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Illegal immigrants not entitled to injury compensation from public funds: Ontario court

By Adrian Humphreys

Ontario's court of appeal has rejected a hard-fought claim from a Brazilian man - in Canada illegally - who was hurt in a hit-and-run walking...

TORONTO - Illegal immigrants are not entitled to compensation from public funds for a motor vehicle accident, says Ontario's court of appeal, which has rejected a hard-fought claim from a Brazilian man hurt in a hit-and-run when walking across a Toronto street.

Jarley Silva was run down in 2011 while he was walking across Bloor Street West. The driver was never identified.

Silva had arrived in Canada in 1992 using a fraudulent passport and lived partially off the grid - he obtained an Ontario driver's licence but did not own a car or have insurance; he worked as a cleaner and then in construction, even registering his own drywall company, but did not report his income or pay tax.

He even joined a trade union, the International Union of Painters and Allied Trades, court heard.

Silva lived in rental apartments and paid for his living expenses in cash. He didn't have any credit cards and never applied for a Social Insurance Number or OHIP, the province's health plan.

He had been deported in 1995, but soon returned in Canada, illegally crossing the border from the United States at Niagara Falls and returning to his quiet life in Toronto.

In 2002 he applied for, and was issued, a driver's licence, although he apparently never owned a car and never drove. From then until his accident, he never left Ontario.

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When Silva was hit on Bloor, he suffered a shattered left ankle and fractured right knee. The ankle was surgically repaired with screws and a plate and he spent time in a wheelchair and then on crutches after the surgery.

After the crash he filed two claims: one for refugee protection, which was denied him in April 2013, and one for compensation for his injuries. Because the identity of the driver was unknown, there was no insurance policy that could respond to damages, putting his claim before the Motor Vehicle Accident Claims Fund.

The traffic accident, however, exposed his life of more than 10 years in the shadows.

Silva was deported to Brazil in 2013, but he continued to press his claim in court.

The government sought to have Silva's claims rejected by the court because the act that created the fund states it is open only to people who "ordinarily reside in Ontario."

Thus began the debate over whether someone who lived in Ontario continuously for almost a decade - but did so without having legitimate immigration status - could be considered a true resident.

In January, Justice James F. Diamond of the Ontario Superior Court sided with the government, declaring Silva's "physical presence" in Ontario was the result of "deception." Diamond did not believe the law was meant to give someone "the opportunity to reap the benefits of ordinary residency in Ontario via a clandestine life through the passage of time."

Silva appealed the decision to the Ontario Court of Appeal, which last week upheld the decision, and ordered Silva to pay \$5,000 in costs to the government.

"(The judge) recognized that de facto physical presence in Ontario, even if continuous, does not automatically establish ordinary residency in Ontario for the purpose of access to the Fund. The appellant was present in Ontario illegally, was subject to deportation on discovery and had already been deported once," Justice Eleanore Cronk wrote on behalf of the appeals panel.

The case highlights limits placed on immigrants without legal status in Canada, said Toronto immigration lawyer Sergio Karas.

"This case should sound a cautionary note for those individuals who have obtained driver's licences and drive motor vehicles without immigration status," Karas said.