1979

Allstate Insurance Company, A Corporation v. Richard Bruce Anderson : Brief of Plaintiff-Defendant-Respondent, Richard Bruce Anderson

Utah Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

ALLSTATE INSURANCE COMPANY, a Corporation,

Plaintiff and Appellant

-vs-

RICHARD BRUCE ANDERSON,

Defendant and Respondent

Case No. 16[illegible]

BRIEF OF DEFENDANT--RESPONDENT, RICHARD BRUCE [illegible]

Appeal From A Judgment Of The First Judicial [illegible]
In and For Cache County
Honorable Tad S. Perry, Circuit [illegible]
Pro Tem

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IN THE SUPREME COURT OF THE STATE OF UTAH

ALLSTATE INSURANCE COMPANY, a Corporation,

Plaintiff and Appellant

-vs-

Case No. 16411

RICHARD BRUCE ANDERSON,

Defendant and Respondent

BRIEF OF DEFENDANT--RESPONDENT, RICHARD BRUCE ANDERSON

Appeal From A Judgment Of The First Judicial District Court
In and For Cache County, Utah
Honorable Tad S. Perry, Circuit Judge, Presiding
Pro Tem

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TABLE OF CONTENTS

CASES CITED

IN THE SUPREME COURT OF THE STATE OF UTAH

ALLSTATE INSURANCE COMPANY, a Corporation,

Plaintiff and Appellant

-vs-

RICHARD BRUCE ANDERSON,

Defendant and Respondent

Case No. 16411

BRIEF OF DEFENDANT--RESPONDENT, RICHARD BRUCE ANDERSON

NATURE OF THE CASE

This is an action to recover $2,000.00 paid by Allstate to Defendant as no-fault benefits, following a settlement by Defendant with the tort feasor's insurance carrier.

DISPOSITION IN LOWER COURT

After a trial, without a jury, judgment was rendered in favor of Defendant and against Plaintiff.

RELIEF SOUGHT ON APPEAL

Defendant-Respondent seeks a sustaining of the lower Court's decision.

STATEMENT OF FACTS

The material alterations and additions to the statements in Plaintiff's-Appellant's brief are as follows:

1. The Plaintiff by its letter Exhibit #2, at the outset clearly purported to sever its claim for no-fault medi payments from Defendant's claims and cited the Utah No-Fault Statute as authority for the severance, and admits that they sent a copy of the severence letter to the tort feasors carri State Farm Mutual.

2. The Defendant obligingly thereafter, acknowledge the Plaintiff's severance demand and expressly excluded from Federal Court Complaint (Exhibit) the no-fault benefits wh had been paid out to the date of the Complaint.

3. The settlement arrived at and the signed releas only purported to release and could only release Richard Anderson's claims and did not purport to release the previousl severed claim of Plaintiff. Both parties to the release were possession of the severance notice at the time Defendant signe his release.

4. Another striking omission from Appellant's state ment of the facts is that the Defendant by the settlement rec not more than one-fifth of reasonable compensation for his 25 total permanent whole body disability because of the limits o liability and a judgment proof tort feasor.

ARGUMENT

POINT #1

APPELLANT'S CITED GREEN SHEET RECENT CASE SUPPORTS TRIAL COURT DECISION UNDER UNCONTROVERTED FACTS. NO DOUBLE PAYMENTS ALLOWED.

Respondent unqualifiedly supports the cited principal in the Transamerica case that no double recovery will be allowed for a single loss. In fact the trial courts decision is based on that same principle.

The uncontroverted evidence was that Defendant as a passenger received an injury in an accident resulting in a permanent total bodily disability of 26% and that the best conservative estimate of his loss as calculated by law would have been around $50,000.00 This case is not in the category of those in which there is any danger of allowing a double recovery for the same loss. Defendant settled for a pittance only because of the limits of liability and the judgment proof condition of the tort feasor.

The Transamerica case is only a reaffirmation of the equitable principle stated in Lyon -vs- Hartford, 25 Utah 2nd 314, 480 P2nd 739 which states:

> "In the absence of express terms to the contrary, the insured is entitled to be made whole before the insurer may recover any portion of the recovery from the tort feasor. If the one responsible has paid the full extent of the loss, the insured should not claim both sums and the insurer may then assert its claim to subrogation."

With such a direct statement of applicable law, this appeal should be summarily dismissed and the trial court sustained.

POINT #2

APPELLANT BY EXPRESS WRITTEN NOTICE TO ALL PARTIES SEVERED ITS CLAIM AND IS EQUITABLY ESTOPPED FROM ATTACHING TO RELEASE OF DEFENDANT'S SEVERED CLAIM.

Appellant's reasoning concerning the effect of their subrogation interest is contradictory and self serving.

The release could only have been effective for Richard Anderson's claim. What was the scope of his claim in the mind of Allstate, State Farm and of greater importance, Richard Anderson and his counsel. Did it include Allstate's so called subrogation interest? Of course not. Allstate had expressly denied and negated any authority to Anderson to deal with their part of the claim.

Allstate sent a copy of the severence to State Farm Mutual and never repudiated it as the lower court found; all for the purpose of avoiding contributions to the real collection costs. The evidence is clear that after a settlement had been reached based on the Federal Complaint which expressly excluded Appellant's severed claim, the Appellant then made a new demand repudiating its earlier severence notice resulting in the issuance by State Farm Mutual of a seperate check for the then disputed $2,000.00.

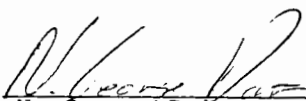
CONCLUSIONS

It is clear that if the Defendant receives the full agreed settlement of $10,000 he will only be receiving a part of his loss and therefore is entitled to the full amount under the cited principle that he is entitled to be made whole before the insurer may recover any portion of the recovery.

This is clearly a case of attempted overreaching by the insurer; first severing his claim to avoid having to contribute to collection costs. Then when some collection

windfall to the insurer, appears likely after the fact of settlement tries to rejoin his claim. To allow such a result would be unconscionable.

Respectfully submitted,



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Mailed 2 copies of the foregoing to L. E. MIDGLEY, Attorney for Plaintiff-Appellant, 320 South 300 East, Suite 3, Salt Lake City, Utah 84111, this _____day of _____, 1979.

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