

1980

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

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.

AMERICAN ECONOMY INSURANCE
COMPANY,

Defendant and
Appellant.

Case No. 17026

BRIEF OF RESPONDENT

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

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SUPREME COURT OF UTAH

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Case No. 17026

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BRIEF OF RESPONDENTS

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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 plaintiff's 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 for the injured person to be occupying a motor vehicle as defined in the No-Fault Act but concluded that where at least one of the vehicles involved in an accident is a motor vehicle as defined in the Act, the injuries were covered by the insurance required under the No-Fault Act.

RELIEF SOUGHT ON APPEAL

Plaintiff-Respondent seeks an affirmation of the trial court's ruling that the Utah Automobile No-Fault Insurance Act, Section 31-41-1 et seq., U.C.A. (1953 as amended), as applied to the particular facts of this case requires insurance coverage and benefits for these plaintiffs. Plaintiffs also request that the case be remanded to the trial court for an additional award of attorney fees incurred on appeal.

STATEMENT OF FACTS

Plaintiffs-Respondents accept the facts as set forth in the Appellant's Brief, for the reason that the facts were stipulated to by the parties.

ARGUMENT

POINT I

THE LEGISLATURE OF THE STATE OF UTAH HAS EVIDENCED A CLEAR INTENT THAT IN THIS TYPE OF ACCIDENT THE UTAH AUTOMOBILE NO-FAULT INSURANCE ACT §31-41-1 ET SEQ, U.C.A. (1953 AS AMENDED) SHOULD APPLY.

In Originally enacting the "Utah Automobile No-Fault Act, Utah Code Anno. §31-41-1 et seq. (1953 as amended) the State Legislature set forth as the primary purpose of this legislation the following:

"The purpose of this act is 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, preserving, however, the right of an injured person to pursue the customary tort claims where the most serious types of injuries occur." Utah Code Anno. § 31-41-2 (1953 as amended).

The act next sets forth certain definitions of terms (see §31-41-3 U.C.A. (1953 as amended)). The act then requires every owner of a motor vehicle to provide either insurance or some other approved security as defined by the act or as approved by the Utah insurance department. (See §31-41-4 and §31-41-5 U.C.A. (1953 as amended)).

Utah Code Anno. §31-41-6 (1953 as amended) then provides:

"-(1) Every insurance policy or other security complying with the requirements of subsection (1) of section 31-41-5 shall provide personal injury protection providing for payments to the insured and to all other persons suffering personal injury arising out of an accident involving any motor vehicle." (emphasis added)

The legislature next determined the types of recipients covered under the Act. In U.C.A. §31-41-7 the act provides:

"(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.

(b) Personal injuries arising out of automobile accidents occurring in this state sustained by any other natural person while occupying the described motor vehicle with the consent of the insured or while a pedestrian if injured in an accident involving the described motor vehicle.
(emphasis added)

Thus in reading all of this legislation, together there are two classes or categories of people who are covered by the No-Fault Act.

First, there is the insured (which is a defined term meaning the named insured...or other relative who reside(s) in the same household (see U.C.A. §31-41-3(4)) who is injured in an accident in this state involving any motor vehicle.

Second, are those injured people such as passengers occupying the described motor vehicle with the consent of the insured, or pedestrians if injured in an accident involving the described motor vehicle.

As will be shown later, the recognition of these separate categories of people entitled to no-fault benefits assists in understanding why the 1975 amendment to the No-Fault Act does not disqualify the plaintiffs from coverage under the Act.

It is the respondents' position that under U.C.A. §31-41-6(1) and 31-41-7(1)(a) (1953 as amended) that the plaintiffs only need show three (3) elements to be entitled to their no-fault benefits. These three elements are:

- (1) was Brent Ralph Coates an "eligible insured person";
- (2) did Brent Ralph Coates receive "bodily injuries"; and
- (3) was Brent Ralph Coates injured in an accident involving any motor vehicle.

Since the stipulated facts agree that Brent Ralph Coates was an "eligible insured person" and Brent Ralph Coates did receive "bodily injuries", the only question before this court is whether or not his injuries were caused by an accident involving any motor vehicle.

"Motor vehicle" is a defined term pursuant to the insurance contract and pursuant to Utah State law. The statute defines motor vehicle as "any vehicle of a kind required to be registered under Title 41, but excluding, however, motorcycles.

Assuming that the motorcycle Mr. Coates was operating (even though not owned by him) would be excluded from coverage, the fact remains that Mr. Coates was injured in an accident involving the use of a motor vehicle, that motor vehicle being the motor vehicle operated by Ferris Reeder.

This point was clearly understood by the trial court who noted that this accident involved two vehicles. While it is clear that the Coates' youth was occupying and riding upon a motorcycle, the defendant-appellant fails to understand that Ferris Reeder was operating a motor vehicle, and his motor vehicle is not excluded, and his motor vehicle caused the accident and injuries. Thus, under §31-41-6(1)

and §31-41-7(1) (a) the plaintiffs-respondents are entitled to coverage under their own policy because:

"Personal injuries [were] sustained by an insured when injured in an accident in this State involving any motor vehicle.

The appellants argue that the 1975 Legislature clearly intended to deny any no-fault benefits to motorcycle occupants in enacting an amendment to the No-Fault Act. However, neither the language of the amendment nor the debate surrounding the enactment of the amendment suggests such a result was desired, let alone achieved.

Prior to 1975 the term "pedestrian" meant:

"any natural person not occupying or riding upon a motor vehicle."

All the 1975 amendment did was to add the following language to the definition of a pedestrian:

"excluding, however, any natural person occupying or riding upon a motorcycle."

Thus as previously pointed out of the two categories of people entitled to benefits ("the insured person and his covered relatives injured in an accident involving any motor vehicle" and "non-insured occupants or pedestrians injured in an accident involving the insured motor vehicle") the amendment merely dealt with defining "pedestrians" injured in an accident involving an insured motor vehicle.

The reasons for this amendment were well articulated by the witnesses, senators and representatives who participated in the debate.

The people who testified talked of the inequality of allowing a motorcycle operator who did not choose to purchase no-fault or medical payment provisions on his motorcycle to then be able to collect no-fault benefits on the policy of a motor vehicle owner whose vehicle was involved in an accident with a motorcycle.

Senator Wilford Black [D] Salt Lake County, sponsored Senate Bill 45, the proposed amendment, and stated that the reason for the amendment was to prevent a motorcycle operator who wasn't insured from having a "free ride" on the insurance policy of an automobile driver who had no-fault and whose vehicle was involved in an accident.

Mr. Melvin Summerhays of the Utah State Insurance Commissioners Office testified on February 4, 1975 before the State Senate on Senate Bill 45 and again stated that the purpose of the bill was to prevent motorcycle operators who were not insured from collecting as "pedestrians" on an automobile owners policy. Mr. Summerhays stated:

"Now what we didn't anticipate and I'm sure the legislature didn't anticipate that we were making the motorcyclist the

same as a pedestrian and in making him a pedestrian, we gave him something for nothing...In other words, if he was in an accident with your vehicle now, if he was at fault or otherwise, he can run in to your car when you're sitting still and he has the benefits of your No-Fault Policy as a pedestrian...so that the real intent of this amendment we are talking about is to take the motorcyclist out of the pedestrian classification..."

Following several questions, Mr. Summerhays again reiterated that the purpose of the amendment was to exclude motorcyclists from the definition of pedestrian.

No one spoke in favor of nor did anyone mention that §31-41-7(1)(a) which provides benefits when a policy holder or his immediate relatives who are covered by his policy are involved in an accident involving any motor vehicle should be denied coverage under this amendment.

Mr. Carl Halbert and Mr. Keith McCune, insurance representatives, also spoke regarding the amendment. Again they stated that their sole purpose in urging the passage was to keep a motorcyclist who does not elect to insure himself under no-fault or under a medical payment policy from getting free coverage as a pedestrian under an automobile owners policy. They both testified that if a motorcyclist chose to do so, he could voluntarily buy a medical benefits and disability benefits policy.

In concluding the debate, Senator Black reiterated the reasons for his sponsorship of the Amendment and claimed that the present situation allowing motorcyclists "who are not paying a dollars worth of insurance towards personal injury protection" 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 next considered by the Utah House of Representatives wherein it was debated on February 12, 1975. Representative James Hansen, [R] Davis County, was the leading advocate for its passage before the House. Representative Hansen explained that all the bill was doing "was to take the motorcyclist out of the definition of a pedestrian".

Representative Hansen went on to explain that since a motorcyclist would not pay any "no-fault" premiums they should not be entitled to "free" benefits by being covered as pedestrians under a motor vehicle owner's policy. Mr Hansen further stated that if a motorcyclist desired to do so:

"He can go to an [insurance] company and he can purchase insurance: liability, medical, collision, comprehensive - whatever it is he wants to purchase for his own individual requirements and that is the reason behind the change in this no-fault bill."

Again, no one suggested that the first category of people as defined in 31-41-7(1)(a) should be denied coverage. As to this category of people to-wit those who purchase no-fault benefits and are injured in an accident "involving any motor vehicle" the 1975 Amendment left all coverages and benefits intact.

The House passed the Amendment and it became effective on May 13, 1975.

If the legislature really intended all motorcyclists to be "free game" and totally excluded from all no-fault benefits they could have done so very easily by amending §31-41-7(1)(a) to read:

"(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, [unless the insured is occupying or riding upon a motorcycle]."

Since all the legislature did was to change the definition of a pedestrian it is clear there was no legislative intent to deny benefits to insured people who were injured in an accident involving any motor vehicle.

POINT II

THE BASIC PURPOSE OF THE NO-FAULT
ACT WOULD BE THWARTED IF THIS COURT
DENIES COVERAGE TO THE PLAINTIFFS.

The basic purpose of the Utah Automobile No-Fault
Act is stated as follows:

"The purpose of this act is to require
the payment of certain prescribed bene-
fits in respect to motor vehicle accidents
through either insurance or other approved
security but on the basis of no fault,
preserving, however, the right of an injured
person to pursue the customary tort claims
where the most serious types of injuries
occur."

While it was the intention of the legislature to effectuate
certain savings in automobile insurance rates, it is clear
that the main purpose was to afford insurance coverage for
certain prescribed benefits irregardless of fault.

The plaintiffs and any similarly situated citizens
of this state really have no way to insure against the risk
of injury to their son other than through their own no-fault
policy.

Since their son was only test driving a motorcycle,
there was no way they could have purchased an insurance
policy to cover the risks. If their son had owned the
motorcycle and had failed to obtain coverage, both the

policy of insurance and the state statutes would have excluded coverage on a motor vehicle owned but not insured. (See U.C.A. §31-41-10 (1953 as amended)). Thus the only way to insure that medical payments and other benefits would be available would be to rule that the provisions of the act apply under this factual situation.

The appellants would apparently concede that had the plaintiff's son been injured in an accident involving Mr. Reeder's vehicle they would pay except for the fact he was on a motorcycle. Thus had Brent Coates been riding on a bicycle, unicycle, skate board, horse, donkey or elephant or any other means except a motorcycle he would have had protection. The appellants urge that though the plaintiffs purchased a no-fault policy as required by law and even though their son was injured and died in an accident involving a motor vehicle, just because he was on a motorcycle no benefits are available.

It is suggested that such a result is contrary to the purpose behind this act.

The respondents, also, claim that a denial of coverage would vitiate the contractual agreement between plaintiffs and defendants.

The insurance policy in effect provided:

"The Company agrees with the named insured, subject to all of the provisions in this endorsement and to all of the provisions of the policy except as modified herein, as follows:

SECTION 1

PERSONAL INJURY PROTECTION COVERAGE

The Company will pay personal injury protection benefits to or on behalf of each eligible injured person for:

- (a) medical expenses,
- (b) work loss,
- (c) funeral expenses, and
- (d) survivor loss

with respect to bodily injury sustained by an eligible injured person caused by an accident involving the use of a motor vehicle as a motor vehicle." (emphasis added) (see R.38 for copy of the insurance policy.)

Thus as previously pointed out, if the plaintiffs can show three (3) elements, they are entitled to insurance coverage. These three elements are: (1) was Brent Ralph Coates an "eligible insured person"; (2) did Brent Ralph Coates receive "bodily injuries"; and (3) was Brent Ralph Coates injured in an accident involving the use of a motor vehicle as a motor vehicle.

Since he was an "eligible insured person" and he received "bodily injuries" and he was injured in an accident involving a motor vehicle (the Reeder vehicle), the plaintiffs are entitled to coverage under their own policy.

If it could be considered that the insurance policy is unclear as to whether the basic benefits should apply, it is pointed out that Utah law clearly provides that automobile insurance policies must be construed to resolve doubts or uncertainties against the insurer which prepared and issued the policy. See Commercial Credit Corp. v. Premier Insurance Co. 12 Utah 2d 321, 366 P2d 476 (1961); see, also, American Cas. Co. of Redding Pa. v. Star Ins. Co. Ltd. 568 P2d 731 (Utah 1977).

Thus, even if there existed an uncertainty as to whether a rider of a motorcycle hit by another motor vehicle would be covered, all uncertainties would have to be resolved in favor of the insured.

POINT III

THE TRIAL COURT CORRECTLY APPLIED CASES
FROM OTHER JURISDICTIONS IN INTERPRETING
THE PROVISIONS OF THE UTAH AUTOMOBILE
NO-FAULT INSURANCE ACT.

Cases involving factual circumstances similar to the present case have been decided in a number of foreign jurisdictions. The vast majority of courts considering this question have ruled that no-fault benefits were payable

to the injured party occupying a motorcycle.

The defendant cites the case of Speakman v State Farm Mutual Automobile Insurance Company, 402 Atlantic 2d 123 (Md.1979) as purported authority for denial of coverage.

That case has two major differences from the case before this court. In the Speakman case the injured party was operating his own motorcycle. As an owner, he could insure his own vehicle if he had so desired, and thus protected himself from the risk of injury.

Mr. Brent Coates did not own the motorcycle he was riding. He inspected the motorcycle at Vesco's Sport Center and apparently requested to take it for a test drive. After traveling approximately 11 blocks northbound on Main Street, he was struck by the Ferris Reeder vehicle and killed. Thus, Mr. Brent Coates had no opportunity to insure himself other than the general coverage of his parent's policy.

Had the Speakman case occurred in Utah under the same facts as it did in Maryland and if the owner was insured by the same policy as the Coates were, the same result should have been reached in Utah as was reached in Maryland. This is due to the first exclusion listed in the Coates policy which states:

Exclusions

This coverage does not apply:

- (a) to bodily injury sustained by any person while occupying a motor vehicle which is owned by the named insured and which is not an insured motor vehicle." (Emphasis added)

The fact that Brent Ralph Coates was operating a motorcycle not owned by his parents or himself makes a great difference.

The second major difference is that the Speakman case was really a determination of the Statutes of the State of Maryland. In fact the court clearly defined the issue as follows:

"The appellant's automobile insurance policy included the following proviso with respect to PIP coverage:

'THIS INSURANCE DOES NOT APPLY
UNDER:

(j) COVERAGE P TO ANY PERSON WHO:

.

(4) SUSTAINS BODILY INJURY ARISING
OUT OF THE OWNERSHIP, MAINTENANCE
OR USE OF A MOTOR CYCLE OR MINI BIKE;'

The issue is whether under the Maryland Insurance Code, the appellee could legally make such an exclusion."

The Maryland Court concluded that such an exclusion was valid for an "owned" motorcycle. The insurance policy between the Coates and American Economy Insurance had no

such exclusion and thus the Speakman case is not really in point or even authority to support defendant's position.

The defendant-appellant cites the 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). Both of these cases dealt with factual circumstances similar to the present case, in both the court ruled that no-fault benefits were payable. Appellant attempts to dismiss these cases on the assertion that they really involve conflicts between the language of the policy and the language of the applicable statutes. Appellant fails to even note the most recent case decided by the New Jersey Court, that being Gerber v Allstate Insurance Co., 391 A.2d 1285 (N.J. App. 1978). In that case at page 1287 the court stated the following:

"...the fact that the injured insured is driving a motorcycle at the time of the accident does not in itself justify the denial of coverage."

(Hoglin and Harlan cases cited)

"From both of the above cases it is apparent that in order for an insured under an automobile policy to receive PIP benefits, the accident need only be one involving an automobile, even though the insured himself is driving a non-qualifying vehicle." (Emphasis added)

Thus the New Jersey Court on three separate occasions has consistently held that under facts similar to the present case, benefits were payable.

The trial court cited the case of Shoemaker v. National Ben Franklin of Michigan, 259 N.W.2d 414 (Mich. App.1977). Appellant makes the rash statement that it is beyond appellant's capacity to understand or explain how the Shoemaker case supports the trial court's ruling. The Shoemaker case involved a plaintiff who was injured while riding a motorcycle which collided with a farm tractor on a public highway. The plaintiff brought suit to recover no-fault benefits from his automobile insurance company. The trial court granted defendant's Motion For Summary Judgment and the appellate court ruled as follows:

"For an insurer to incur liability under (the statute) there must at a minimum be an accident involving a vehicle intended to be covered by (the statute)."

The clear implication of the Shoemaker ruling is that if either one of the vehicles involved in the collision had been a "motor vehicle" as defined by statute, then benefits would have been recoverable.

Appellant concedes that the later Michigan case of Piersante v. American Fidelity Fire Insurance Company, 278 N. W. 2d 691 (Mich. App. 1979), substantially supports the trial court's decision in the present case. Appellant

asserts that the statutory provisions relied upon in the Piersante case were substantially different from the Utah Statutes, but appellant makes no effort to demonstrate the differences. The Michigan Statute was similar to Utah's in that it defined "motor vehicle" in such a way as to exclude motorcycle. Additionally, the Michigan statute required payment of benefits for injury arising out of the use of a motor vehicle as a motor vehicle. The Michigan Court stated:

"This provision does not require that the insured be the driver of the motor vehicle involved in the accident. It only required that the injury arise out of the operation of a motor vehicle....

In the present case, plaintiff's injury arose out of the operation of the motor vehicle with which he collided. Unlike the situation in Shoemaker, the vehicle with which he collided was required to be and was insured under (the statute)."

Based upon this reasoning the court ruled that the defendant insurer must pay no-fault benefits to the plaintiff.

The trial court's opinion cited the Florida case of Negron v. The Travelers Insurance Company, 282 S.2d 28 (Fla. App. 1973). In its Brief appellant again rashly states that it is unable to explain how Negron is applicable here. In Negron the plaintiff was operating a vehicle (a tractor trailer owned by the United States Postal Service) not

defined as a "motor vehicle" by the Florida No-Fault Statute. Plaintiff's vehicle was involved in a collision with a motor vehicle. The Florida Court held that Negron's personal automobile insurance policy must pay no-fault benefits to him because the accident involved a "motor vehicle".

"There is no question that under the statement of facts the plaintiff's injury was caused by physical contact between a postal tractor-trailer and a motor vehicle."

The Negron case then, stands for the principal that only one "motor vehicle" need be involved in the collision for no-fault coverage to apply.

Finally, appellant cites the Florida case of Long Island Insurance Company v. Frank, 328 S.2d 542 (Fla. App. 1976). That case involved the question of whether or not the plaintiff might recover personal injury protection benefits from his own no-fault automobile insurance carrier as a result of injuries sustained while operating a motorcycle which collided with a motor vehicle. Appellant is correct in stating that the Florida Court held in favor of the insurance company, but appellant fails to advise this court that the reason for the holding was an interpretation of the Florida Statute. The applicable Florida Statute required the insurer of a motor vehicle to pay personal protection benefits for

"accidental bodily injury sustained in this state by the owner while operating a motor vehicle, or while not an occupant of a motor vehicle or motorcycle, if the injury is caused by physical contact with the motor vehicle."

The court ruled against the plaintiff because he was clearly occupying a motorcycle at the time of the collision. Appellant has spent much time talking about legislative intent. If the Utah Legislature intended to exclude motorcyclists in all cases, it could have done so by adopting language similar to the Florida Statute. The Utah Legislature did not do this, and appellant stretches the imagination to the breaking point by asking the court to rule that the Utah Legislature "intended" the same result as the Florida Statute even though it did not use that language.

CONCLUSION

The respondents respectfully suggest that the language of the Utah Automobile No-Fault Act requires payment of the prescribed benefits for an insured who is injured in an accident involving any motor vehicle. The 1975 legislature in amending the definition of pedestrian did not change that result.

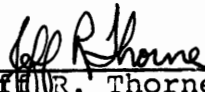
The basic policy of allowing a person to insure against the risks of injuries arising out of motor vehicle usage would be thwarted, unless the plaintiffs receive coverage under this policy.

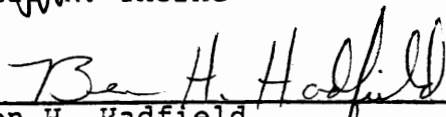
The decisions of other appellate courts have consistently afforded coverage under the same factual situations which existed in this case.

It is therefore urged that the trial court's decision be affirmed and that pursuant to U.C.A. §31-41-8 (1953 as amended) that the case be remanded for a determination of attorney fees and interest.

Respectfully submitted this 25th day of September, 1980.

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MAILING CERTIFICATE

Mailed two copies, postage prepaid, this 25th day of September, 1980, of the foregoing Brief of Respondent to Thomas N. Arnett, Jr. 32 Exchange Place, 600 Commercial Club Building, Salt Lake City, Utah 84111.



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