1990

Glenda Versluis v. Guaranty National Companies : Brief of Appellant

Utah Supreme Court

Theodore Kanell; attorney for respondent.
Robert Breeze; attorney for appellant.

BRIEF

BEFORE THE SUPREME COURT OF UTAH

GLENDA VERSLUIS,	)	
	)	
Plaintiff/Appellant,	)	
	)	
vs.	)	Case No. 900409
	)	
GUARANTY NATIONAL COMPANIES,	)	Category #16
	)	
Defendant/Respondent.	)	
	)	

BRIEF OF APPELLANT

APPEAL FORM ORDER OF THIRD DISTRICT COURT JUDGE PAT B. BRIAN STATING THE PLAINTIFF WAS NOT ENTITLED TO PIP DISABILITY BENEFITS

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PARTIES

THE PARTIES ARE AS THEY APPEAR ON THE CAPTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

JURISDICTIONAL STATEMENT

This Court has jurisdiction over this appeal pursuant to Section 78-2-2(3)(j), Utah Code Annotated 1953 as amended.

ISSUES ON APPEAL AND STANDARD OF REVIEW

The Appellant presents the following issues on appeal:

Does a PIP Claimant injured in an automobile accident have to be employed on the date of injury in order to qualify for PIP No Fault Disability benefits provided for under Section 31(a)-22-307(1)(b)(i), Utah Code Annotated?

Did the Trial Court err when it ruled that a PIP disability claimant must show both loss of gross income and loss of earning capacity to qualify for disability benefits?

The Utah Supreme Court accords no deference to the Trial Court's legal conclusions given to support the grant of a Motion for Summary Judgment, but review(s) them for correctness. Madsen v. Borthick 769 P2d 245 (Ut 1988).

DETERMINATIVE STATUTE

Section 31(a)-22-307 Utah Code Annotated, 1953 (as amended), reads in relevant part as follows:

> "(1) Personal injury protection coverages and benefits include: . . .
>
> (b)(i) the lesser of $250 per week or 85% of any loss of gross income and loss of earning capacity per person from inability to work, for a maximum of 52 consecutive weeks after the loss, . . .".

STATEMENT OF THE CASE

A. NATURE OF THE CASE

This is an Appeal from a Summary Judgment granted by the Trial Court who held that the injured housewife was not entitled to PIP No Fault benefits because she was not employed on the date of injury, and hence suffered no loss of gross income.

B. COURSE AND DISPOSITION OF PROCEEDINGS BELOW

The housewife made written demand on the insurance company for payment of PIP Disability Benefits. The insurance company refused. The housewife filed suit. On cross-motions for Summary Judgment the Trial Court ruled that the housewife was not entitled to benefits. This Appeal ensued.

C. STATEMENT OF MATERIAL FACTS

1. The housewife was injured in an automobile accident 2/1/89. (R. 2,11).

2. Defendant insurance company was the PIP No Fault insurer at the time of the accident relevant herein. (R. 2,11).

3. The housewife had not had actual employment for at least 13 months prior to the time of the accident. (R. 23, 55).

4. The housewife was starting to look for work at the time of the accident. (R. 23).

5. The housewife provided the insurer with documentation showing her prior earning capacity. (R. 35, 55).

6. The housewife was medically unable to work for one year following the accident. (R. 2).

SUMMARY OF ARGUMENT

A plain reading of Section 31(a)-22-307 and the application of simple arithmetic shows that the Court erroneously applied the Statute.

The Legislature of Utah would have used more specific language if it intended that only those actually employed on the day of accident were entitled to PIP Benefits.

ARGUMENT

POINT I.

TRIAL COURT FAILED TO PROPERLY APPLY STATUTE

Section 31A-22-307(1)(b)(i) requires a simple mathematical computation. The relevant statutory language reads: ". . . 85% of any loss of gross income and loss of earning capacity . . .".

.85 X (any loss of gross income + loss of earning capacity)= ? .

Under the facts of this case the next step in the computation is:

.85 X (0 + $180) = ? .

The next step is:

.85 X $180 = $153.

It is clear from the face of the statute that a Claimant need not have both loss of gross earnings and loss of earning capacity. Loss of either is sufficient to support a claim for PIP Benefits based on the mathematical formula setforth by the Legislature.

POINT II.

THE STATUTE DOES NOT REQUIRE THAT ONE BE EMPLOYED ON THE DAY OF THE ACCIDENT

A review of the authorities shows that no case law exists in Utah which is directly on point with the question presented on this appeal. A review of the authorities of neighboring states as well as the leading scholarly treatise shows that the other states that have addressed the issue have varied widely in their rulings.

In the Colorado case of Bondi v. Liberty Mutual Auto Ins. Co., 757 P 2d, 1101, 1102 (Colo. 1988) the Supreme Court of Colorado ruled that a Claimant who was employed at the time of the accident could not get No Fault benefits. However, it should be noted that the Colorado Court made much of the fact that the Colorado No Fault Statute only used the words "gross income". The words "loss of earning capacity" did not appear in the Colorado Statue. The clear implication of the Colorado Court's holding was that if the Legislature had used "loss of earning capacity" in the statute a different decision would have resulted.

In the Kansas case of Morgan v. State Farm Mutual Auto Ins. Co. 613 P 2d 684 (Kan. App. 1980), a case dealing with an unemployed person who had no prior employment history and 'ho firm offer of future employment", it was ruled that a claimant needed more than a mere hope of employment. It was held that a claimant would need to produce evidence sufficient to convince a tryer of fact that regular

employment was a reasonable expectation.

In Pennsylvania in the case of Marryshaw v. Nationwide Mutual Ins. Co., 452 A 2d 530 (1982) it was held at 532 that the absence of employment history was not a per se bar to entitlement to benefits. However, it should be noted that the Pennsylvania statute specifically provided for persons who had no employment history and allowed such persons to collect at the rate of 50% of normal benefits. (See also Minier v. State Farm Mutual Auto Ins. Co., 454 A 2d 1078 (1982).

The only thorough review of the issue presented on this appeal discovered by Appellant appears in Blashfield Automotive Law and Practice, revised 3rd edition, 1987, West Publishing Co. Section 314.9. Blashfield shows that the various States have requirements ranging from "must be employed", to "must have firm offer of employment", to "complete lack of earning history not being a per se bar to recovery". Even in those States which usually bar benefits if one is unemployed at the time of the injury are generally exceptions for those who are "temporarilly" unemployed, such as strikers or teachers.

Rules of Statutory Construction require that when the Legislature uses a word that has a well known legal meaning the Courts are to give the word its precise legal meaning when construing the statute. State v. Franklin 735 P 2d 34 (Ut 1989). There is a major difference between the words "gross income" and "earning capacity". The Legislature, had it intended that only those employed on the date of the accident would receive benefits "was free to use words such as 'actually employed', 'loss of gross income', wages lost from actual em-

ployment', or any of a number of other phrases which would have clearly setforth the idea that only those who have actual employment on the date of injury are entitled to PIP Disability Benefits".

CONCLUSION

The housewife involved in this case, although she had been unemployed for 13 months, had an earning capacity. The Statute provides for compensation for those who have suffered a loss of earning capacity. While the Statute itself does not provide much guidance, it is clear that the Legislature intended that accident victims be compensated.

WHEREFORE Appellant prays for relief as follows:

1. That the Order of the Trial Court granting Summary Judgment be set aside;

2. That this matter be remanded for such other and further proceedings as may be appropriate in the Trial Court.

DATED this 11 day of ~~December~~ February, ~~1990~~ 1991.

ROBERT BREEZE
Attorney for Plaintiff/Appellant

CERTIFICATE OF SERVICE

I certify that I mailed 4 of the foregoing Appellant's Brief to Theodore Kannell, Attorney, 4 Triad Center #500, Salt Lake City, Utah 84110 on the 11 day of ~~December, 1990~~ Feb 1991.