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Robert E. Simmons, Charrie Brennan, David A. Williams, Louie A. Short, Patricia L. Castillo, Beth L. Hurst, and Jay Ezra Rea v. State of Utah, Department of Public Safety, Financial Responsibil-lty Division : Brief of Respondent

IN THE SUPREME COURT OF THE STATE OF UTAH

ROBERT E. SIMMONS, CHARRIE BRENNAN, DAVID A. WILLIAMS, LOUIE A. SHORT, PATRICIA L. CASTILLO, BETH L. HURST, and JAY EZRA REA,

Plaintiffs-Respondents,

vs.

STATE OF UTAH, Department of Public Safety, Financial Responsibility Division,

Defendant-Appellant.

Case No. 11771

BRIEF OF RESPONDENTS

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TABLE OF CONTENTS

Cases Cited

Page

Statutes Cited

Other Authorities

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BRIEF OF RESPONDENTS

STATEMENT OF THE NATURE OF THE CASE

This case involves the legality of the action of the Director of the Financial Responsibility Division of the Department of Public Safety of the State of Utah when he issued an order to the Respondents requiring

them, individually, to post a security bond or, in the alternative, suffer the suspension of their respective driver's licenses and motor vehicle registrations.

STATEMENT OF FACTS

Plaintiffs-respondents substantially agree with the Statement of Facts as made by the defendant-appellant, but would point out specifically that each of the accident or damage reports submitted was a report required to be submitted under applicable laws of the State of Utah. Plaintiffs-respondents object to and specifically point out that in Point II, Item 6, of the appellant's Brief (App. Br. 4), the enumeration of the six types of purported evidence in the records of these cases, specifically the case of Beth L. Hurst, it is alleged that there was a letter from the insured motorist to the Commission. No such letter was ever submitted in evidence to the trial court at the hearing on this matter. When the State first alleged that such a letter did exist in the file, the attorney for the plaintiffs again examined the file to find out if any such letter existed as a part of those files. As of June 19, 1969, twenty-one (21) days after the hearing of this matter, no such letter had been made a part of the file of Beth L. Hurst. There is at the present time no such letter in the record on appeal before this court. Plaintiffs-respondents attorney would object to any consideration of said letter the existence of which has never been demon-

strated. Accordingly, plaintiffs-respondents would maintain that in the consideration of this matter, there should be no belief that any such letter is a part of the facts in the Beth H. Hurst case, or is in any way an issue before this court. This brief will be written on that basis.

ARGUMENT

POINT I.

THE ACTION OF THE DIRECTOR OF FINANCIAL RESPONSIBILITY DIVISION OF THE DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF UTAH ORDERING THE RESPONDENTS TO EITHER POST A SECURITY BOND OR SUFFER SUSPENSION OF THEIR DRIVERS LICENSES AND VEHICLE REGISTRATIONS IS CONTRARY TO THE LAWS OF UTAH.

Section 41-12-5(a), Utah Code Annotated 1953, as pertinent to the issues before this court, states:

> "If twenty days after the receipt of a report of a motor vehicle accident within this state which has resulted in bodily injury or death, or damage to the property of any one person in excess of $100, the commission does not have on file evidence satisfactory to it that the person who would otherwise be required to file security under subsection (b) of this section has been released

from liability, or has been finally adjudicated not to be liable, or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments with respect to all claims for injuries or damages resulting from the accident, the commission shall determine the amount of security which shall he sufficient in its judgment to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each operator or owner. The commission shall determine the amount of security deposit upon the basis of the reports or other evidence submitted to it *but shall not require a deposit of security for the benefit of any person when evidence has not been submitted by such person or on his behalf as to the extent of his injuries or the damage to his property within fifty* (50) *days following the date of the accident.*" (Emphasis added)

The specific issue involved in this case primarily involves the impact of the language:

> "The commission[1] shall determine the amount of security deposit upon the basis of the reports or other evidence submitted to it *but shall not require a deposit of security for the benefit of any person when evidence has not been submitted by such person or on his behalf as to the extent of his injuries or the damage to his property within fifty* (50) *days following the date of the accident.*" (Emphasis added)

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1 "Commission" is defined in Section 41-12-1(a), Utah Code Annotated 1953, as "The department of public safety" and as used in this brief shall refer to the financial responsibility division of the department of public safety.

In the hearings below, the exhibits offered by the Director of the Financial Responsibility Division of the Department of Public Safety of the State of Utah to support the orders issued in each of these cases, (each respondent had received an order requiring in the alternative either the posting of a determined security bond or the suspension of his driver's license and motor vehicle registration) were:

1. The accident report filed by the investigating officer. (present in every file).

2. The accident report filed by the insured motorist. (present in every file).

3. The accident report filed by the uninsured motorist. (present in every file).

4. Body shop estimates of the cost of repair of the damages. (present in some of the files).

5. Personal injury reports filled in by injured drivers and/or passengers which were prepared and signed by a physician. (present in some of the files).

As each of these reports was offered into evidence, the attorneys for the plaintiffs objected that this was not evidence submitted by the injured party or on his behalf as is required by Sectoin 41-12-5, Utah Code Annotated 1953. It was submitted by the attorneys for the plaintiffs that this offered evidence was of a nature envisioned by the statutes as being already before the Commission and the language quoted required some-

thing other than reports which would be submitted to the Commission by the normal operation of the statutory scheme enacted by the Financial Responsibility Laws and Motor Vehicle Code, Traffic Rules and Regulations.

The accident report filed by the insured motorist and the accident report filed by the uninsured motorist are each required to be filed with the Commission by Section 41-6-35(a), Utah Code Annotated 1953. Subsection (b) of that statute further empowers the Commission to require a more complete description of the accident of the accident if the original report is not detailed enough. Not only are these comprehensive accident reports required of each driver within 5 *days* of the accident, but Section 41-6-36, Utah Code Annotated 1953, provides that should any driver be physically incapable of giving immediate report of accident there are alternative methods for that driver's report to be submitted. Section 41-6-35(b), Utah Code Annotated 1953, gives the Commission the power to require reports from witnesses. Subsection (c) of Section 41-6-35, Utah Code Annotated 1953, requires the report of the investigating offecer to be filed within twenty-four (24) hours of the accident. In summation, the reports of the investigating officer and each of the drivers must be filed with the Commission within five days of the accident and the Commission may then require additional reports from the drivers and any witnesses to the accident. These statutes give the Commission com-

prehensive power to investigate the causes of an accident both to provide a basis for the setting of security and to permit the examination of the causes of the accident for accident prevention studies.

The body shop damage estimates and personal injury reports were filed on forms submitted to the garages and doctors respectively by the Commission. This was done presumably pursuant to Section 41-6-35(b) and Section 41-6-39, Utah Code Annotated 1953, which empowers the agency to obtain reports from witnesses of accidents and requires garage keepers to submit reports of damaged vehicles. The Commission is, thereby, given the power and authority to investigate the consequences, that is, the personal injuries and property damage resulting from the accident.

Section 41-6-37, Utah Code Annotated 1953, spells out in detail the contents of the reports and sets forth the penalties for failure to answer these reports. That section, in conjunction with Section 41-6-40, Utah Code Annotated 1953, clarify the dual nature of the report program established. First, it is to allow the Department of Public Safety itself to carry out its study of accidents so as to enable it to suggest laws and implement regulations aimed at accident prevention. The second function, as is clear from Sections 41-6-40 and 41-12-4, Utah Code Annotated 1953, is, by means of the required reports, to enable the Commission to carry out its assigned task of determining the amount of security that must be required of any

uninsured driver not otherwise exempted from the requirement of posting security or suffering suspension of his driver's license and motor vehicle registration. In carrying out this function, the respondents would agree with the contention of the appellant (app. Br. pp 3-4) that the administrative agency should have broad powers in making its decisions. It is clear that the Legislature intended to give the Commission broad powers of investigation to effectuate their assigned duties.

All of this comprehensive statutory scheme for supplying information to the Commission had been established by the Legislature at the time it enacted the first clause of second sentence of Section 41-12-5, Utah Code Annotated 1953:

> "The commission shall determine the amount of security deposit upon the basis of the reports or other evidence submitted to it . . . "

However, the second clause of the sentence then goes on to provide:

> " . . . but it shall not require a deposit of security for the benefit of any person when evidence has not been submitted by such person or on his behalf as to the extent of his injuries or the damage to his property within fifty (50) days following the date of the accident."

This language clearly reflects an intention and an obvious meaning that the evidence required before an order requiring the depositing of security may be issued must

be something other than the reports required as heretofore described. This additional evidence must be submitted to the Commission before that agency is empowered to issue an order requiring either the posting of security in the amount that the reports had shown to be necessary or the suspension of the driver's license and motor vehicle registration of the uninsured driver. The key language revealing and expressing the basis of this requirement of additional evidence are the words: "for the benefit of any person." The Commission is not to be empowered to act until someone has acted for himself because the order requiring the posting of a security bond or suspension of driver's license and motor vehicle registration is envisioned as an action *for the benefit of the injured party* who was not protected by insurance. This intent and the language chosen to enact it clearly require that some affirmative act must be made by an injured party to show that he desires to invoke the benefits of the act. This fits logically into the whole statutory scheme established by the Financial Responsibility Laws and Motor Vehicle Code.

This logic of requiring an affirmative action of one of is to benefit from this statute may be seen by examining other parallel provisions of the Financial Responsibility Laws, Sections 41-12-13, 41-12-14, 41-12-15, 41-12-16, and 41-12-17, Utah Code Annotated 1953, which govern the situation after an injured party has secured a judgment against the responsible party. They provide

that after the action by the injured party of securing a judgment, he may take the additional affirmative action of enforcing his judgment by requiring the suspension of the driver's license of the judgment debtor who has not satisfied the judgment in addition to the usual methods of enforcing such a judgment. This action creates a right that may be asserted even over the bankruptcy laws of the United States of America. *Kassler v. Department of Public Safety,* 369 U.S. 153, 7 L.Ed2d 641, 82 S.Ct. 807 (1962).

In addition to this parallel statutory scheme, there is the consideration of the problem of the non-liable (unresponsible) uninsured motorist who has been involved in an accident.[2] If the Commission has the power to, or is required to, follow up receipt of the accident reports with a subsequent determination of damages and with an order to the uninsured driver to deposit the security or suffer suspension of driving privileges without requiring affirmative action by the injured party, great injustices could be done. A responsible, but insured motorist is thereby empowered to compound the injury to, and to add to the pressure upon, the uninsured motorist to force an insufficient settlement because the State is assisting him to do so. In fact, this did happen in two of the cases brought in the instant matter: David A. Williams #195,587 and Douglas Z. Bjork-

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2 The issue of whether or not the Commission has the power to decline to issue an order where it determines that an uninsured motorist is not liable is not before the Court and will not be pursued here.

man #186,415 (not appealed). Each of these men were struck by an uninsured motorist in such a way that there was no question, upon examining the facts, that the insured motorist was the liable party.[3] In each of these cases, the insurance company for the insured motorist used the order of the Commission to help attempt to force an unsatisfactory settlement on the uninsured motorist. In each case, they refused to give releases of liability until such time as a final settlement was made. As a result, but for the action of Judge Croft in this matter, each of these innocent but uninsured parties would have lost their driver's license in addition to the burden of the accident. Such an unfair result could not be intended by the legislature.

Examination of these facts indicates that contrary to the *proposition of the appellant* (App. Br. pp. 7-9), the action of the Commission under the construction of Section 41-12-5, Utah Code Annotated 1953, propounded by the State, would, in fact effectuate injustice. This is accentuated when one contemplates the consequences of requiring the affirmative act of submitting affirmative evidence before the Commission is empowered to issue an appropriate order. If an insured driver were to go to the Commission and submit proof of his injuries when *he* was the party really responsible for the accident and its consequences, he would open himself to additional liability for the economic loss to the uninsured

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3 Williams was struck by a driver who ran a red light and Bjorkman was struck by a driver making an illegal left turn.

party for that party's loss of his driving privileges in addition to liability for the personal injury and the property damages.

In his Memorandum Decision, Judge Croft stated clearly that this statute meant what it said. In pages 6-8 of his Memorandum Decision, he stated:

> " . . . *However,* the statute clearly provides that even when such determination is made, the Commission *shall not require a deposit* of security for the benefit of any person when evidence has not been submitted by such person or on his behalf as to the extent of his injuries or the damage to his property within 50 days following the date of the accident."
>
> "Under Section 41-12-5(b) the suspension lies only if the driver or owner fails to deposit the security required to be filed in the sum *so determined* by the Commission. Since, as set forth in the preceding paragraph, the deposit of security *shall not be required* by the Commission unless evidence has been submitted within the 50 day period by the injured person or on his behalf, it seems clear to me that the suspension will not lie until such evidence is submitted within the 50 day period."
>
> "This requires, in my opinion, something more than the filing by the injured person of the Section 41-6-35 report, for that report must be filed within five days, and if that was all that was intended by the legislature to be filed by the injured party, no further evidence would be required within the 50 day period. The statutes relating to this five-day report do not require the setting forth of information from which the

Commission is to determine the amount of security to be filed by another driver."

" . . . it seems to me that by the evidence-within-50-days requirement, the legislature intended that if the injured party intended to hold the other driver responsible for injuries or damage, such injured party must make some affirmative showing that he so intended by coming forward and filing with the department evidence as to the extent of his injuries, and that it was not the legislative intent that, absent such filing by or on behalf of the injured party, the Commission could or should go head and collect such evidence on its own initiative. It would do well, instead, to advise the respective drivers of the 50-day filing requirement."

"Even if an injured party concluded within 60 days after the accident that his own fault caused the accident, all of the reports and information collected by the Commission would be on hand from which a determination of damage might be made. To then say that even though the injured party did not intend to seek recovery for his damages, the Commission can nevertheless require security and suspend the license, if not filed, seems grossly unfair."

"The requirement of security is for the benefit of the injured driver, not the public, and to suspend the license of a driver when the other party manifests no intent to seek recompense for his injury by filing evidence serves no useful or public purpose.

"It is, therefore, my opinion that since, in the record before me, none of the other parties involved in the accident filed the required evidence

within the 50 day period, no security was required to be filed by the plaintiffs. Their licenses were not subject to revocation, and the orders suspending the same were invalid and contrary to law."

CONCLUSION

Section 41-12-5(a), Utah Code Annotated 1953, is very clear in its requirement that before the Commission is empowered to issue an order requiring the posting of a bond or the suspension of drivers license and vehicle registration of an uninsured driver the affirmative action of submitting evidence of his damages is required of the driver for whose benefit such an order will operate. The evidence must be submitted within fifty days of the accident and cannot be the reports required by Sections 41-6-35, 36, 37, 39 or 40, Utah Code Annotated 1953. No such evidence was presented to or was before the Commission when it issued any of the orders challenged in this action. Those orders were therefore, invalid, and their injunction by the District Court should be affirmed.

Respectfully submitted,

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