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Traffic accident a case of the 'unusual and usual: Paciocco

By Tony Poland, AdvocateDaily.com Associate Editor



A “rare” case where a passenger suddenly grabbed the steering wheel of a car causing an accident presents different problems and challenges, Windsor personal injury lawyer [Gino Paciocco](#) tells [AdvocateDaily.com](#).

In August 2013 a woman was driving on a highway when she and her boyfriend got into an argument, according to an Ontario Superior Court [judgment](#).

The girlfriend said something that angered the man and he suddenly, “without warning, grabbed the steering wheel, causing the car to lose control and collide” with another vehicle, leaving a woman in the other car with “significant injuries,” the judgment states.

The man fled the scene but was later arrested and pleaded guilty to dangerous driving causing bodily harm and failing to remain at the scene of the accident, according to the judgment.

“This case is interesting because neither outcome is entirely fair. The man’s actions are likely the cause of this accident yet he didn’t defend and likely did not have insurance,” says Paciocco, a founding partner with [Paciocco & Mellow](#). “Neither the girlfriend nor the injured passenger in the other car was responsible for the accident, but it is their two insurers who are fighting as to who will pay.”

He says “precedent was very important in this case” with the court referencing the similarities on other occurrences “in coming to conclusions on all of the issues in contention.”

Paciocco says, “From a legal perspective, it is understandable that the court found the girlfriend not to be driving the car at the time of the accident.

“The man suddenly grabbed the wheel without permission and left no time for the driver to react, or retain control of the vehicle,” he says. “However, for the girlfriend’s insurance not to be held responsible because he did not have permission to drive the vehicle is arguably less easy to accept.

“They were travelling together, and were in a relationship together, he could have driven it in the past for all we know ... it would have been possible for the court to find that he had implicit permission to drive the car, regardless of how he came to drive it or what the consequences were.”

While the injured woman’s insurance provider paid her claim, the man who grabbed the steering wheel “may yet still be liable for paying damages,” Paciocco says.

“The insurance provider has a right to go after him after the suit has concluded in what is called the right of subrogation. Whether or not they will recover those damages is another matter,” he says.

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While the circumstances in the case are unusual, “uninsured provisions of insurance policies are designed specifically for these types of situations,” Paciocco explains.

“Ontario’s insurance policies are set up so that even if an at-fault driver does not have insurance coverage, there is still insurance to cover your damages,” he says.

Paciocco notes that the case “could affect how insurers handle insurance claims when faced with identical facts.”

“Bringing a summary judgment motion in similar circumstances may be more likely as it had success in this case,” he says. “This is such a rare instance where the person behind the wheel of the car was not the driver at the time of the accident, and the actual 'driver' did not have permission to drive the car. Aside from cases where vehicles were stolen and then involved in an accident, there shouldn’t be much effect on insurances companies’ decisions regarding coverage for claims.”

Paciocco says while it’s not unexpected for insurance companies to be “fighting among themselves over a strict interpretation of a policy about who is liable to pay for benefits or damages,” the case is novel.

“Aspects of this case are both unusual and usual. A passenger grabbing the wheel of a moving vehicle and causing a crash is unusual. Most passengers of a motor vehicle do not have such a reckless disregard for their own safety and that of others,” he says.

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