

**IN THE MATTER OF THE INSURANCE ACT,  
R.S.O. 1990, C. I.8, S. 275, AS AMENDED**

**AND IN THE MATTER OF THE ARBITRATION ACT S.O. 1991,  
CHAPTER 17, AS AMENDED**

**AND IN THE MATTER OF AN ARBITRATION**

**B E T W E E N :**

**YORK FIRE & CASUALTY INSURANCE COMPANY**

**Applicant**

**- and -**

**ROYAL & SUNALLIANCE INSURANCE COMPANY OF CANADA**

**Respondent**

**AWARD**

**COUNSEL**

**Boyd Critoph, Esq.  
Counsel for the Applicant**

**Derek Greenside, Esq.  
Counsel for the Respondent**

Pursuant to Section 275(1) of the *Insurance Act*, R.S.O. 1990, c. I.8, the insurer responsible for the payment of benefits under the *Statutory Accident Benefits Schedule* is entitled to indemnification in relation to benefits paid, from the insurers of various classes of automobiles, identified in Regulation 664, as amended, under the *Insurance Act*. Such indemnification is made according to the respective degree of fault of each insurer's insured.

In this case, Andrew Dionizio was a pedestrian who was struck by a pick-up truck insured by the Respondent, Royal & SunAlliance Insurance Company of Canada (hereinafter referred to as "Royal").

Andrew Dionizio was a dependant of his father Rui Dionizio. Rui Dionizio was insured under an automobile policy issued by the Applicant, York Fire & Casualty Insurance Company (hereinafter referred to as "York Fire").

York Fire has paid benefits under the SABS to Andrew Dionizio.

Regulation 664 in s. 9(3) provides that the insurer of a heavy commercial vehicle is obliged under s. 275 of the *Insurance Act* to indemnify the first party insurer. Accordingly, if the pick-up truck, in this case, is found to be a "heavy commercial vehicle", then Royal will be obliged to indemnify York Fire for the payments made under the SABS to or for the benefit of Andrew Dionizio.

The issue before me is to determine whether the pick-up truck was a "heavy commercial vehicle". "Heavy commercial vehicle" is defined in s. 9(1) of Regulation 664 as "a commercial vehicle with a gross vehicle weight greater than 4,500 kilograms".

"Commercial vehicle" is defined in s. 1 of Ontario Regulation 664 as:

"means an automobile used primarily to transport materials, goods, tools or equipment in connection with the insured's occupation...a vehicle designed specifically for construction or maintenance purposes..."

It was conceded on behalf of Royal that the primary use of the pick-up truck was to transport tools. Furthermore, the pick-up truck was being operated by Verzin Construction Ltd. Accordingly, the use of the pick-up truck to transport tools brings the subject vehicle

within the terms of the definition of "commercial vehicle" in s. 1 of the Regulation 664. I find that the pick-up truck was a "commercial vehicle" within that definition. Accordingly, the remaining issue is whether or not the vehicle had a gross vehicle weight greater than 4,500 kilograms.

Various documents were put into evidence on behalf of York Fire. Those documents consisted of the following:

- (a) A print-out from the Safety and Regulation Division of the Ministry of Transportation. The print-out included reference to empty weight of the subject vehicle at 2,500 kilograms. The print-out set out "Registered Gross Weight" at 5,000 kilograms;
- (b) A letter from the Ministry of Transportation set out that the "Registered Gross Weight" meant "the weight of the vehicle or combination of vehicle and load, or the combined weight of a motor vehicle, trailer or trailer and load." The same letter set out what was referred to as acceptable documentation. Such documentation consisted of New Vehicle Information Statement (N.V.I.S.) and letter from motor vehicle dealer confirming manufacturer's specifications for the empty weight. It thus appeared that the "Registered Gross Weight" of 5,000 kilograms on the print-out was taken from acceptable documentation submitted, in particular, the N.V.I.S. statement;
- (c) The New Vehicle Information Statement (N.V.I.S.) form showed the shipping weight, i.e. empty vehicle weight at 2,500 kilograms and the Gross Vehicle Weight Rating at 4,173 kilograms;

(d) A letter from Ford Motor Company showed the base curb weight of the vehicle at 5,226 lbs. That translates to approximately 2,375 kilograms. The letter showed the payload at 3,985 lbs. That translates to approximately 1,811 kilograms. The letter showed the Gross Vehicle Weight Rating at 9,200 lbs., translating to approximately 4,182 kilograms;

(e) I was also provided with a Ford Recreation Vehicle Guide for 1994 which defines some of the terms in the aforesaid letter from the Ford Motor Company.

**Base Curb Weight** is defined as the weight of the vehicle including a full tank of fuel and all standard equipment. That does not include passengers.

**Payload** is defined as the combined, maximum allowable weight of cargo and passengers that a truck is designed to carry.

**Gross Vehicle Weight Rating** is the Base Curb Weight plus Payload.

Accordingly, the weight of the vehicle, including a full tank of fuel and a maximum allowable weight of cargo and passengers that the pick-up truck in this case was designed to carry totals approximately 4,182 kilograms, based on the information provided by Ford Motor Company.

The amount set out for the Gross Vehicle Weight Rating on the N.V.I.S. form was 4,173 kilograms, approximating the Gross Vehicle Weight Rating (4,182 kilograms) provided by Ford Motor Company for the subject vehicle.

I heard evidence from the used car sales manager that leased the subject vehicle to Verzin Construction Ltd. The witness indicated that his company attended to the registration of the subject vehicle with the Ministry of Transportation. He indicated that it was his company

who filled in the numbers on the N.V.I.S. form and showed the Gross Vehicle Weight Rating at 4,173 kilograms. He advised that when they attended at the office of the Ministry of Transportation, they provided the N.V.I.S. form indicating that Gross Vehicle Weight Rating of 4,173 kilograms. He advised that the clerk at the Ministry of Transportation charged for the registration on the basis that the Gross Vehicle Weight Rating of 4,173 kilograms took the vehicle into a registration class dealing with vehicles up to 5,000 kilograms.

I heard no other evidence as to why the subject vehicle was registered with the Ministry of Transportation showing a Registered Gross Weight of 5,000 kilograms.

In the letter received from the Ministry of Transportation, I have confirmation that the N.V.I.S. form is acceptable documentation for the registration of Registered Gross Weight of a vehicle in kilograms. Accordingly, it appears that the Ministry of Transportation accepted the Gross Vehicle Weight Rating of the subject vehicle at 4,173 kilograms as indicated on the N.V.I.S. form.

I have no evidence before me to contradict the evidence of the used car sales manager who gave evidence. I accept his explanation as to why the print-out from the Ministry of Transportation showed a Registered Gross Weight of 5,000 kilograms in contrast to the figure set out on the N.V.I.S. form.

I conclude that the subject pick-up truck did not have a Gross Vehicle Weight greater than 4,500 kilograms.

In any case of this type, the best evidence would be the actual weight of the vehicle involved in the accident. However, practically, the actual weight of a vehicle involved


in an accident is unlikely to ever be available. To get that actual weight, one would have to weigh the vehicle with the load being carried at the time of the accident.

In the absence of evidence as to the actual weight, the best practice would be to obtain the N.V.I.S. form with perhaps some confirmation from the vehicle manufacturer as to the Gross Vehicle Weight Rating in any case.

I therefore conclude that there is no Loss Transfer available to York Fire in the subject case.

The parties agreed that the costs of the Arbitration would be fixed at \$750.00 plus disbursements, with costs to be awarded to the party that succeeded in this Arbitration. Accordingly, York Fire is ordered to pay to Royal the costs of the Arbitration fixed at \$750.00 plus disbursements. In addition, York Fire is to pay the fees and disbursements of the Arbitrator.

DATED this 5th day of October, 2000.

  
Stephen M. Malach, Q.C.  
Arbitrator

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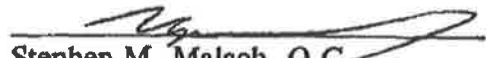
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DATED this 5th day of October, 2000.

  
Stephen M. Malach, Q.C.  
Arbitrator