

COURT OF APPEAL FOR ONTARIO

CITATION: Matheson v. Lewis, 2014 ONCA 542

DATE: 20140711

DOCKET: C57170 & C58490

Juriansz, Tulloch and Strathy JJ.A.

BETWEEN

Arthur Matheson, Diane Matheson, Derek Matheson, Travis

Matheson, Justin Matheson and John Matheson

Plaintiffs (Respondents)

and

Gary Wayne Lewis, GMAC Leasco Limited,

Lanark Mutual Insurance Company

Defendants (Appellants)

Stephen S. Appotive and Meghan E. W. O'Halloran, for Lanark Mutual Insurance Company

Paul Muirhead for Gary Wayne Lewis and GMAC Leasco Limited

Robert E. Houston, Q.C., for the respondents

Heard: April 29, 2014

On appeal from the order of Justice Kenneth E. Pedlar of the Superior Court of Justice, dated April 24, 2013.

Juriansz J.A.:

[1] The question on appeal is whether an unmodified all-terrain vehicle (ATV) owned by a farmer and used in farm operations was a “self-propelled implement of husbandry” and therefore not subject to the province’s compulsory motor vehicle liability insurance regime.

[2] The question arises in the context of a motor vehicle accident. A farmer, the respondent Mr. Arthur Matheson, was injured while driving an uninsured ATV on a public road when he was struck from behind by a truck. The farmer and his family members brought an action against the driver of the truck, the owner of the truck, and the insurer of Mr. Matheson's own automobiles.

[3] The plaintiffs, respondents on appeal, brought a motion before trial to determine whether their action was statute barred by s. 267.6(1) of the *Insurance Act*, R.S.O. 1990, c. I.8. Section 267.6(1) provides that a person is not entitled to recover damages for bodily injury or death arising from the use or operation of an automobile if, at the time of the incident, the person was operating an uninsured motor vehicle on a highway contrary to section 2(1) of the *Compulsory Automobile Insurance Act*, R.S.O. 1990, c. C.25.

[4] The plaintiffs also sought a declaration that their claims against Mr. Matheson's insurer, the appellant Lanark Mutual Insurance Company ("Lanark Mutual"), were not foreclosed by operation s. 30(1)(a) of the *Statutory Accident Benefits Schedule*, O. Reg. 403/96. Section 30(1)(a) provides that an insurer is not required to pay various benefits in respect of an injured driver who knew or ought reasonably to have known that he or she was operating an automobile without motor vehicle liability insurance.

[5] The motion judge found that the ATV was a self-propelled implement of husbandry and was therefore excluded from Ontario's compulsory insurance regime. Consequently, neither s. 267.6(1) of the *Insurance Act* nor s. 30(1)(a) of the *Statutory Accident Benefits Schedule* applied to bar the respondents' claims. I would allow the appeal based on my conclusion that the ATV was not a self-propelled implement of husbandry but an off-road vehicle that had to be insured when operated by a farmer on a public road.

Facts

[6] The respondent Mr. Matheson is a full-time farmer. His farm of about 900 acres includes three parts that front onto a public roadway. He raises beef cattle and sheep. During the day, he kept the sheep in a gated field on the most westerly of the three parts of the farm. To check on the sheep, he could walk or drive his ATV to the gated field. He could walk there without leaving his farm property but it was faster for him to travel on the public road on which the farm fronted.

[7] On October 11, 2008, Mr. Matheson used his ATV to check on the sheep. While he was driving the ATV on the public road, a truck driven by the appellant Lewis and owned by the appellant GMAC Leasco Limited struck him from behind, leaving him with serious and permanent physical and cognitive disabilities. Lewis left the scene of the accident and was subsequently convicted of careless driving, obstruction of justice and breach of probation. The investigating police officer concluded that Mr. Matheson's ATV was a "self-propelled implement of husbandry" that did not require insurance under a motor vehicle liability policy and so did not charge Mr. Matheson with an offence under s. 2(3) of the *Compulsory Automobile Insurance Act*.

[8] The ATV was an unmodified 1986 Honda model TRX 200 SX. Its first owner was not a farmer but a small engine mechanic who operated a supply store in the Village of Lanark. It came equipped with four wheels that had contact with the ground; a steering handlebar; and a straddle seat that was designed for a driver only. The first owner also purchased front and rear carriers which were standard optional equipment available from Honda. These carriers could be simply bolted onto the ATV and did not require any modification to the ATV itself. The ATV was also equipped with a trailer hitch.

[9] Mr. Matheson purchased the ATV from the first owner in 1997. Upon the transfer of ownership, Mr. Matheson received a license plate for the ATV. Both the ownership and the plate permits for the ATV were issued under Ontario's off-road vehicle registration

system. Mr. Matheson affixed the license plate to the rear of the ATV but removed it while carrying out routine maintenance and did not reinstall it before the accident. At the time of purchase, Mr. Matheson completed a sales tax exemption declaration stating that the ATV was for “farm use only”. During the next 11 years, Mr. Matheson used the ATV exclusively for farming-related purposes. He used it to get to different places, to carry tools and equipment and to take supplies where they were needed. Mr. Matheson made no changes to the ATV.

[10] At the time of the accident, Mr. Matheson was insured by Lanark Mutual under a standard automobile policy and a farm insurance policy. The standard automobile insurance policy provided coverage for two automobiles but not for the ATV. The farm policy, in addition to providing coverage for buildings, livestock, produce and equipment, specifically described and provided coverage for “self-propelled equipment as described”. Only a John Deere combine was specified.

[11] Mr. Matheson’s insurance agent advised him that the ATV was not a self-propelled implement of husbandry and that it would have to be insured under an automobile policy if he took it off his property. He advised Mr. Matheson that if he did not insure the ATV he could be denied accident benefits if involved in an accident while riding it off of farm property. The agent testified that Mr. Matheson told him that the ATV hardly ever left the farm and that he “would take his chances”.

The motion judge’s decision

[12] The specific questions before the motion judge were:

1. Whether the Matheson action was statute-barred by operation of s. 267.6(1) of the *Insurance Act*; and
2. Whether Mr. Matheson’s claims against Lanark Mutual Insurance Co. for

statutory accident benefits, and specifically income replacement benefits, were foreclosed by operation of s. 30(1)(a) of the *Statutory Accident Benefits Schedule*.

[13] The motion judge proceeded on the basis that the answers to these questions depended on whether Mr. Matheson's ATV was, on the date of the accident, a "self-propelled implement of husbandry". That is because the *Compulsory Automobile Insurance Act*, while prohibiting the operation of a motor vehicle on a highway unless it is insured under a contract of automobile insurance, gives "motor vehicle" the same meaning it has under s. 1 of the *Highway Traffic Act*, R.S.O. 1990, c. H.8. Section 1 of the *Highway Traffic Act* excludes a "self-propelled implement of husbandry" from its broad definition of "motor vehicle". The *Highway Traffic Act* defines a self-propelled implement of husbandry as "a self-propelled vehicle manufactured, designed, redesigned, converted or reconstructed for a specific use in farming."

[14] The motion judge evidently concluded that s. 30(1)(a) of the *Statutory Accident Benefits Schedule* would also not apply to Mr. Matheson if his ATV was a self-propelled implement of husbandry. Section 30(1)(a) refers to the use of an uninsured "automobile", rather than a motor vehicle. The motion judge noted that the *Insurance Act* provides two different definitions of "automobile" in ss. 1 and 224(1). He observed at para. 34 that the "extended definition" of "automobile" in the *Compulsory Automobile Insurance Act* refers to the *Highway Traffic Act*, so the exception for a "self-propelled implement of husbandry" would still need to be addressed.

[15] The motion judge noted that, to determine whether the ATV was a self-propelled implement of husbandry, he only had to consider whether Mr. Matheson's ATV was designed or manufactured for a specific use in farming and used for farming purposes. That was because the ATV was in the same state as when it came off the assembly line. It had not been redesigned, converted or reconstructed.

[16] In considering that issue, the motion judge noted this court's statement in *R. v. Van Berlo*, 2010 ONCA 242 that a vehicle that is manufactured or designed for specific use in farming has an objectively discernable character or function that does not depend at all on the particular use intended by the user. The motion judge remarked that it was a matter of common sense that the person making the objective assessment of the character of the vehicle in question should be reasonably well-informed about agricultural life, specifically animal husbandry. He said that "[t]hat objective discernment may not accurately exist in the person of a Bay Street lawyer living in Rosedale, or in a downtown high rise condominium, in Toronto": para. 47. Rather he found that such objectively accurate discernment did exist in Mr. Matheson and his witnesses who were well-versed in the agricultural community of Eastern Ontario.

[17] The motion judge accepted. at para. 12, evidence introduced by Mr. Matheson about the "evolving nature of the use of ATVs in the practice of farming over the years". He took judicial notice of the fact that farming, like other industries, businesses, and professions, had undergone significant changes and advances in the use of equipment and technology. Based on Mr. Matheson's affidavit, which set out his own knowledge and experience of the use of ATVs in farming and referred to a document obtained from Honda Canada's website, the motion judge accepted that ATVs have become a part of everyday life in virtually all farming operations in Ontario and are designed to perform a multitude of specific farm tasks. He remarked that the ATV is ideally suited for the task of rounding up cattle and sheep. He accepted the evidence that farmers are beginning to use ATVs instead of tractors for many tasks.

[18] Given the changing nature of farming, the motion judge expressed his opinion at para. 49 that "the statutory and regulatory definitions have not kept pace". While many people purchase and use ATVs as recreational vehicles, ATVs are now an integral part of virtually all full-time farming operations and "need to be recognized as such and

responded to appropriately by our laws”.

[19] The motion judge found at para. 51 that “any reasonably informed person about farming in Ontario, particularly beef and sheep husbandry, would readily discern the character and function of the vehicle driven by... Matheson... as being an implement manufactured and designed for a specific use in farming and animal husbandry.” This was not a question of the specific use intended by Mr. Matheson only.

[20] Invoking the principle of purposive interpretation, the motion judge reasoned that the *Compulsory Automobile Insurance Act* of Ontario is intended to protect innocent victims of automobile accidents. He noted that taking away an injured party’s rights to sue a tortfeasor and to claim no-fault benefits is a harsh civil penalty intended to ensure that innocent victims of accidents are protected. He commented that if the defendants’ position were correct, the result would be that an injured person not at fault in the accident would be denied significant benefits including the right to claim damages from the negligent party. He also considered that the primary purpose of compelling Mr. Matheson to insure the ATV would be to protect himself from liability if he were negligent and protect the innocent victims of his negligence. It would also result in him making a modest contribution towards the “funds available in support of the entire insurance scheme”: para. 55.

[21] After weighing these considerations, the motion judge concluded that a fair, large and liberal interpretation of the *Compulsory Automobile Insurance Act* and a finding in favor of Mr. Matheson would best achieve the object of the Act. The motion judge found that Mr. Matheson and his family members were not statute-barred from bringing the action against GMAC Leasco and Lewis, and that Mr. Matheson could claim statutory accident benefits from Lanark.

Analysis

[22] The motion judge correctly identified the purpose of the legislation before him but then adopted an interpretation that failed to give effect to that purpose. He considered matters that were not pertinent to the exercise of statutory interpretation: whether the regulatory definitions were out of date, the views of the farming community, and the fact that Mr. Matheson was not at fault in the accident. Consequently, he lost sight of the goal of determining the intent of the legislature.

The statutory and regulatory scheme

[23] The motion judge strayed outside the role of the court, which is to interpret and apply the laws enacted by the legislature. No technique of statutory construction allows a court to decline to apply legislation that in its opinion has not kept pace with changes in society.

[24] In this case, a regulation under the *Off Road Vehicles Act*, R.R.O. 1990, c. O.4, explicitly classifies the Honda ATV model TRX 200 as an “off-road vehicle”: R.R.O. 1990, Reg. 863, s. 3, para. 3. Mr. Matheson has not argued that his Honda TRX 200 SX does not come within this provision. In any case, s. 3 of Reg. 863 also classifies all-terrain vehicles generally as off-road vehicles, so long as they have steering handlebars and a seat designed to be straddled by the driver: para. 1.1. The *Off-Road Vehicles Act*, s. 15, prohibits a person from driving an off-road vehicle on land not occupied by the owner of the vehicle unless it is insured under a motor vehicle liability policy in accordance with the *Insurance Act*. As well, a regulation under the *Highway Traffic Act*, O. Reg. 316/03, provides that an off-road vehicle shall not be operated on a highway unless it is insured in accordance with s. 2 of the *Compulsory Automobile Insurance Act* and s. 15 of the *Off-Road Vehicles Act*.

[25] The *Highway Traffic Act*, the *Off-Road Vehicles Act*, the parts of the *Insurance Act* dealing with motor vehicle insurance, and the *Compulsory Automobile Insurance Act* are

all components of one comprehensive scheme. As a principle of statutory interpretation, there is a presumption of harmony, coherence and consistency between statutes dealing with the same subject matter: *R. v. Ulybel Enterprises Ltd.*, 2001 SCC 56, [2001] 2 S.C.R. 867, at para. 52; Ruth Sullivan, *Statutory Interpretation*, 2nd ed. (Toronto: Irwin, 2007), at pp. 149-151. Within the legislative scheme governing automobile insurance, Mr. Matheson's ATV cannot have been both an off-road vehicle that required insurance when operated on land not occupied by the owner and at the same time a self-propelled implement of husbandry that was excluded from Ontario's compulsory insurance regime. That the regulatory scheme classifies the Honda ATV model TRX 200 and other ATVs with steering handlebars and straddle seats as off-road vehicles leads to the immediate conclusion that they are not self-propelled implements of husbandry.

[26] It was beyond the competence of the motion judge to conclude that Mr. Matheson's ATV was a self-propelled implement of husbandry based on his opinion that the regulatory regime has not kept pace with changes in society, that ATVs need to be responded to appropriately by our laws, and that they need to be recognized as self-propelled implements of husbandry.

[27] Reg. 863 could not make clearer the legislative intent that a Honda ATV model TRX 200 is an off-road vehicle and not a self-propelled implement of husbandry. The motion judge's failure to give effect to Reg. 863 is a sufficient basis for allowing the appeal.

[28] I would add that I see no basis for the motion judge's conclusion that the regulatory definitions have not kept pace with changes in society. He seems to have taken the view that the regulatory scheme was designed so that all vehicles used extensively in farming would be exempt from Ontario's compulsory insurance regime. That is not so. The legislature has carefully struck a balance between the needs of

farmers and the protection of the public. The legislature, in the *Off-Road Vehicles Act*, recognizes and specially accommodates the use of off-road vehicles by farmers. Section 2(2)(b)(i) of the Act allows a farmer who is a licensed driver to operate an off-road vehicle on a highway if the vehicle is designed to travel on more than two wheels and the vehicle bears a slow moving vehicle sign. An ordinary member of the public is not allowed to operate an off-road vehicle on a highway, except when crossing it. However, to protect the public, the Act requires that off-road vehicles be insured when they are operated off the property of the owner. A farmer driving an off-road vehicle on a highway as permitted by s. 2(2)(b)(i) must still comply with the requirement in s. 15 that the vehicle be insured.

[29] The legislature has gone further with self-propelled implements of husbandry that are manufactured, designed, redesigned, converted or reconstructed for specific use in farming by exempting them from its compulsory insurance regime.

[30] I see no basis for concluding that the legislature's decision to accord different treatment to off-road vehicles used in farming and self-propelled implements of husbandry is out of date.

[31] The same may be said of the classification of the Honda ATV model TRX 200 and other ATVs with steering handlebars and straddle seats as off-road vehicles. The regulations under the *Off-Road Vehicles Act* have been amended from time to time, as recently as this year. Despite amending the regulatory framework, the legislature has left intact the classification of the Honda ATV model TRX 200 as an off-road vehicle. In 2003, the legislature amended s. 3 of Reg. 863 by adding paragraphs 1.1 and 1.2: O. Reg. 317/03. Rather than referring to specific model numbers, these paragraphs bring whole categories of ATVs within the definition of off-road vehicles. This must be seen as a regulatory choice. It seems to me the legislature is well aware of the use of ATVs by

farmers and has provided for that use by allowing farmers to operate ATVs on a highway with insurance. The issue is not whether farmers can operate ATVs used in agriculture on highways, but whether they can do so without insurance.

The ordinary meaning of the definition

[32] The motion judge did not give effect to the grammatical and ordinary sense of the definition of a self-propelled implement of husbandry.

[33] The question before the motion judge was whether the ATV had been manufactured or designed for a specific use in farming. The evidence in the record would establish, at the highest, that the Honda ATV model TRX 200 SX was designed and manufactured to be a multipurpose vehicle and that it is now widely used in farming. It was open to the motion judge to conclude, as he did, that the ATV is ideally suited for and widely used to carry out many farming tasks. This, however, does not establish that it was manufactured or designed for a specific use in farming. The evidence establishes that it was manufactured and designed to serve both recreation and utility purposes. Though the ATV may be ideally suited for use by farmers, it may be equally ideally suited for use by hunters and trappers, and for recreation.

[34] Justice Goudge stated in *R. v. Van Berlo*, at para. 17, that “a vehicle that is “manufactured” or “designed” for a specific use in farming has an objectively discernable character or function that does not depend at all on the particular use intended by the end user”. Although he added that he did not agree “that the [definition of a self-propelled implement of husbandry] requires that the vehicle be capable only of the specific use in farming for which it was manufactured or converted”, this comment simply recognizes that though self-propelled implements of husbandry must be manufactured or designed for a specific use in farming, they may still be capable of being put to some other use. In this case the first step was not satisfied— Mr. Matheson’s ATV lacked the

objectively discernable character or function necessary to establish it was manufactured or designed for a specific purpose in farming.

[35] Even if the farmers' views were relevant in determining legislative intent, they only spoke to the widespread use of ATVs by farmers and not to their design or manufacture. The motion judge erred in giving controlling weight to this evidence. Mr. Matheson's ATV may have been a vehicle used in farming but it was not a vehicle manufactured or designed for a specific use in farming. Not all vehicles used in farming are excluded from Ontario's compulsory insurance regime.

Purposive interpretation

[36] The starting point for a purposive analysis of Ontario's compulsory insurance regime is s. 2 (1) of the *Compulsory Automobile Insurance Act* which prohibits an owner of a motor vehicle from operating it on a highway "unless the motor vehicle is insured under a contract of automobile insurance." As the motion judge noted at para. 55, Ontario's compulsory automobile insurance regime "is clearly intended to protect innocent victims of automobile accidents from having no means of seeking damages from persons who might have caused those damages without having the protection of automobile insurance."

[37] To foster its goal of universal insurance coverage, the legislature has given all owners of vehicles strong incentives to purchase the required insurance. Section 2(3) of the *Compulsory Automobile Insurance Act* makes the failure to purchase insurance an offence. In addition, the legislature has provided that those who fail to purchase insurance cannot recover loss or damage arising from the use or operation of an automobile or claim significant benefits under the *Statutory Accident Benefits Schedule*.

[38] The motion judge recognized that the purpose of removing of these rights, which

he characterized as a “very harsh civil [penalty]”, was to give all vehicle owners strong reason to purchase the required insurance. On my reading, he did not apply this penalty to Mr. Matheson in large part because Mr. Matheson was not at fault in the accident. He reasoned that the broader legislative goal would be achieved by allowing Mr. Matheson, as the innocent victim of a motor vehicle accident, to seek damages from the insured person who caused his damages.

[39] The motion judge erred by not giving effect to the means the legislature chose to further its broad goal of protecting innocent victims of motor vehicle accidents. The legislative means of ensuring universal insurance would be rendered nugatory if they were made applicable only to those who cause accidents. Such persons would not be successful in recovering damages in an action in any event. The clear legislative intent is that the prospect of not being able to recover damages or statutory accident benefits gives vehicle owners good reason to purchase insurance before any accident has taken place. The motion judge failed to give effect to the legislative purpose of the specific provisions he had to interpret and apply. The legal maxim “dura lex sed lex”[\[1\]](#) applies. The provisions, even if considered “very harsh”, must be enforced.

[40] The motion judge erred by finding Mr. Matheson’s ATV was a self-propelled implement of husbandry, and by failing to find that his action was statute-barred by operation of s. 267.6(1) of the *Insurance Act* and his claim for statutory accident benefits was foreclosed by operation of s. 30(1)(a) of the *Statutory Accident Benefits Schedule*.

The meaning of “automobile” in the SABS

[41] An additional comment is necessary regarding the motion judge’s reasoning about Mr. Matheson’s claim for statutory benefits. Section 30(1)(a) disqualifies a driver of an “automobile” from claiming income replacement benefits if, at the time of the accident, he or she was knowingly operating an “automobile” without motor vehicle liability

insurance. This provision would apply to Mr. Matheson if the ATV he was driving at the time of the accident was an “automobile” within the meaning of s. 30(1)(a). The *Schedule* does not contain a definition of “automobile”.

[42] As the motion judge noted, the *Schedule* is a regulation under the *Insurance Act*, and the Act provides two different definitions of an “automobile”.

[43] Section 224 of the *Insurance Act* defines “automobile” for the purposes of Part VI, entitled “Automobile Insurance”. It defines an “automobile” to include “a motor vehicle required under any Act to be insured under a motor vehicle liability policy” and any vehicle prescribed by regulation to be an automobile. The definition does not include a “self-propelled implement of husbandry”.

[44] Section 1 of the Act defines an “automobile” to include “a trolley bus and a self-propelled vehicle, and the trailers, accessories and equipment of automobiles,” but not “railway rolling stock that runs on rails, watercraft or aircraft.”

[45] These inclusive definitions are broad enough to encompass Mr. Matheson’s ATV. The motion judge reasoned the exception for a “self-propelled implement of husbandry” in the general definition of motor vehicle in the *Highway Traffic Act* would still have to be considered because “the extended definition of “automobile” under the *Compulsory Automobile Insurance Act* refers to the *Highway Traffic Act*”. It appears he misspoke. The *Compulsory Automobile Insurance Act* contains no definition of “automobile”.

[46] I need not attempt to deduce what provision the motion judge had in mind. I have concluded Mr. Matheson’s ATV was not a self-propelled implement of husbandry. If there were an exception such as the motion judge had in mind, it would not apply.

Conclusion

[47] I would allow the appeal, set aside the motion judge's order and replace it with an order that Mr. Matheson's action is statute-barred by operation of s. 267.6(1) of the *Insurance Act* and that Mr. Matheson's claims against Lanark Mutual for statutory accident benefits are foreclosed by operation of s. 30(1)(a) of the *Statutory Accident Benefits Schedule*. I would fix the costs of the appeal in the amount of \$20,000 for Lanark and \$12,500 for GMAC Leasco and Lewis, and the costs of the motion in the amount of \$15,000 for Lanark and \$7,500 for GMAC Leasco and Lewis, all amounts inclusive of disbursements and applicable taxes.

Released: July 11, 2014

"RGJ"

"R.G. Juriansz J.A."

"I agree M. Tulloch J.A."

"I agree G.R. Strathy J.A."

[\[1\]](#) The law is harsh but it is the law.