

1983

D. Dale Williams, Executive Director, Department Of Administrative Services, State of Utah, As Administrator of the Utah State Insurance Fund v. Allstate Insurance Company, William J. Bliss, Vera Bliss and the Second Injury Fund : Brief of Defendant And Respondent William J. Bliss And Veora Bliss

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IN THE SUPREME COURT
OF THE STATE OF UTAH

D. DALE WILLIAMS, Executive :
Director, Department of :
Administrative Services, :
State of Utah, as :
Administrator of the UTAH :
STATE INSURANCE FUND, : Supreme Court No. 19289

Plaintiff-Appellant, :

vs. :

ALLSTATE INSURANCE COMPANY, :
WILLIAM J. BLISS, VEORA BLISS :
and THE SECOND INJURY FUND, :

Defendant-Respondent. :

BRIEF OF DEFENDANT AND RESPONDENT
WILLIAM J. BLISS and VEORA BLISS

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BRIEF OF DEFENDANT-RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

WILLIAM J. BLISS and VEORA BLISS, respondents, are the real parties in interest in this appeal by the Utah State Insurance Fund from a partial Summary Judgment entered on the 5th day of May, 1983, by Judge Judith Billings in the Third District Court in and for Salt Lake County. Allstate Insurance no longer has any interest in the matter because they have made a compromise settlement of the death claim for the death of Karen Bliss with her parents.

DISPOSITION BY THE LOWER COURT

The trial Court held that William J. Bliss and Veora Bliss

were not obligated to pay to the State Insurance Fund the sum of \$18,720 from the settlement they received from Allstate. Karen's parents were not dependent upon her for support at the time of her death. The Court held, in effect, that since Karen's parents were not dependent upon her, and that since they had not made a claim for dependent's benefits, that the State Fund was not entitled to claim reimbursement from the sum received by Karen's parents as a result of the settlement of their wrongful death claim against the insurance carrier for negligent party responsible for the death of their daughter.

RELIEF SOUGHT ON APPEAL

Respondents, William J. and Veora Bliss, seek affirmance of the partial Summary Judgment entered in the District Court.

STATEMENT OF FACTS

While we do not dispute the fact statement contained in appellants' brief, it is felt that such statement is not adequate to clearly present the position of these respondents. Karen Bliss was employed as an airport shuttle driver and while she was employed, she was killed as a result of a motor vehicle collision. The facts of the collision indicate clear liability on the part of the other driver, who was covered by Allstate Insurance. Karen Bliss' parents were not financially dependent upon her at the time of her death. Karen Bliss came under Workmen's Compensation and her employer was covered by the

Insurance Fund. The State Insurance Fund paid the sum of \$18,720 into the Second Injury Fund. Mr. and Mrs. Bliss have now made a compromise settlement of their wrongful death claim with Allstate Insurance. The sum of \$18,720 from said settlement is now being held in trust pending the outcome of this appeal. The issue before the court is whether this sum is to go to the parents of Karen Bliss as damages for her wrongful death, or is to be paid to the State Insurance Fund.

ARGUMENT

POINT I

UNDER THE UTAH WORKER'S COMPENSATION ACT THE NON-DEPENDENT PARENTS OF THEIR CHILD, THE DECEASED WORKER, DO NOT RECEIVE COMPENSATION OR SURVIVORS BENEFITS FROM THE EMPLOYER'S COMPENSATION CARRIER, THEREFORE, THE PARENTS HAVE NO OBLIGATION TO MAKE ANY PAYMENT TO THE INSURANCE CARRIER FROM THE PROCEEDS OF THE SETTLEMENT OF THEIR WRONGFUL DEATH CLAIM.

The appeal of the State Fund is based upon the interpretation it places on the word "compensation". The statutory language which is controlling in this case is contained in this portion of Sec. 35-1-62, UCA.

"When any injury or death for which compensation is payable under this title shall have been caused by the wrongful act or neglect of a person other than an employer, * * * the officer, agent or employee of said employer, the injured employee, or in cause of death his dependents may claim compensation and the injured employee or his heirs or personal representative may also have an action for damages against the third person."

If compensation is claimed, and the insurance carrier obligated to pay compensation, then compensation carrier becomes a trustee of the cause of action against the third party responsible for the death, under such circumstances the compensation carrier has a statutory right, to be reimbursed for payments made to the dependents of the deceased worker.

In this case the parents of Karen Bliss have not claimed they were dependent upon their daughter and their counsel in the District Court proceeding before Judge Billings specifically stated that the parents were not making a claim for survivor benefits from the State Fund as a result of her death in the course of her employment. Based upon the representation, Judge Billings granted a partial Summary Judgment which held that the State Insurance Fund was not entitled to the reimbursement for the sum paid to the parents of Karen Bliss in settlement of the wrongful death claim of their daughter.

The position of Mr. and Mrs. Bliss is that where there has been no payment to them by the State Fund, no obligation to reimburse the Fund has been created. When the legislature used the word "reimburse" they meant the usual and normal meaning of this word. Webster's Collegiate Dictionary defines the word reimburse as follows: (reimburse - 1: to pay back to someone REPAY.)

This generally accepted definition of the word reimburse

includes the concept that something had been paid to the person from whom reimbursement is sought. In the case now before the Court State Fund paid no compensation and for this reason there should be no obligation to pay anything back to the Fund.

Respondent relies on Star v. Industrial Commission, 615 P.2d 436 (1980) to support its claim. The Star case deals with a totally different fact and law question. In the Star case the non-dependent mother of a workman killed in the course of his employment sought compensation. The Industrial Commission, after a hearing, determined she was not dependent upon her son and denied benefits. Then the mother appealed to the Supreme Court challenging the statutory disposition of death benefits under the Workmen's Compensation Act where the employee dies without dependents. The Supreme Court affirmed the order of the Industrial Commission and held that the mother, under circumstances where she could not establish that she was wholly or partially dependent upon her son, was not entitled to death benefits under the Compensation Act. The Court went on to say: "Her loss of love, affection and companionship of a dutiful child is not compensable under the act." Citing Farnsworth v. Industrial Commission, 534 P2 897.

This case now before the Court is the exact opposite of the Star case. In this case the settlement paid to the Bliss parents, by the negligent third party, which the State Fund seeks

to share, was paid for damages which are not covered by the Compensation Act, namely "the love, affection and companionship of a dutiful child". The ruling of the Court in the case of St. v. Industrial Commission, supra, has no application to the case now before the Court as it deals solely with a challenge to the constitutionality of the statutory provision requiring an insurance carrier to pay to the Second Injury Fund when a deceased worker leaves no dependents.

POINT II

THE PURPOSE OF SEC. 35-1-62 IS TO PREVENT A DOUBLE RECOVERY BY DEPENDENT HEIRS BY RECEIVING COMPENSATION FOR DEATH FROM THE COMPENSATION CARRIER AND ALSO OBTAINING WRONGFUL DEATH DAMAGES FROM A THIRD PARTY TORT FEASOR. THIS STATUTE HAS NO APPLICATION TO NON-DEPENDENT HEIRS WHO DO NOT RECEIVE WORKMEN'S COMPENSATION.

The State Fund is asking the court to reverse its decision in the case of Oliveras v. Caribou Four Corners, Inc., 598 P.2d 1111 (1979). Here, as in the Oliveras case, The Fund relies on subsection (2) of Sec. 35-1-62 UCA which provides:

(2) The person liable for compensation payments shall be reimbursed in full for all payments made less the proportionate share of costs and attorneys' fees provided for in subsection (1).

The Court clearly addressed and decided the issue now raised when in the Oliveras case on page 1324 it said:

"At first blush Paragraph (2) above seems to support the contention of the Fund that it is entitled to full reimbursement out of the wrongful death recovery even though the shares of those who received no compensation from the Fund must be invaded to provide for full reimbursement. However, Sec. 35-1-62, Paragraph 2, should be construed to avoid a conflict with Article XVI, Sec. 5, of the Constitution. Article XVI, Sec. 5, provides that the "amount recoverable shall not be subject to any statutory limitation," except where compensation "is provided for by law."

This provision is not consistent with the statutory construction that would allow the Fund to invade the shares of nondependent heirs who received no compensation. The nondependent heirs receive no compensation "provided for by law"; therefore, their share is not subject to diminution."

The controlling factor in this case is the same as in the Oliveras case Article XVI of the Constitution Sec. 5 which provides "The amount recoverable shall not be subject to any statutory limitation except where compensation is provided by law".

Under the facts of the case now before the Court Workmen's Compensation is not provided for by law. The non-dependent heirs of Karen Bliss, her parents, received no compensation from the State Fund. Therefore under the Oliveras decision their wrongful death recovery is not subject to diminution by the claim of the State Fund.

POINT III

RECOVERY UNDER THE WORKMEN'S COMPENSATION ACT IS LIMITED TO "DEPENDENTS". UNDER THE WRONGFUL DEATH STATUTE RECOVERY IS GRANTED TO HEIRS REGARDLESS OF DEPENDENCY.

Recovery for death whether incurred in the course of employment or otherwise was unknown in the common law.

The Workmen's Compensation Act Sec. 35-1-45 UCA requires that a person be able to prove dependency upon a deceased worker in order to receive compensation benefits.

The Wrongful Death Statute Sec. 78-11-7 UCA requires that a person establish that he is an heir in order to maintain a wrongful death action. The elements of damages in a wrongful death action, while they include the element of loss of support, cover many other losses in addition to that of support. A leading Utah decision on the elements of damage in a wrongful death action is In Re Behm's Estate, 213 P2 657 (1950). Justice Latimer, speaking for a unanimous court said at page 661:

"Besides the financial support furnished by the deceased to his or her family, the loss of affection, counsel and advice, the loss of the deceased's care and solicitude for the welfare of his or her family and the loss of the comfort and pleasure the family of the deceased would have received are all matters to be considered in assessing damages recoverable under 104-3-11, UCA, 1943. Pool v. Southern Pac. Co., 7 Utah 303, 26 P. 654; Evans v. Oregon Short Line R. Co., 37 Utah 431, 108 P. 638, Ann. Cas. 1912C, 259; Chilton v. Union Pac. Ry. Co., 8 Utah 47, 29 P. 963."

CONCLUSION

The carefully considered decision of the District Court denying reimbursement to the State Insurance Fund should be affirmed.

Respectfully submitted this 15th day of December, 1983.

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CERTIFICATE OF MAILING

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