

1993

Winton Aposhian v. Steve Quimby : Reply Brief

Utah Court of Appeals

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930601 CA

IN THE UTAH COURT OF APPEALS

WINTON APOSHIAN,)	
)	
Plaintiff and Appellant,)	
)	
vs.)	
)	Case No. 930601 CA
STEVE QUIMBY,)	920900339
)	
)	
Defendant and Appellee.)	Priority No. 15
)	
)	

REPLY BRIEF OF APPELLANT WINTON APOSHIAN

APPEAL FROM AN ORDER AND JUDGMENT ENTERED IN THE
THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY,
STATE OF UTAH, THE HONORABLE RICHARD H. MOFFAT PRESIDING

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Utah

JUN 03 1994

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vs.)	
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STATUTES AND RULES

Utah Code Ann. § 31A-22-309:	1, 5
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DETERMINATIVE STATUTES AND RULES

The following statute is determinative of the question at issue in this appeal:

Utah Code Ann. § 31A-22-309:

(6) Every policy providing personal injury protection coverage is subject to the following:

(a) that where the insured under the policy is or would be held legally liable for the personal injuries sustained by any person to whom benefits required under personal injury protection have been paid by another insurer, including the Workers' Compensation Fund of Utah, the insurer of the person who would be held legally liable shall reimburse the other insurer for the payment, but not in excess of the amount of damages recoverable; and

(b) that the issue of liability for that reimbursement and its amount shall be decided by mandatory, binding arbitration between the insurers.

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN REDUCING THE JURY
VERDICT BY \$3000.00.

A. Plaintiff and Defendant Agreed Before Trial
That Plaintiff Incurred Reasonable Medical
Expenses of \$7,815 Due to the Accident.

Prior to trial, plaintiff and defendant stipulated to a summary of plaintiff's medical expenses resulting from the collision, which the jury later determined was caused by defendant's negligence. The stipulation provided:

The above-named parties, through their respective counsel, hereby stipulate that the summary of plaintiff's medical charges (a copy of which is attached as Exhibit "A") represent[s] reasonable charges for medical services plaintiff Winton Aposhian incurred as a result of the subject collision, and that these amounts may be entered into evidence without the need of further foundation.

(R. 114) (See Exhibit "A"). Now, defendant takes the position that the stipulation merely established that the medical charges incurred by plaintiff were reasonable and not that plaintiff's medical charges were reasonably and necessarily incurred.

Defendant fails to recognize that the stipulation stated that the reasonable charges were incurred "as a result of the subject collision." (Emphasis added.) Defendant's position is further undermined when the stipulation is read in conjunction with jury instruction eleven, which further evidences the parties' intent in entering into the stipulation. The trial

court instructed the jury that the parties agreed, "[t]he stipulated facts are as follows: \$7,815.00 in accident related medical expenses. Since the parties have so agreed, you are to take these facts as true for purposes of this case." (R. 174) (See Exhibit "B"). This illustrates that the parties intended to convey to the jury that due to the collision, plaintiff incurred reasonable medical expenses of \$7,815.00. Moreover, from this instruction, the jury could only derive that the parties had previously agreed that, as a matter of fact, this collision caused plaintiff to incur reasonable medical expenses of \$7,815.00.

Defendant repeatedly avers that the parties' stipulation did not remove from the jury's consideration the question of what amount of medical expense damages plaintiff was entitled. And, the jury ascertained plaintiff's medical expense damages to be only \$4,000.00.

It is impossible at this stage to "know" what the jury intended or how it arrived at the figure of \$4,000.00 for plaintiff's medical expense damages. It is plaintiff's position, however, that the exact effect of the parties' stipulation, presented to the jury in the form of both a jury instruction and the stipulation itself, was to remove from the jury's consideration the question of what amount of medical expense damages plaintiff was entitled. Jury instruction eleven conveyed to the jury in clear, precise language that the parties had agreed that plaintiff incurred \$7,815.00 in medical expenses

stemming from the collision. It emphasized twice that the amount of medical expenses stipulated to were to be taken as true by the jury. The jury instruction further informed the jury that by virtue of the parties stipulating to the amount of plaintiff's medical expenses, it is "possible to save much time." (R. 174) (See Exhibit "B"). Based on the instruction, the jury should have understood the court's instruction to mean only that because the parties had previously reached an agreement on the amount of plaintiff's medical expenses incurred because of the collision, the jury must take the stipulated amount as true and not "waste" time considering an issue not before them.

In light of jury instruction eleven's clarity, a logical explanation for the jury awarding plaintiff only \$4,000.00 is that the jury understood plaintiff would receive \$7,815.00 in medical expense damages as already stipulated to by the parties, and then awarded another \$4,000.00 to him for future or additional medical expenses over and above the stipulated amount. That notwithstanding, the jury awarded plaintiff only \$4,000.00 in medical expense damages.

In short, plaintiff and defendant agreed before trial that plaintiff incurred reasonable medical expenses of \$7,815.00 due to the collision, which was caused by defendant's negligence. The trial court conveyed the stipulated facts as true, effectively removing from the jury's consideration the question of plaintiff's medical expense damages.

B. The Jury Verdict Did Not Contemplate Plaintiff's Previously Compensated Damages.

The trial court erred in reducing the jury verdict of \$4,000.00 for medical expense damages by \$3,000.00. In making this determination, this Court should apply equitable principles.

Here, the trial court reduced the jury verdict to offset PIP benefits previously paid by plaintiff's no-fault insurer. Plaintiff does not dispute the well settled proposition that he is not entitled to previously compensated damages. See Allstate Ins. Co. v. Ivie, 606 P.2d 1197, 1203 (Utah 1980). However, plaintiff maintains the jury verdict of \$4,000.00 for medical expense damages did not reflect previously compensated damages. Instead, it represented damages suffered over and above the PIP benefits paid by plaintiff's no-fault insurer. See Dupuis v. Nielson, 624 P.2d 685, 687 (Utah 1981). Thus, the trial court's reduction of the medical expense damages award was improper.

When liability is established, as in the present case, plaintiff's no-fault insurer has an equitable right to reimbursement from defendant's insurer. Utah Code Ann. 31A-22-309(6)(a). Plaintiff's no-fault insurer's right of reimbursement through subrogation must be pursued in an arbitration proceeding against defendant's insurer. Utah Code Ann. 31A-22-309(6)(a); Allstate, 606 P.2d at 1203.

Subrogation is an equitable doctrine governed by equitable principles. Hill v. State Farm Mut. Auto. Ins. Co.,

765 P.2d 864, 866 (Utah 1988). Plaintiff must be made whole before his no-fault insurer is entitled to any portion of plaintiff's recovery. Id.; Transamerica Ins. Co. v. Barnes, 29 Utah 2d 101, 505 P.2d 783, 786 (Utah 1972); Lyon v. Hartford Accident & Indem. Co., 25 Utah 2d 311, 480 P.2d 739, 744 (Utah 1971). Plaintiff was not made whole by the jury verdict awarding only \$4,000.00 in medical expense damages. The parties' stipulation and the subsequent jury instruction more than sufficiently signify that the parties expected plaintiff to be awarded at least \$7,815.00 in medical expense damages. The trial court's reduction of the jury verdict by \$3,000 effectively entitled plaintiff's no-fault insurer to a portion of plaintiff's recovery before plaintiff was made whole. Thus, the trial court erred in reducing the jury verdict of \$4,000.00 for medical expense damages by \$3,000.00.

CONCLUSION

The trial court erred in reducing the jury verdict by \$3,000.00. Before trial, plaintiff and defendant stipulated that plaintiff incurred reasonable medical expenses of \$7,815.00 due to this collision. The trial court conveyed the stipulated facts as true, effectively removing from the jury's consideration the question of plaintiff's medical expense damages.

The jury verdict of \$4,000.00 for medical expense damages did not include previously compensated damages. In reducing the jury verdict by \$3,000.00, the trial court imparted

a portion of plaintiff's recovery to plaintiff's no-fault insurer.

Based on the above arguments and plaintiff's prior brief, plaintiff/appellant, Winton Aposhian asks this Court to reverse the trial court's ruling and reinstate the jury verdict awarding plaintiff a total of \$9,000.00 in damages.

RESPECTFULLY SUBMITTED this 5th day of June, 1994.

SIEGFRIED & JENSEN



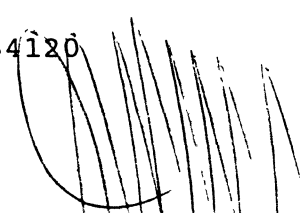
John Farrell Fay, Esq.

Attorney for the Plaintiff/Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21st day of June, 1994, two copies of the foregoing **REPLY BRIEF OF APPELLANT WINTON APOSHIAN** were mailed, postage fully prepaid, to:

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EXHIBIT "A"

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY


STATE OF UTAH

-----ooo0ooo-----
WINTON APOSHIAN,)
) STIPULATION TO SUMMARY
Plaintiff,) OF MEDICAL CHARGES
)
-vs-) Civil No. 920900339 PI
)
STEVE QUIMBY,) Judge Richard Moffat
)
Defendant.)
-----ooo0ooo-----

The above-named parties, through their respective counsel, hereby stipulate that the summary of plaintiff's medical charges (a copy of which is attached as Exhibit "A") represent reasonable charges for medical services plaintiff Winton Aposhian incurred as a result of the subject collision, and that these amounts may be entered into evidence without the need of further foundation.

DATED this 26th day of January, 1993.

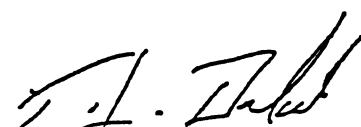
SIEGFRIED & JENSEN



John Farrell Fay
Attorneys for Plaintiff

DATED this 19 day of January, 1993.

HANSON, EPPERSON & SMITH



T.J. Tsakalos
Attorney for Defendant

EXHIBIT "B"

INSTRUCTION NO. 11

Before the trial of this case, the Court held a conference with the lawyers for the parties. At this conference, the parties entered into certain stipulations or agreements, in which they agreed that facts could be taken as true without further proof. By this procedure, it is often possible to save much time.

The stipulated facts are as follows:

\$7,815.00 incurred in accident related medical expenses.

Since the parties have so agreed, you are to take these facts as true for purposes of this case.