1964
*Nov. 9, 10
1965
Apr. 6

IRENE VIOLET SMITH (*Plaintiff*) .....APPELLANT;

AND

BRITISH PACIFIC LIFE INSURANCE COMPANY (*Defendant*) .. } RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN

Insurance—Accident insurance—Insured suffering fatal heart attack while rocking car caught in snowdrift—Whether loss caused by accident as required by policy.

The widow of the deceased brought action to recover under a policy of insurance. The defendant took the position that the deceased did not die from bodily injury caused by accident within the meaning of the terms of the policy as originally issued or as subsequently extended by a rider. The deceased had suffered a heart attack in the spring of 1961 and after a period of hospitalization and recuperation had returned to work with instructions to restrict his activities. On September 29, 1961, accompanied by a friend, he went on a hunting trip in his automobile. Blowing snow and ice were encountered and the car became stuck in a snowdrift. The friend shovelled and pushed while the deceased attempted to help by rocking the car, *i.e.*, by shifting alternately from forward to reverse gear. While thus engaged, the deceased suffered a coronary thrombosis and occlusion causing his death. The trial judgment in favour of the deceased's widow was reversed by the Court of Appeal and an appeal was then brought to this Court.

Held: The appeal should be dismissed.

The exertion of driving and handling the steering wheel of the automobile and, at the last, of rocking the automobile by alternately shifting from forward to reverse gear was not an accident but deliberate and, there-

*PRESENT: Taschereau C.J. and Cartwright, Abbott, Martland and Hall JJ.

fore, the loss was not caused by accident as required by the policy. *Columbia Cellulose Co. Ltd. et al. v. Continental Casualty Co.* (1963), 43 W.W.R. 355 [affirmed (1964), 42 D.L.R. (2d) 401] followed.

APPEAL from a judgment of the Court of Appeal for Saskatchewan[1], allowing an appeal from a judgment of Balfour J. Appeal dismissed.

H. C. Rees, Q.C., for the plaintiff, appellant.

J. L. Robertson, for the defendant, respondent.

The judgment of the Court was delivered by

HALL J.:—By a policy of accident insurance issued October 9, 1950, the respondent insured one Daniel Wilfred Smith in the principal sum of $1,000 against, *inter alia*, loss of his life by:

> loss resulting solely from Bodily Injury which is not caused by and does not arise out of nor in the course of any employment for compensation, wage, profit or gain, and which is sustained during the life of this policy through Accidental Bodily Injury (Suicide, or any attempt thereat, sane or insane, not included) . . . . .

A rider to this policy effective July 1, 1959, insured Smith in the sum of $10,000 against loss of his life from:

> bodily injury caused by an accident occurring anywhere in the world while this rider and the policy to which it is attached are in force and resulting directly and independently of all other causes in death of the Insured within 90 days of the date of the accident provided the accident causing such injury of the insured is in consequence of the Insured:
>
> A. Riding as a passenger or operator in or on, boarding or alighting from, or being struck by an automobile . . . . .

Daniel Wilfred Smith died on September 29, 1961, under the circumstances later set out. The respondent admitted that Smith's death occurred while the policy was in force and that the appellant, the widow of the deceased Smith is the beneficiary named in the policy. The respondent took the position that the deceased did not die from bodily injury caused by accident within the meaning of the terms of the policy as originally issued or as extended by the rider of July 1, 1959.

The deceased who was 47 years of age at the time of his death was a welder by trade. For about 18 months prior to his death he was employed at the University of Saskatchewan. In April or May 1961 he suffered a heart attack. His condition was then diagnosed by Dr. Lewis Brand, who had

[1] (1964), 48 W.W.R. 25, 45 D.L.R. (2d) 91.

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been his physician for some eight to nine years, as a coronary occlusion. He was hospitalized for about two weeks and treated for this condition. After being discharged from hospital, he remained at home recuperating for about a month before returning to work. When he returned to work he did so with instructions from Dr. Brand not to do any heavy work such as lifting and not to climb flights of stairs except slowly one at a time with a rest between each step.

The events of September 29, 1961, prior to the death of the deceased are set out fully in the judgment of Maguire J.A. in his judgment as follows:

> On the morning of September 29, 1961, Smith, accompanied by a friend Wright, left his home in Saskatoon by automobile, on a duck shooting expedition, for the area east of Cudworth, Saskatchewan. Some blowing snow and ice were encountered on the road which became progressively heavier towards Cudworth. In that area the deceased drove eastward on a municipal road, encountering snow drifts which at first caused no particular difficulty. Near the crest of a small hill a much deeper drift was run into, which stopped the car, but without any sudden jar or shock. The deceased found he was unable to proceed through the drift or to back out of it. He remained at the wheel and after Wright had shovelled and pushed for about three-quarters of an hour, they got the car out of the drift, but in so doing found it necessary to drive off of the road into the adjoining field. There they stopped for tea. Here the car again became stuck and it took about one or one and one-half hours of manoeuvring as well as further shovelling and pushing by Wright, to get the car back on the road. When the car was back on the road, it was facing west. The deceased then suggested to Wright, who had done all the shovelling and pushing, that he should take a rest. While Wright was resting, the deceased walked some distance east to view the road conditions. On his return to the car it was agreed it was not feasible to go any further east and that they should return home.
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> In order to proceed west there was about forty yards to go to get clear of the snow. Wright resumed shovelling and pushing and the deceased attempted to help by rocking the car, that is, rapidly changing gears from forward to reverse. In rocking the car the deceased moved his body back and forth in union with the movement of the car. It was while engaged in this activity that the deceased suffered a coronary thrombosis and occlusion causing his death. It is to be noted that the deceased during all this time, approximately, three hours, did no heavy work such as shovelling snow or pushing the car. Apart from the walk to ascertain the road conditions, all he did was drive the car.

An autopsy was performed on November 2, 1961, 34 days after death, and the pathologist, Dr. E. J. Andres, concluded:

> Death was due to repeated coronary thromboses. The terminal thrombosis was initiated by haemorrhage into an atheroma which had ruptured into the lumen of the right coronary artery. This was the immediate cause of death.

The medical testimony, based on the autopsy, was to the following effect:

(1) that the heart showed that the deceased had suffered two previous coronary thromboses with resultant myocardial infarction;

(2) that substantial recovery had been made from these earlier thromboses;

(3) that the deceased suffered from atherosclerosis;

(4) that said prior thromboses and the disease predisposed the deceased to further coronary thromboses;

(5) that the sequence of development of the fatal occlusion was,

(*a*) rupture of and haemorrhage into the atheroma;

(*b*) rupture or breaking of the roof of the atheroma and haemorrhage into the lumen or passageway of the artery;

(*c*) the forming of the thrombosis;

(*d*) occlusion of the artery and death as a result.

All the medical witnesses called by the appellant were agreed that (*b*), (*c*) and (*d*) were probably sudden, involving little lapse of time; that (*a*), in point of time, could be relatively short but might take up to three hours before (*b*) occurred and with a possibility that it might have commenced early that morning before the deceased left his home.

Other testimony by each of the three physicians was in substantial accord, and, in brief, to the following effect: the prior thromboses predisposed the deceased to further such attack or attacks and such could be produced spontaneously without apparent immediate cause or be induced by performing work; the disease of atherosclerosis was an underlying cause, the thrombosis being the end effect of the disease; that strain or stress in driving an automobile could induce the thrombosis.

The appellant's contention is that being stuck in the snow, the difficulties experienced in getting going and, finally, the rocking action in trying to free the automobile by shifting alternately from forward to reverse gear caused the deceased to become emotionally upset, resulting in a rise in his blood pressure which triggered the rupture or breaking of the roof of the atheroma and haemorrhage into the lumen or passageway of the artery; the forming of the thrombosis; occlusion of the artery and death as a result.

Assuming that the deceased did become emotionally upset with a consequent rise in blood pressure with the results just mentioned, the question is, would that constitute an accident

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resulting directly and independently of all other causes in death within the meaning of the insuring clauses in the policy and in the rider.

An "accident" is defined in Welford on Accident Insurance, 2nd ed., p. 268, as:

> The word "accident" involves the idea of something fortuitous and unexpected, as opposed to something proceeding from natural causes; and injury caused by accident is to be regarded as the antithesis to bodily infirmity caused by disease in the ordinary course of events.

A like definition is found in Murray's Oxford Dictionary, vol. 1, p. 55.

Many cases were cited by counsel, including a number of workmen's compensation cases. Workmen's compensation cases are not ordinarily applicable in the interpretation of a policy such as we have here: *Fenton v. Thorley & Co., Ltd.*[1]

In my opinion the judgment of Sheppard J.A. in *Columbia Cellulose Co. Ltd. et al. v. Continental Casualty Co.*[2], which was affirmed without written reasons by this Court[3], is conclusive against the position taken by the appellant. The facts in the *Cellulose* case were that one Eugene Bartlett, employed as plant manager by Columbia Cellulose Co. Ltd. at Prince Rupert, British Columbia and at their plant on Watson Island, British Columbia, left Prince Rupert on Friday, April 3, 1959, on an inspection tour of plants of the Cellulose Corporation of America in the vicinity of Charlotte, North Carolina, U.S.A. On Sunday, April 5, 1959, he arrived in Charlotte; on Monday, April 6, he inspected the Rockhill plant; on Tuesday, April 7, the plant at Charlotte and in the afternoon of that day he drove to the Narrows. On Wednesday, April 8, he inspected the Narrows plant, including the power house in which the temperature was as high as 120°-125°. That evening he returned to Charlotte, North Carolina. Later that evening Bartlett became ill, was taken to the hospital and at 12:30 a.m. the following morning he died. The plaintiff company, and Emerald Bartlett as executrix of the estate of the late Eugene Bartlett, brought action under a policy issued by the defendant to the plaintiff company insuring all eligible persons including Eugene Bartlett against

> bodily injury caused by an accident . . . and resulting directly and independently of all other causes.

[1] [1903] A.C. 443 at 455.
[2] (1963), 43 W.W.R. 355.
[3] (1964), 42 D.L.R. (2d) 401.

After trial, the learned trial judge dismissed the action and from that judgment the plaintiffs appealed.

On appeal the principal argument was whether or not the death of Bartlett was "caused by an accident" and therefore within the policy definition of "injury". The plaintiffs contended that Bartlett, unknown to himself, was suffering from fatty deposits in the coronary artery (atherosclerosis) producing a plaque or roughened elevation of the lining of the coronary artery, and that the exercise of the trip and the inspections caused a haemorrhage of the tissues under the lining of the artery, which haemorrhage raised the plaque thereby narrowing the bore of the artery and so affected the flow of blood as to have resulted in the formation of a clot or thrombosis. That blocking of the passage of blood to a portion of the heart so affected the heart that death followed.

Having reviewed the facts, Sheppard J.A. referred to the definition of "accident" quoted above, and proceeded to say at pp. 359-360:

> The difficulty arises in applying the definition, that is, to determine whether "accident" under a particular policy relates to the cause or to the consequence. Under this policy the event insured against, namely "a bodily injury caused by an accident" consists of three parts: (1) A bodily injury; (2) An accident; and (3) That the accident cause the bodily injury. Under the policy there must be an accident which caused the bodily injury and therefore the accident must be distinct and separate from that bodily injury so as to be the cause thereof. On the literal meaning of the policy the accident must be the cause of the injury; it is not sufficient that the injury, that is the consequence, be an accident.
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> The plaintiffs' case is that the inspection of plants amounted to an over-exertion which caused a haemorrhage resulting in the raising of the plaque, the clot, the blocking of the artery and Bartlett's death. The evidence reads:
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> MR WALLACE: I ask the Doctor to make that assumption that there was over-exertion.
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> THE COURT: And I just point out it is a very important assumption and it must be the premise upon which all of his evidence as to medical results must depend, is that not so, Doctor? A. Yes. I would respectfully say that that is for your lordship to say.
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> Q. Yes, but I mean you are basing your opinion upon an assumption that the exertion described by the witness, Cotsford, was abnormal in the case of this particular patient? A. I am, sir.
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> MR. WALLACE: Q. Now I want to deal with this question of exertion, Doctor. What relationship does it bear to this phenomena that you have described? A. Unusual exertion raises the blood pressure in the coronary arteries and intimal haemorrhage or subintimal haemorrhage—in other words, bleeding of a small capillary, small blood vessel

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which branches from the coronary artery in the wall of the heart. This characteristically occurs in people who have this underlying condition, as almost all males do in our civilization.

The exertion would be deliberate and not an accident; only the injury, that is the consequence, at the most would be an accident. Hence the plaintiffs' case is that the wilful act of exertion, which was no accident, has caused an unexpected consequence which is said to be an accident, but that is the reverse of what the policy requires.

and at p. 366:

The injury complained of here is the haemorrhage and the consequences caused by the exertion, but the exertion was not an accident but deliberate and, therefore, the loss was not caused by accident as required by the policy.

In the present case the exertion of driving and handling the steering wheel of the automobile and, at the last, of rocking the automobile by alternately shifting from forward to reverse gear was deliberate and, in the words of Sheppard J.A. just quoted "the loss was not caused by accident as required by the policy".

The appeal should, therefore, be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the plaintiff, appellant: Rees, Shmigelsky & Angene, Saskatoon.

Solicitors for the defendant, respondent: Moxon, Schmitt, Estey, Robertson & Muzyka, Saskatoon.