

CASE STUDIES

Please note that each matter is dealt with on its own merits and no precedent is created by the findings in these matters. The case studies are intended to provide guidance and insight into the manner in which OSTI deals with complaints.

INSUFFICIENT CIRCUMSTANTIAL EVIDENCE

MIWAY INSURANCE LIMITED

Ms M submitted a claim to the insurer in respect of a vehicle accident whilst the vehicle was driven by a family member (incident driver).

The insurer rejected the claim on the grounds that the damage to the vehicle occurred when a member of Ms M's household, who has authorised access to the vehicle, used the vehicle without her consent and failed to adhere to the policy by driving whilst under the influence of alcohol and failed to comply with the insurer's reasonable request.

The insurer subsequently indicated that it would not pursue the rejection of "non-compliance with a reasonable request for information".

In support of the rejection of the claim for driving under the influence of alcohol, the insurer made reference to evidence from a security guard, tow operator, two passengers as well as video footage.

The following evidence relied on by the insurer to reject the claim, was considered by OSTI:

Security guard:

The insurer provided a transcript of its recorded conversation with the security guard. From the transcript provided the only evidence that the insurer could possibly seek to rely on was the security guard's statement that "he spoke like he is drunk that is what I noticed." No clarity was obtained from the security guard regarding what he meant by this statement. The security guard advised that he was too far away from the driver to advise if the driver smelt of alcohol.

Towing operator:

The insurer provided a transcript of the call with the towing operator. The

evidence did not indicate that the incident driver was under the influence of alcohol. When the towing operator was asked whether the incident driver smelt of alcohol, he said "no I would be lying."

From the evidence of the towing operator it was established that the police were present at the scene but did not conduct any test for alcohol on the incident driver.

Passenger 1:

The insurer provided a transcript of the recording with passenger 1, who was in the insured vehicle at the time of the accident. The witness advised that he did not know what the incident driver had been drinking. When asked whether they had all been drinking, the witness advised "we were drinking I do not know about him, as he was not at the same table as us." When asked about how the incident driver was driving, the witness advised that he was not driving too fast and lost control when overtaking another vehicle.

Passenger 2:

Passenger 2 was also in the insured vehicle at the time of the accident. This witness advised that they found the incident driver at a pub. The witness did not know what the incident driver had been drinking. The witness advised that the incident driver sipped on passengers 2's drink. The witness advised that the incident driver was tipsy. He stated that he was not saying that the incident driver was drunk but that he was tipsy. The witness advised that he himself was drunk when compared to the others.

Video footage

The insurer provided video footage, which it advised was that of the incident driver arriving at Ms M's residence after the accident. The insurer submitted that in the video footage the incident driver was clearly unsteady on his feet and his

eyes were blood shot. The insurer stated that this corroborated the security guard's version that the incident driver spoke "like he was drunk".

OSTI watched the video footage and disagreed with the insurer's observations. One could not establish from the video footage whether the incident driver's eyes were blood shot or not. In addition, the footage of the incident driver was footage provided after the accident. On the insurer's own version, the insured vehicle had overturned in the accident. The incident driver's gait, which the insurer sought to rely on, could on the probabilities have been as a result of the accident. The footage in itself did not indicate on a balance of probabilities that the incident driver was under the influence of alcohol at the time of the accident.

The insurer had further submitted in its response to this office that the passengers were not independent witnesses as they would have an interest in the outcome of the claim.

As Ms M's claim against the insurer is a civil claim, the onus on the insurer is to demonstrate on a balance of probabilities that the incident driver drove the vehicle whilst under the influence of alcohol and that this affected him to such an extent that it impaired his ability to drive or control the vehicle.

OSTI advised the insurer that it had provided insufficient evidence to overcome the required burden of proof. Accordingly the insurer had not discharged the onus of proving on a balance of probabilities that the policy exclusion relied on applied to reject the claim.

OSTI recommended that the insurer settle the claim. The insurer agreed to comply with OSTI's recommendation and settled the claim.