of or a feature of the roadway to meet this definition. Regardless of whether the raised manhole cover is integrated into the road infrastructure, its distinct, elevated, and tangible nature satisfies the plain and ordinary meaning of "any other object."
- [20] The respondent argues that the legislature could have explicitly excluded manhole covers from the definition of a roadway under the *Insurance Act*, just as it excluded shoulders from the definition of a roadway under the *Highway Traffic Act*, R.S.O. 1990, c. H.8 (HTA). However, I find this comparison unpersuasive. The *HTA* and the *Insurance Act* serve distinct legislative purposes and use different statutory language. The *HTA*'s exclusion of shoulders from the definition of a roadway has no bearing on the interpretation of "any other object" under section 268(1.1). The *Insurance Act* does not exclude roadway features from being considered "any other object," and there is no basis to read such an exclusion into the statutory language.

- [21] I am similarly unpersuaded by the respondent's argument that recognizing a raised manhole cover as "any other object" would lead to absurd outcomes. The elevated manhole cover is a distinct and tangible feature, temporarily transformed into a separate object due to its elevation during roadwork. Recognizing it as such does not create an absurd or impractical outcome, as the interpretation is consistent with the plain and ordinary meaning of "any other object." If the legislature intended to exclude objects integrated into the road infrastructure, it could have explicitly stated so.
- [22] Considering the raised manhole cover's distinct and independent nature within the roadway, I conclude that it satisfies the definition of "any other object" under section 268(1.1). Accordingly, I find that the raised manhole cover constitutes "any other object" within the meaning of the statute.

The incident was a "collision" for the purposes of s. 268(1.1) of the Insurance Act

- [23] I find that the incident satisfies the definition of a "collision" for the purposes of s.268(1.1) of the *Insurance Act*.
- [24] The applicant's position is that the incident with the raised manhole cover constituted a "collision" for the purposes of s. 268(1.1). The applicant submits that the definition of "collision" is context-dependent and that, in this case, the excessive speed of 57 km/h, which exceeded both the regular speed limit for the area and the reduced caution expected in a construction zone, along with the force of the impact, satisfies the meaning of "collision" under the *Insurance Act*.
- [25] Further, the applicant submits that any ambiguity in interpreting the term should be resolved in her favor under principles of consumer protection when interpreting a statute that determines eligibility for accident benefits. While consumer protection principles are relevant in interpreting statutes designed to benefit claimants, I do not rely on these principles as the sole basis for my conclusion. Instead, the plain and ordinary meaning of the statutory language supports the applicant's position.

- [26] On the other hand, the respondent's position is that the incident was not a "collision." Among the arguments made, the respondent submits that:
- i. The case law it relies upon supports the view that contact with the roadway itself, or continuous roadway features like bumps or potholes, does not constitute a "collision;"
 - ii. Speed is irrelevant to determining whether a collision took place, and the speed of the vehicle is a matter better left for a tort claim;
 - iii. The driver's failure to stop immediately after the incident suggests that the contact did not amount to a collision; and
 - iv. The presence of caution signs at multiple intervals indicated that the roadway was intended to be safely driven over, even in the presence of raised features like manhole covers.
- [27] While section 268(1.1) of the *Insurance Act* refers to "collide," the parties made submissions using the terms "collide" and "collision" interchangeably. For clarity, I find that this distinction does not materially affect the analysis or the outcome.
- [28] In the circumstances, I accept that the incident constitutes a "collision." I find that the excessive speed of 57 km/h, as evidenced in the GPS data on the surveillance footage, exceeded what was reasonable for safely navigating the elevated manhole cover. I find that this excessive speed transformed what would have been an intended interaction with the road feature into a forceful, disruptive contact, consistent with the ordinary meaning of a collision.
- [29] I am not persuaded by the respondent's analogy to a low-speed impact between two vehicles. The respondent argued that any contact between two vehicles, regardless of speed, constitutes a collision, and therefore, high speed would not transform an intended interaction with a roadway feature into a collision. However, I find the analogy unpersuasive. Contact between two vehicles is typically outside the ordinary contemplation of a vehicle's usage, rendering speed irrelevant in those scenarios. By contrast, the raised manhole cover is a roadway feature intended to be traversed with caution. In this case, the excessive speed at which the bus drove over the raised manhole cover rendered the contact inappropriate and transformed it into a collision. This conclusion is supported by the signage and pylons visible in the surveillance footage, which indicate that the construction zone required careful navigation at reduced speeds.

- [30] Secondly, the respondent argues that the driver's failure to stop immediately after the impact suggests that there was no collision, and that the lack of damage or resistance undermines the applicant's position. I disagree. The surveillance footage shows that the bus came to a stop approximately 20 seconds after the impact, following a report from a passenger. While the delayed response may indicate that the driver did not initially perceive the incident as a safety concern, it does not preclude a finding that a collision with another object occurred. Further, I reject the respondent's argument that the absence of damage supports a finding that there is no collision and that also reject the argument that there was no resistance to the vehicle's motion. The lack of physical damage alone does not preclude a collision, and resistance includes any disruption of the vehicle's expected motion. In this case, the elevated manhole cover caused a forceful impact that disrupted the bus's trajectory, satisfying the definition of a collision.
- [31] The respondent also points to the caution signs placed at multiple intervals, as seen in the surveillance footage, which warned drivers about uneven surfaces and bumps. The respondent submits that these signs indicate the roadway was intended to be driven over and argues that if the raised manhole cover posed a risk of collision, the lane would have been closed entirely. While the signs suggest that careful driving could allow safe passage, they do not preclude the possibility of a collision occurring under certain conditions. Here, I find that the elevated speed of 57 km/h, combined with the raised cover, produced a meaningful impact consistent with the type of forceful contact typically considered a collision. The signage highlights that the roadway was passable with appropriate caution, which was not exercised in this case.
- [32] Finally, the respondent raises concerns about absurd results, suggesting that finding the incident constituted a collision would expand the definition of "collision" to include routine contact with potholes or bumps. I find this concern misplaced. The raised manhole cover is not analogous to typical road features like potholes or speed bumps. It is a distinct, removable feature that became elevated temporarily due to roadwork, introducing a condition that required reduced speed and additional caution. The forceful, high-speed impact with this elevated feature falls squarely within the plain and ordinary meaning of "collision" with "any other object," without improperly expanding the scope of coverage.

- [33] Having considered the evidence and the submissions of the parties, I find that the circumstances of this incident satisfy the requirement of “collide” under section 268(1.1) of the *Insurance Act*. The excessive speed at which the bus traveled over the elevated manhole cover transformed the contact into a forceful and disruptive interaction, meeting the definition of a “collision” with “any other object.” This interpretation is consistent with the plain and ordinary meaning of the statutory language and does not improperly expand the scope of coverage. Accordingly, I conclude that the incident constitutes a collision for the purposes of section 268(1.1).

Legislative Intent and the Statutory Framework

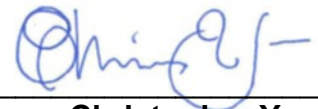
- [34] The respondent argues that the broader scheme of the *Insurance Act* directs public transit passengers away from the statutory accident benefits system to the enhanced tort system, without requiring them to overcome the statutory threshold or deductible, when no collision with another vehicle or object occurs. The respondent cautions that accepting the applicant’s interpretation would expand the statute’s scope contrary to legislative intent, making virtually any roadway contact that causes a bump qualify as a “collision.”
- [35] I do not find that the legislative intent or statutory scheme supports the respondent’s interpretation.
- [36] I accept that section 268(1.1) of the *Insurance Act* is designed to limit statutory accident benefits to specific incidents involving a collision with another vehicle or object. However, that purpose does not support the respondent’s interpretation of “collide” or “any other object.” The statutory scheme redirects claimants to the tort system only *after* concluding that no collision has occurred. Recognizing the raised manhole cover as an “object” does not expand the statute’s scope to routine bumps or undermine the Bill 178 amendments. While section 268(1.1) does not explicitly mention a threshold for significance, in my view, there must be a degree of consequence or disruption to the vehicle’s motion, something beyond a *de minimis* impact, to meet the statutory requirement of the word “collide”. This threshold ensures that only non-negligible contacts with distinct objects are captured by section 268(1.1), rather than every minor or inconsequential encounter with the roadway.

[37] Accordingly, based on the facts of this case and the statutory scheme, I find that the raised manhole cover falls under the definition of “any other object” under section 268(1.1) of the *Insurance Act* and that the incident constitutes a “collision.” The statutory framework directs claimants to the tort system only when there is no collision with another vehicle or object, but it does not narrow the definitions of “collision” or “any other object” to preclude findings such as this one.

ORDER

[38] Section 268(1.1) of the *Insurance Act* does not apply to disentitle the applicant from statutory accident benefits.

Released: March 14, 2025



Christopher Yan
Adjudicator