

CITATION: *Toronto Transit Commission Insurance Company Ltd. v. Janes*, 2026 ONSC 4709

COURT FILE NO.: DC-25-00000284-0000

DC-25-00000788-0000

DATE: 20260814

**SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT**

RE: TORONTO TRANSIT COMMISSION INSURANCE COMPANY LTD.,
Applicant/Appellant

and

KATHLEEN JANES, *Respondent*

BEFORE: Matheson, Koehnen and Schreck JJ.

COUNSEL: *J. Lim and S. Sargent*, for the Applicant/Appellant

J.-C. Rioux, S. Brown and A. Naples, for the Respondent

J. Boyce, for the Licence Appeal Tribunal

HEARD: August 12, 2026

ENDORSEMENT

[1] This appeal and application for judicial review was dismissed after the oral hearing, with reasons to follow. These are those reasons.

[2] Katheleen Janes (“Ms. Janes”) was a passenger on a Toronto Transit Commission bus that drove over a manhole cover that was elevated relative to the road surface because of ongoing construction, causing her to be thrown from her seat. She suffered catastrophic injuries as a result and applied for statutory accident benefits pursuant to s. 268(1) of the *Insurance Act*, R.S.O. 1990, c. I.8.

[3] Section 268(1.1) of the *Insurance Act* provides an exception to the entitlement to statutory accident benefits:

- (1.1) Despite subsection (1) and the *Statutory Accident Benefits Schedule*, no statutory accident benefits are payable in respect of an occupant of a public transit vehicle, in respect of an incident that occurs on or after the date this subsection comes into force, if the public transit vehicle did not collide with another automobile or any other object in the incident.

Based on this subsection, the Toronto Transit Commission Insurance Company Ltd. (“TTCIC”) denied Ms. Janes benefits.

[4] Ms. Janes applied to the Licence Appeal Tribunal to challenge the TTCIC's decision. Before the Tribunal, the TTCIC took the position that the manhole cover was not "any other object" within the meaning of s. 268(1.1), and that the bus's contact with it was not a "collision." In a decision reported at 2025 CanLII 23490 and a Reconsideration Decision reported at 2025 CanLII 86542, the Tribunal disagreed. The TTCIC appealed and applied for judicial review of those decisions.

[5] On the judicial review application, the applicant submits that the Tribunal made findings of fact in the absence of evidence. In particular, it submits that the Tribunal was not entitled to conclude that the manhole cover was a "temporary, independent feature within the roadway" and "no longer seamlessly integrated with the continuous road surface." In the applicant's submission, the only available finding was that the raised manhole cover was an ordinary part of the road that vehicles were expected to drive over.

[6] We disagree. Even though the parties chose not to include a specific measurement of the degree to which the manhole cover protruded from the roadway, there was ample evidence to support the Tribunal's conclusion that the protrusion was significant, including the speed of the bus (57 km/hr), the fact that Ms. Janes was thrown from her seat and video evidence from inside the bus at the time of the accident.

[7] With respect to the appeal, which is restricted to questions of law by s. 11(6) of the *Licence Appeal Tribunal Act, 1999*, S.O. 1999, c. 12, the appellant submits that the Tribunal erred in its interpretation of s. 268(1.1) by considering the words "collision" and "object" separately. We do not agree. These are separate terms with different meanings, and the Tribunal did not err by first determining whether the raised manhole cover was an "object." Based on the findings of fact, it was open to the Tribunal to conclude that it was.

[8] The appellant also submits that the Tribunal erred by considering the speed of the bus in determining whether there was a "collision" within the meaning of s. 268(1.1) and by holding that "something beyond a *de minimis* impact" is required. We are not persuaded that the Tribunal erred in considering the force of the impact, which was a function of the speed of the bus, in determining whether there was a "collision." We need not decide whether the speed of the vehicle and the degree of force is always a relevant factor in determining whether there was a "collision" within the meaning of s. 268(1.1).

[9] The appeal and the application for judicial review are dismissed. In accordance with the agreement of the parties, costs are fixed at \$7500.00, inclusive of taxes and disbursements, to be paid by the applicant/appellant to the respondent.

"Matheson J."

"Koehnen J."

"Schreck J."

Date: August 14, 2026