1980

Orville Ralph Coates and Donna Coates v. American Economy Insurance Co. : Brief of Appellant

Utah Supreme Court

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SUPREME COURT OF UTAH

STATE OF UTAH

ORVILLE RALPH COATES and DONNA COATES, his wife, Plaintiffs and Respondents,	)	
vs.	)	Case No. 17026
AMERICAN ECONOMY INSURANCE COMPANY, Defendant and Appellant.	)	

BRIEF OF APPELLANT

Appeal from a Judgment of the
First Judicial District Court
Box Elder County, State of Utah
Honorable VeNoy Christofferson, Judge, Presiding

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SUPREME COURT OF UTAH

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BRIEF OF APPELLANT

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NATURE OF THE CASE

This is an action wherein plaintiffs seek survivor benefits, funeral expenses and medical expenses under the Personal Injury Protection Endorsement provided in an automobile insurance contract between the plaintiffs and the defendant.

DISPOSITION IN THE LOWER COURT

The trial court in the First District Court of Box Elder County granted the plaintiffs' Motion for Summary Judgment against the defendant for survivor benefits, funeral expenses and medical costs. The trial court held that under the Utah Automobile No-Fault Insurance Act it is not necessary that the injured person occupy a motor vehicle as defined in the No-Fault Act, but that where at least one of the vehicles involved in an accident is a motor vehicle as defined in the Act, the injuries are covered by the insurance required under the No-Fault Act.

RELIEF SOUGHT ON APPEAL

Defendant-Appellant seeks a reversal of the trial court's ruling and a determination that the Utah Automobile No-Fault Insurance Act, § 31-41-1 et seq., U.C.A. (1953 as amended), specifically excludes persons riding motorcycles from its coverage.

STATEMENT OF FACTS

The facts necessary for a determination of this appeal are contained in a Stipulated Facts for Purposes of Summary Judgment Only, said Stipulation having been entered into by counsel of record for the parties herein. (R. 36 - 50) Briefly, those stipulated facts are as follows:

> On the 8th day of July, 1978, Orville Ralph Coates and Donna Coates, his wife, were covered by an automobile insurance policy issued by American Economy Insurance Company. Their son, Brent Ralph Coates, was an "insured person" under his parents' policy. On or about July 8, 1978, while said policy of insurance between plaintiffs and the defendant was in full force and effect, the plaintiffs' son, Brent Ralph Coates, was operating a motorcycle consigned to Vesco's Sports Center and while properly operating said motorcycle, was struck by a motor vehicle operated by Ferris Reeder at approximately 4th North and Main Street in Brigham City, Utah. Brent Ralph Coates died that same day as a result of injuries sustained in the collision. The plaintiffs, as parents of the deceased, have incurred and been required to pay certain expenses in connection with the injuries, death and burial of the deceased and have suffered certain losses as the survivors of the deceased. The plaintiffs have paid all funeral expenses in connection with the burial of Brent Ralph Coates and have incurred medical expenses in the amount of $675.25.

The parties also attached a copy of the automobile insurance policy to the Stipulated Facts. Both parties then moved the trial court for summary judgment and, following oral argument on their respective motions, the trial court

entered an Order granting plaintiffs' Motion for Summary Judgment.

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN INTERPRETING THE PROVISIONS OF THE UTAH AUTOMOBILE NO-FAULT INSURANCE ACT, § 31-41-1 et seq., U.C.A. (1953, AS AMENDED).

In 1973, the Utah State Legislature adopted the Utah Automobile No-Fault Insurance Act to become effective January 1, 1974. The "No Fault Act" is codified at § 31-41-1 through § 31-41-13.4, Utah Code Annotated (1953, as amended). The purpose of the Act is stated in §31-41-2 as follows:

> To require the payment of certain prescribed benefits in respect to motor vehicle accidents through either insurance or other approved security but on the basis of no fault. . . .

The Act provides that persons injured in motor vehicle accidents are entitled to certain minimum benefits from either their insurance policy or other security. Section 31-41-7 sets forth the applicability of the required insurance coverage. The pertinent provisions of that section are:

(1) The coverages described in Section 31-41-6 shall be applicable to:

(a) Personal injuries sustained by the insured when injured in an accident in this state involving any motor vehicle.

. . .

Section 31-41-3 sets forth the definition of the terms used in the Act. In pertinent part, the section provides:

(1) "Motor Vehicle" means any vehicle of a kind required to be registered under Title 41, but excluding, however motorcycles. (emphasis added)

These provisions of the No-Fault Act indicate a specific legislative intent to exclude motorcycles from the coverage of the Act. It is clear from the language of the Act that the legislature intended that Personal Injury Protection benefits normally available to motor vehicle operators would not be available to persons injured while operating a motorcycle. However, any ambiguity in the language of the statute is dissolved and the legislative intent made crystal clear by the debate surrounding an Amendment of the Act which occurred in 1975.

In 1975, Senate Bill No. 45 proposed an amendment to the statutory language of the No-Fault Act. The amendment was proposed in an attempt to correct a problem which had arisen concerning benefits claimed by persons injured while riding motorcycles. Although the No-Fault Act as

originally enacted had excluded motorcycles from the definition of motor vehicle, and therefore, presumably from coverage under the Act, these persons were claiming benefits as pedestrians. The original definition of pedestrian in the No-Fault Act, § 31-41-3(6), was as follows: "'Pedestrian' means any natural person not occupying or riding upon a motor vehicle."

Since by definition a motorcycle was not a motor vehicle, persons injured while riding motorcycles claimed that they were entitled to benefits as pedestrians and the legislative debate reveals that several of these claims had been paid by insurance companies. The amendment proposed to change the definition of pedestrian to read: "'Pedestrian' means any natural person not occupying or riding upon a motor vehicle, excluding, however, any natural person occupying or riding upon a motorcycle." The legislative debate surrounding this proposed amendment makes the intent of the legislature, both as to the original passage of the No-Fault Act, and as to the amendment, absolutely unambiguous.

Senator Wilford R. Black, [D] Salt Lake County, sponsored the amendment and stated that the reason for the proposed amendment was to prevent the driver of a motorcycle from having a "free ride" on the insurance of an automobile driver who had no-fault insurance. On February 4, 1975, the Senate became a committee of the whole to hear evidence

concerning the proposed amendment. Mr. Melvin Summerhays appeared from the Utah State Insurance Commissioner's Office and testified, in substance, that motorcycles were excluded in most States from No-Fault Acts because the inherent risks associated with motorcycles were too high for any reasonable premium and insurance companies did not wish to combine the risks of motorcycles together with the risks of the general motoring public. He stated that the Insurance Commissioner had not anticipated that motorcyclists would be able to claim benefits as pedestrians under the original No-Fault Act and that, in effect, the motorcyclist was receiving something for nothing. Mr. Summerhays testified:

> In other words, if he has an accident with your vehicle now, if he is at fault or otherwise, he can run into your car if you are sitting still and he has benefits of your no-fault policy as a pedestrian. Now the reason this isn't fair is because you and I will have to pay his premiums. We will have to have our rates raised eventually. It will cost you and I and the citizens additional premiums to take care of motorcyclists under the Act if he is left a pedestrian. So the real intent of the amendment is to take the motorcyclist out of the pedestrian classification and leave him recourse to tort liability and the Financial Responsibility Law where he belongs at a rate he can afford to pay.

Mr. Carl Halbert, an insurance representative, also testified and supported the statements of Mr. Summerhays. He reiterated that in an accident between a motor vehicle and a motorcycle, it is generally the driver and/or passenger of the motorcycle that are injured and they are

receiving benefits which were not intended to be paid by the No-Fault Insurance policies carried by automobile drivers. Mr. Keith McCune of State Farm Insurance Company testified concerning a case wherein State Farm had paid more than $22,000.00 to a motorcyclist and his children who were injured in an accident wherein the motorcyclist was at fault, but was collecting from the Personal Injury Protection Benefits of the automobile driver's policy as a pedestrian.

In concluding the debate, Senator Black reiterated the reasons for his sponsorship of the Amendment and claimed that the present situation allowing motorcyclists to claim benefits as pedestrians was highly unfair and that the Amendment should be adopted. The Senate subsequently adopted the proposed Amendment.

The proposed Amendment was then considered by the Utah House of Representatives wherein it was debated on February 12, 1975. Representative James Hansen, [R] Davis County, argued that the general motoring public was picking up the bill for motorcyclists and this was not intended when the No-Fault Act was originally adopted. He stated:

> "All this is trying to do when Senator Black introduced this Amendment is to take the motorcyclist out of the definition of a pedestrian. A motorcyclist should not be a pedestrian, and I think they overlooked that."

Representative T. Quentin Cannon [R] Salt Lake County, stated:

> "We are saying they are no longer a pedestrian, nor are they covered by the No-Fault Act. If the motorcyclist strikes me, or I strike him, regardless of fault, they are under the old system of tort liability. . . . The motorcyclists don't want to be within the No-Fault Act, because the premiums are so high. It will not shift liability. The motorcyclist is under the old system of tort reparations. This Amendment is making the motorcyclist carry the burden himself."

The Amendment then was passed by the House and became effective on May 13, 1975.

Appellant believes the above-cited history of the legislative debate surrounding the Utah No-Fault Act makes it abundantly clear that the intent of the Utah Legislature, both in enacting the original No-Fault Act, and in enacting subsequent amendments, was to exclude motorcyclists from the benefits of the coverages required under the Act. Indeed, when the legislature was made aware that motorcyclists were receiving benefits pursuant to the Act as originally enacted, they quickly moved to amend that "loophole" to eliminate any possibility that motorcyclists would be entitled to such benefits. Although the appellant raised the issue of the clear legislative intent behind the No-Fault Act in its Memorandum of Points and Authorities, the trial court made no finding concerning this issue and erred in failing to

consider the legislative intent in interpreting the provisions of the No-Fault Act.

The Utah Supreme Court has consistently held that in interpreting statutory language, the legislative intent is crucial to the determination of the meaning of the particular statute. The Utah Supreme Court most recently dealt with this principle in the case of Osuala v. Aetna Life and Casualty, 608 P.2d 242 (Utah 1980). In that case, the plaintiff was injured when the automobile he was driving collided with a truck owned by a construction company. The plaintiff brought an action against the construction company's insurer to obtain Personal Injury Protection Benefits under the No-Fault Act. The trial court held that the plaintiff was neither an insured nor a person entitled to protection under the insurance policy the defendant had issued to the construction company. On appeal, this court affirmed. In ruling on the plaintiff's claims pursuant to certain provisions of the No-Fault Act, this Court stated:

> There are some cardinal rules of statutory construction to be considered in relation to this controversy. If there is doubt or uncertainty as to the meaning or application of the provisions of an act, it is appropriate to analyze the act in its entirety, in the light of its objective, and to harmonize its provisions in accordance with the legislative intent and purpose. . . .

In the instant case, the Utah No-Fault Act in its entirety and in its objective is clearly to reduce the cost

of automobile insurance to the motoring public. This objective and the purpose underlying the entire Act would be subverted by allowing motorcyclists to obtain benefits under the Act for which they have not paid and the cost of which must be borne by the general motoring public. The legislative debate makes clear the legislative intent behind the Act and appellant contends that the trial court erred in failing to analyze the Act consistent with the principles enunciated above.

POINT II

THE TRIAL COURT ERRED IN ADOPTING THE RATIONALE OF CASE LAW FROM OUTSIDE THE JURISDICTION AND ERRED IN ITS INTERPRETATION OF SAID CASE LAW.

The trial court's Order granting plaintiff's Summary Judgment is based upon the trial court's own Memorandum Decision dated March 24, 1980 (R. 56 - 58) In the Court's Memorandum Decision, the Court discusses cases concerning the issue raised in the instant case and concludes that certain of these cases are the better reasoned view and subsequently holds for the plaintiffs and respondents. However, defendant and appellant believes that most, if not all, of these cases are inapplicable to the instant case for the simple reason that no other state's No-Fault Statute is identical to that of the State of Utah, nor are they even substantially similar. Further, defendant and

appellant contends that the trial court erred in its interpretation of certain of these cases.

Appellant believes that the better reasoned view is represented by the case of Speakman v. State Farm Mutual Automobile Insurance Company, 402 A.2d 123 (Md. App. 1979). In that case, the plaintiff was the named insured in an automobile insurance policy issued by defendant, which policy provided $10,000.00 in personal injury protection coverage. The plaintiff brought an action against the defendant for hospital and medical bills and loss of income suffered as a result of an accident wherein the plaintiff, while operating his motorcycle, was struck by an automobile. The Maryland No-Fault Act did not expressly exclude motorcycles from its provisions, as the Utah No-Fault Act expressly provides. However, the Maryland No-Fault Act did provide that insurance companies could exclude benefits for persons injured while operating motorcycles. The defendant insurance company chose to specifically exclude benefits for persons injured while riding motorcycles and the plaintiff conceded the legitimacy of the exclusion contained in the policy. However, the plaintiff argued that since the accident in which he was injured involved another motor vehicle, i.e. the automobile with which he collided, he was still entitled to benefits. The Court of Special Appeals of

Maryland affirmed the trial court's holding that the plaintiff was not entitled to benefits under the plain and unambiguous language of the insurance policy.

Appellant believes that the Speakman case is correct in its interpretation of the phrase upon which the plaintiffs and respondents rely in the instant case, i.e. that plaintiff's decedent was killed in an accident "involving any motor vehicle." Indeed, the Maryland case revolved around the chosen language in the insurance policy, whereas the instant case revolves around statutory language intended by the Utah Legislature to exclude motorcyclists from benefits under the Act.

The trial court was pursuaded by cases other than the Maryland case cited above. The trial court cited the New Jersey cases of Hoglin v. Nationwide Mutual Insurance Company, 366 A.2d 345 (N.J. App. 1976) and Harlan v. Fidelity & Casualty Company, 353 A.2d 151 (N.J. App. 1976) in support of its ultimate decision. However, the Hoglin case revolved around an obvious conflict between the terms of the insurance policy between plaintiff and defendant and the statutory language of the New Jersey No-Fault Law. The insurance company attempt to limit coverage was found to conflict with the statute and the Superior Court of New Jersey, Appellate Division, held that the plaintiff was entitled to benefits, although he was occupying a motorcycle at the time of the accident. Moreover, the New Jersey Court

relied upon a treatise prepared by the former counsel to the New Jersey Automobile Insurance Study Commission which concluded that the intent of the Act was to provide coverage in the type of situation before the court. The Harlan case is yet another example of a conflict between the provisions of the insurance policy and the provisions of the No-Fault Law, where the court held that the statute prevails. This is not the issue before the Court in the instant case. Indeed, the defendant and appellant in the instant case modeled its language in the insurance policy precisely after the statutory language contained in the Utah No-Fault Act, relying on the clear meaning and legislative intent behind the Act that motorcyclists would be excluded from coverage.

The trial court proceeded in its Memorandum Decision to cite the case of Shoemaker v. National Ben Franklin of Michigan, 259 N.W.2d 414 (Mich. App. 1977), as supportive of the trial court's holding. However, appellant believes that the trial court clearly erred in relying upon this case. In the Michigan case, the plaintiff was injured while riding a motorcycle which collided with a farm tractor. The plaintiff brought suit to recover No-Fault Benefits from his automobile insurance company. The trial court granted Summary Judgment to the insurer and, on appeal, the Court of Appeals of Michigan affirmed, although remanding on other grounds. The court stated in part:

> . . . It is this court's duty to determine the legislative intent, looking at the language used in the set statute, its subject matter, scope and purpose, and the act should be construed to render it internally consistent and to avoid absurd results. . . . It is our belief that it would work an absurdity to hold that plaintiffs can recover for injuries from a motorcycle accident, because of the fortuitous purchase of an automobile No-Fault policy, after the legislature went to great lengths to exclude tractors and motorcycles from coverage under the Act. Having limited an insurer's risk to not include motorcycles, we find no legislative intent nor judicial prerogative to impose an even greater risk by imposing liability on an insurer that has issued a policy on an automobile and has issued no policy on a motorcycle.

How the Shoemaker case can be said to support the trial court's ruling is beyond the capacity of the appellant to understand or explain. However, appellant wishes to point out to this Court that in a later Michigan case, Piersante v. American Fidelity Fire Insurance Company, 278 N.W.2d 691 (Mich. App. 1979), the Michigan Court rendered a decision substantially supporting the trial court's decision in the instant case. It should be also noted, however, that the Michigan No-Fault Act appears substantially different from that of Utah and that the Michigan Court in Piersante relied heavily upon certain priority provisions of the Act in reaching its result.

Finally, the trial court relied upon dicta from a Florida case, Negron v. The Travelers Insurance Company, 282 S.2d 28 (Fla. App. 1973). The facts of that case are not similar or relevant to the instant case and appellant is

unable to explain how the dicta in Negron is applicable here. In any event, the Florida Court was later presented with the precise issue now before this Court in Long Island Insurance Company v. Frank, 328 S.2d 542 (Fla. App. 1976). In that case, the plaintiff in the trial court, Mr. Frank, brought suit to recover No-Fault Benefits on behalf of his minor son, a member of plaintiff's household, for injuries sustained while the minor son was operating a motorcycle which collided with another motor vehicle. Plaintiff urged the same argument on the Florida Court that plaintiffs and respondents urge in the instant case, that because the accident involved a motor vehicle, the plaintiff is entitled to recover benefits. However, the Florida Court disagreed and held in favor of the insurance company, thus clearly indicating that the dicta from Negron does not support the trial court's decision nor the position of the plaintiffs and respondents.

Defendant and appellate does not believe that any case from a jurisdiction outside the State of Utah is particularly applicable, much less dispositive, of the issue before this Court. The language of the Utah No-Fault Act appears to be unique in comparison with the language contained in the No-Fault Acts construed in the cases cited above and, therefore, those cases cannot determine the interpretation of different language in the Utah Statute.

CONCLUSION

Defendant and appellant urges this Court to apply the excellent criteria contained in the Osuala case concerning the issue of statutory construction. Appellant believes that the Utah No-Fault Act in its entirety, its clearly stated objective, its legislative intent and purpose, all combine to make clear the meaning of the statutory provision at issue. The Utah Legislature clearly intended to exclude motorcyclists from the benefits of the Act and the statutory language reflects that intent. While at least one court outside the State of Utah has ruled on this issue consistently with appellant's position, appellant does not believe that case law from outside the State is readily applicable to a determination of the meaning of a Utah Statute, peculiar to Utah. Appellant urges this Court to reverse the decision of the trial court and to remand the case for further proceedings consistent with that opinion.

Respectfully submitted this 10th day of July, 1980.

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MAILING CERTIFICATE

Mailed two copies, postage prepaid, this 10th day of July, 1980, of the foregoing Brief of Appellant to Jeff R. Thorne, Mann, Hadfield and Thorne, Attorneys for Plaintiffs and Respondents, 35 First Security Bank Building, Brigham City, Utah 84302.

Thomas W Arnett Jr.