

SUPERIOR COURT OF JUSTICE  
SMALL CLAIMS COURT

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B E T W E E N:

CONTINENTAL CASUALTY COMPANY C/O MARTENS LINGARD LLP  
Plaintiff

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- and -

MAHAD ALI and MUSTAFA MOHAMED  
Defendants  
(not present)

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F I N D I N G S O F F A C T  
and  
J U D G M E N T A N D O R D E R

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BEFORE THE HONOURABLE JUSTICE K.N. HAGAN  
ON May 29<sup>th</sup>, 2013 at ST. CATHARINES, Ontario

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APPEARANCES:

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K. Sah

Counsel for the Plaintiff

(i)  
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**SUPERIOR COURT OF JUSTICE  
SMALL CLAIMS COURT**

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**E X H I B I T S**

EXHIBIT NUMBER/LETTER ENTERED ON PAGE

FINDINGS OF FACT 1

JUDGMENT 5

**Legend**

[sic] - Indicates preceding word has been reproduced verbatim and is not a transcription error.

(ph) - Indicates preceding word has been spelled phonetically.

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WEDNESDAY, MAY 29, 2013

F I N D I N G S O F F A C T

5 HAGAN, D.J. (Orally):

In terms of making findings of fact, I make the findings of fact in this case that Mr. Ali and Mr. Mohamed alleged to have been involved in a motor vehicle accident which has been outlined in the statement of claim, there are conflicting dates as to when it occurred and that, in itself, does not decide anything. November 22<sup>nd</sup> and 23<sup>rd</sup> were listed. There were accident benefits paid out and there were expenses for both the benefits provided, the adjuster's time, on these claims. For Mr. Ali, there was \$6,607.75 in total based on the invoices which are listed in Exhibit 7 and Exhibit 8, so the first one being for Mr. Ali, I believe, and the second one being for Mr. Mohammed, Exhibit 8, for a total of \$8,752.03. There is also testimony of an additional \$1,130, and I believe that was not added in.

MS. SAH: I did add that in to the total number.

THE COURT: You did add it.

MS. SAH: Yes, Your Honour.

THE COURT: Did you split it between the two of them?

MS. SAH: I did. I split it equally.

THE COURT: All right. So that was split between the two of them.

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## Findings of Fact - Hagan, D.J.

5 I find that based on the evidence provided by  
first Mr. Rick Thorpe, the adjuster, that those  
were the amounts that are listed in Exhibit 7  
and 8, together with his testimony; those are  
the finding of the damages. The second witness  
and the question of liability, and usually we do  
this in the reverse order, but I am finding  
based on the testimony of Joseph Jakym, who I  
have qualified to be an expert in accident  
reconstruction, that there were a number of  
10 inconsistencies to these cars meeting. That his  
finding is that there is physical evidence that  
the silver Hyundai, which was the car allegedly  
driven with the two defendants in it, never  
struck the 2000 Honda Accord, which was beige.

15 The reasons for his conclusion are as follows:  
he indicates that the colours that were found on  
the back of the 2000 Honda Accord, the paint  
transfers were brown and black on the rear and  
20 that the Hyundai Sonata, the 2010, was silver in  
colour. He found conflicting damages.

25 He indicates that the right-front side of the  
silver Hyundai was damaged; there was fairly  
minor damages, as he describes it, around the  
front and the total width is approximately 15  
centimeters. He indicates on the rear of the  
Honda Accord there was 160 centimeters,  
30 approximately, with damages and those damages  
pretty well along the whole back bumper.

## Findings of Fact - Hagan, D.J.

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There were also protrusions into the back bumper of the Honda Accord from the vehicle that actually hit it that were consistent with a vehicle that had front protrusions coming out of it. The Hyundai Sonata was described as not having any front protrusions which would have created these marks. The additional evidence also provided that the Hyundai, if it had been in the collision, there was evidence that the car that did collide with the back of the Honda Accord was described to have under-ridden the Honda Accord, in other words gone below the bumper, pushed the bumper up, and there was evidence of paint marks including the imprint of what appears to be blue writing from an Ontario licence plate. The evidence was that in such an under-riding case there would expect to be significantly more damage the Hyundai Sonata: hood damage, light damage, and similar damage, and there was no such damage; there was no damage to the hood at all or the licence plate on the Hyundai, and that this was inconsistent with the two coming together.

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Another indication was that the blue licence plate that imprinted only partially on the rear of the vehicle that was struck, the Honda Accord, was inconsistent with the colour of the licence plate which was darker, black, I believe, on the Hyundai Sonata, which was a rental vehicle, and, I may have this wrong, but I believe it was indicated from a Minnesota

## Findings of Fact - Hagan, D.J.

plate or an out-of-province U.S. plate which was a different colour.

Also this was said to be a rear-end collision. The other thing that happened was that there was evidence of over-riding as well as under-riding on the Honda Accord bumper, and that would require more than one strike. All the evidence from all the exhibits, right away from Exhibit 1 to 8, all indicate one strike from the rear not multiple strikes, and therefore suggesting perhaps even another car may have struck the rear of the Honda Accord, or in any event it is consistent with this vehicle not having struck the Honda Accord at the rear from the profile, severity, width, *et cetera*. All the evidence points to this not being the car in the collision with the other vehicle, therefore I make a finding of fact that these cars did not collide - the black Hyundai Sonata did not collide with the 2010 beige Honda Accord and the claims that have been submitted for the accident benefits by Mr. Ali and Mr. Mohammed are fraudulent. I find that the actual out-of-pocket claims are, by the insurance company against Mr. Ali, a total of \$6,607.75, Mr. Mohamed: \$8,752.03.

## J U D G M E N T   A N D   O R D E R

HAGAN, D.J. (Orally):

I am asked today to make an award for punitive damages against the parties because this is an actual act of fraud and I am asked to double this amount. I note that punitive damages are rarely awarded in Small Claims Court, very very rarely awarded, and they are meant to punish and indicate the most outrageous conduct. I cannot agree with an amount of double the actual out-of-pocket costs, but I find that there was fraudulent conduct here both in the signing of false statements, making false statements, and providing evidence that is clearly false, and the parties are not present today and chose not to defend this. Mr. Mohammed was given a chance to defend himself, and Mr. Ali did file a defence, and filed an amended defence which is very difficult to read, denying this but I find that in fact that they did both commit frauds. In the circumstances, I am going to add an additional \$3,000 to each of the amounts. So I am going to indicate that judgment for the plaintiff against Mahad Ali in the amount of \$9,607.75, plus pre-judgment interest, at the court's rate, from November 22<sup>nd</sup>, 2009 to today's date, plus, and I'll indicate - were there any offers for settlement? I take it there were not any offers for settlement.

MS. SAH: Well there was some negotiations, but no, there were not.

THE COURT: No. So I will indicate 15 percent costs on that, because you did present evidence at trial, so \$1,441.16 costs. What disbursements would you have had, \$175?

MS. SAH: At minimum, Your Honour.

THE COURT: What would you say you had for disbursements?

MS. SAH: Well, Your Honour, I can tell that the expert witness alone, his attendance would be \$2,000.

THE COURT: Okay, \$2,000. So divide that in two. For each of them would be a thousand. Okay, go ahead, yes.

MS. SAH: And then the secondary witness, Mr. Thorpe, his would be in the range of \$800.

THE COURT: So we'll say \$1,400 for each of them, okay. And what other disbursements?

MS. SAH: We have an outstanding costs award against Mr. Ali as well for \$140 for his non-attendance at a motion to adjourn the trial.

THE COURT: Okay.

MS. SAH: There's that outstanding cost award as well.

THE COURT: Well I'll just indicate that is still outstanding.

MS. SAH: But other than that, Your Honour, that would be in addition to the filing fees.

THE COURT: So the filing fees would be divided in two. You probably had service fees, did you, or....

MS. SAH: We did, Your Honour.



THE COURT: If you don't have those available what I'll do is I'll add another, say, \$25 and indicate a total of 200 divided by 2 and add \$100 to each of them.

MS. SAH: That's fair, Your Honour, thank you.

THE COURT: Okay. So plus \$1,500 disbursements, and then plus post-judgment interest at *Courts of Justice Act* rate. Then I am going to indicate judgment for the plaintiff against Mustafa Mohamed in the amount, so his would be the \$8,752.03, I am going to indicate - actually, I am going to make his amount larger because his claim is larger. So I am going to make his amount \$4,000 punitive damages for a total of the amount of \$12,752.03, plus pre-judgment interest at the *Courts of Justice Act* rate from November 22<sup>nd</sup>, 2009 to today's date, and 15 percent costs so \$1,912.80, plus \$1,500 disbursements, plus post-judgment interest. And the costs were against which one? You indicate there were costs against...

MS. SAH: Well there was - there's an outstanding...

THE COURT: A hundred...

MS. SAH: ...cost order against Mr. Ali of \$140.

THE COURT: So what I'll indicate is an order remains outstanding for \$140 costs. I can indicate this should be added to the judgment, then...

MS. SAH: Thank you, Your Honour.

THE COURT: ...to make it easier that way.

MS. SAH: Yes, that will - for enforcement measures, thank you.

THE COURT: Be added to the judgment. Okay, thank you. I should indicate that it is extremely rare, I cannot remember the last time I ordered punitive damages, so it's very rare. But in this case I am ordering it because of the nature - I don't think in 20 years I've done it, as far as I can recall, but this is an extremely rare case. Okay. Thank you.

MS. SAH: Thank you, Your Honour.

**FORM 2**

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

Evidence Act

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I, Peter Kreutzer, certify that this document is a true and accurate transcript of the recording of *CONTINENTAL CASUALTY COMPANY C/O MARTENS LINGARD LLP v. Mahad ALI and Mustafa MOHAMED* in the Superior Court of Justice, Small Claims Court, held at St. Catharines, Ontario, on May 29, 2013 taken from recording No. 2111\_CRT12\_20130529\_093932 which has been certified in Form 1.

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June 14, 2013  
(date)

Peter Kreutzer

Peter Kreutzer  
Court Reporter

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