

1993

Winton Aposhian v. Steve Quimby : Brief of Appellee

Utah Court of Appeals

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930601 CA

IN THE UTAH COURT OF APPEALS

WINTON APOSHIAN,)	
)	
Plaintiff/appellant,)	
)	
vs.)	Case No. 930601 CA
)	
STEVE QUIMBY,)	
)	
Defendant/appellee.)	Priority No. 15

BRIEF OF APPELLEE STEVE QUIMBY

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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FILED

DEC 12 1994

COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

WINTON APOSHIAN,

Plaintiff/appellant,

vs.

STEVE QUIMBY,

Defendant/appellee.

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<u>Laub v. South Central Utah Telephone Ass'n</u> , 657 P.2d 1304 (Utah 1982).4,6,7
<u>State v. Rio Vista Oil, Ltd.</u> , 786 P.2d 1343 (Utah 1990).1

STATUTES AND RULES:

<u>Utah Code Ann.</u> , § 31A-22-309 (Supp. 1992). <i>passim</i>
<u>Utah Code Ann.</u> , § 78-2-2(3)(j) (1991).1
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Rule 24, <u>Utah Rules of Appellate Procedure</u> (1992).2

JURISDICTION

Jurisdiction is conferred upon the Utah Court of Appeals to hear this matter pursuant to Utah Code Ann., § 78-2-2(3)(j) (1991).

STATEMENT OF ISSUE PRESENTED FOR REVIEW

Did the trial court err in granting defendant's Motion for PIP Setoff and ordering that \$3,000.00 be deducted from plaintiff's judgment totalling \$9,000.00 in special and general damages when the parties' stipulation was limited to the fact that the \$7,815.00 in medical charges represented reasonable charges for the medical services incurred by plaintiff as a result of the subject collision and did not further provide that the medical treatments were necessary or that the \$7,815.00 amount would reasonably compensate Plaintiff for his medical expenses?

This case presents a question of statutory interpretation involving the application of Utah Code Ann., § 31A-22-309(6) (Supp. 1992). The appellate court accords the trial court's statutory interpretations no particular deference but assesses them for correctness. State v. Rio Vista Oil, Ltd., 786 P.2d 1343, 1347 (Utah 1990).

DETERMINATIVE AUTHORITIES

Utah Code Ann., § 31A-22-309(6) (Supp. 1992), set forth below, is determinative of the question at issue in this appeal:

(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 Workmans' Compensation Fund of Utah, the insurer of the person who would be 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.

STATEMENT OF THE CASE

Defendant/appellee, Steve Quimby, agrees with the statement of the case made by plaintiff/appellant, Winton Aposhian, to the extent that it is supported by the record and, in addition, pursuant to Rule 24(b), Utah R. App. P. (1992), makes the following statement of facts relevant to the issues presented for review:

1. Plaintiff's no-fault insurer, State Farm Mutual Automobile Insurance Companies, paid Plaintiff \$3,000.00 for PIP insurance benefits prior to the trial of this action [T. 219].

2. Windsor Insurance Group was Defendant's insurance carrier. [T. 215-219].

3. Windsor Insurance Group received a PIP subrogation claim notice from State Farm Mutual Automobile Insurance Companies, claiming reimbursement for the \$3,000.00 it paid to plaintiff. [T. 215-219].

4. The trial court ordered that the jury verdict of \$4,000.00 for medical expense damages be reduced by \$3,000.00, representing the amount of the PIP subrogation claim of State Farm

Mutual Automobile Insurance Companies against Windsor Insurance Group. [T. 268-269].

SUMMARY OF ARGUMENT

Utah Code Ann., § 31A-22-309(b) (Supp. 1992), and relevant case law clearly provide that the trial court's reduction of the \$4,000.00 jury verdict for medical expense damages by \$3,000.00, the amount of medical expense damages for which plaintiff had been previously compensated by PIP benefits by his own no-fault insurer, was the proper process to follow in order to prevent a double recovery by plaintiff. Plaintiff thereby received exactly what the jury determined he should to compensate him for the medical expenses he incurred. Plaintiff's arguments on appeal are faulty because their only support lies in the erroneous assertion that the parties stipulated to the amount of medical expense damages he should receive, when in fact the stipulation established only that the medical charges incurred by plaintiff "represent[ed] reasonable charges for medical services... incurred as a result of the subject collision, and ...may be entered into evidence without the need of further foundation."

ARGUMENT

POINT I. THE TRIAL COURT'S ORDER REDUCING THE JURY VERDICT BY \$3,000.00, REPRESENTING THE PIP SUBROGATION CLAIM, WAS PROPER AND SHOULD BE AFFIRMED.

Plaintiff/appellant, Winton Aposhian ("Plaintiff"), describes the issue he advances on appeal as being one of statutory

interpretation involving Utah Code Ann., § 31A-22-309(6) (Supp.1992), which provides:

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 injury 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.

Defendant/appellee, Steve Quimby ("Defendant"), submits that § 31A-22-309(6) provides authority for the \$3,000.00 reduction in the ultimate award ordered by the trial court judge in this case. Plaintiff contends that in cases such as this where the injured party has received less than the amount of damages he prayed for and anticipated, § 31A-22-309(6) should be construed to produce a result contrary to the rule that "a tortfeasor is not personally liable to the injured insured for special damages previously compensated by PIP benefits from the no-fault insurer." Laub v. South Central Utah Telephone Ass'n, 657 P.2d 1304, 1307 (Utah 1982).

The linchpin upon which Plaintiff's argument turns is his mischaracterization of the scope and meaning of the Stipulation to

Summary of Medical Charges and jury instruction number 11. Defendant did not stipulate that \$7,815.00 was the correct amount of damages to be awarded Plaintiff for medical expenses. The Stipulation to Summary of Medical Charges stated:

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.

[T. 114 (Addendum at "A")]. The agreement that the charges for medical services incurred were reasonable and that no foundation was necessary is not the functional equivalent of an agreement that those charges were reasonably and necessarily incurred. The jury that heard this case ascertained the amount of medical expense damages to which plaintiff was entitled. [T. 206 (Addendum at "C")]. The jury was instructed: "\$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." [T. 174 (Addendum at "B")]. They awarded Plaintiff \$4,000.00. It is that "judicial ascertainment of damages" that is the benchmark from which the analysis of the issue before this court must proceed.

Utah law clearly provides that the trial court's reduction of the ultimate judgment by the amount of the PIP benefits paid by plaintiff's insurer was proper. "[T]he tort-feasor's liability insurer, in fulfilling its duty to respond to the claims of the

insured party to the limits of its policy, stands in the shoes of its insured and pays on the basis of its insured's personal liability to the tort victim; this personal liability does not include PIP payments." Allstate Insurance Co. v. Ivie, 606 P.2d 1197, 1203 (Utah 1980).

[P]revention of double recovery is one of the purposes of the Utah Automobile No-Fault Insurance Act. And in keeping with that purpose, we recently upheld a trial court's reducing the special damages of a judgment by the amount of damages previously compensated by PIP benefits. Dupuis v. Nielsen, Utah, 624 P.2d 685 (1981). Dupuis followed naturally from our holding in Allstate Insurance Co. v. Ivie, Utah, 606 P.2d 1197 (1980), that a tortfeasor is not personally liable to the injured insured for special damages previously compensated by PIP benefits from the no-fault insurer, and that the injured party should therefore not be allowed even to plead for those damages. However, if a plaintiff does improperly plead for previously compensated damages and they are allowed to be included in the judgment, the court should, at the conclusion of trial, either on its own initiative or on motion of a party, reduce the judgment by the amount of those previously compensated damages, and thereby prevent double recovery. (emphasis added).

Laub, 652 P.2d at 1307. The procedure followed by the trial court in this case was precisely what was sanctioned by the Utah Supreme Court in Laub.

Plaintiff attempts to dismiss the clarion mandate of Laub with the patently false assertion that he did not recover the full amount of medical expense damages he believes he was entitled to by virtue of the Stipulation to Summary of Medical Charges. What

Plaintiff fails to acknowledge is that the jury, after receiving evidence of Plaintiff's medical expense damages, determined that only \$4,000.00 of those medical expenses were reasonably and necessarily incurred and a proximate cause of the accident. The jury simply did not award Plaintiff the full amount he prayed for, and Plaintiff has not challenged the jury's determination. Plaintiff's argument that "[T]he verdict did not award plaintiff amounts for which he had been 'previously compensated,' "because the jury's award fell more than \$3,000.00 short of his expectations is disingenuous at best. (Appellant's Brief at 10). It fails to support his contention that Laub is factually distinguishable from the case at bar.

Plaintiff's attempt to distinguish Allstate Insurance Co. v. Ivie is also an inapposite. The trial of this action produced a judicial determination that Plaintiff was entitled to \$4,000.00 in compensation for his medical expenses. Plaintiff was paid that amount; \$3,000.00 in PIP payments and \$1,000.00 by way of the ultimate award of the trial court. According to the jury's verdict, he has been made whole. Allstate Insurance Co. v. Ivie dedicates no different result, and Plaintiff's single argument distinguishing his case from Allstate Insurance Co. v. Ivie fails because the Stipulation to Summary of Medical Charges did not remove from the jury's consideration the question of the amount of medical expense damages to which plaintiff was entitled.

In his discussion of Dupuis v. Nielsen, 624 P.2d 685 (Utah

1981), Plaintiff makes the contumacious and completely unsupportable assertion that "[T]here is no dispute that, by the jury's verdict, Plaintiff's damages had been reduced by more than the amount of the PIP payments he has received." (Appellant's brief at 11). This further stretch of Plaintiff's mischaracterization of the facts is belied by the fact that the jury determined Plaintiff's medical expense "damages" to be \$4,000.00 and that the court properly reduced that amount by \$3,000.00, the amount of the PIP payments. Plaintiff's medical expense "damages" were never determined to be \$7,815.00. His expectation of receiving that amount hinged upon his proving to a jury that it was appropriate. The "double reduction" plaintiff complains of and which fosters his reliance on Dupuis did not occur.

If this court were to accept Plaintiff's mischaracterization of the scope and meaning of the Stipulation to Summary of Medical Charges, the effect would be to confer upon him the "double recovery" that Hill v. State Farm Mut. Aut. Ins. Co., 765 P.2d 864, 866 (Utah 1988) proscribes:

When the amount of damages incurred by the insured has been judicially ascertained, the extent of the subrogation right of the insurer is usually undisputed. The insured is not entitled to double recovery, and the insurer is equitably entitled to recover any amounts from the insured that the insured recovered from the tort-feasor.

The jury ascertained Plaintiff would be made whole by receiving \$4,000.00 for the medical expenses he incurred. If Plaintiff

disputes that fact, he should have filed a motion for an additur or a new trial. See Rule 59, Utah Rules of Civil Procedure; Dupuis 624 P.2d at 686. Because he did not avail himself of that remedy, he cannot now claim he is entitled to any compensation for medical expense damages beyond the \$4,000.00 awarded by the jury. The trial court's reduction of that award by \$3,000.00, representing the amount of the PIP subrogation claim Plaintiff's no-fault insurer, State Farm Mutual Automobile Insurance Companies, filed with Defendant's insurer, Windsor Insurance Group, was proper under § 31A-22-309(6) and Utah case law.

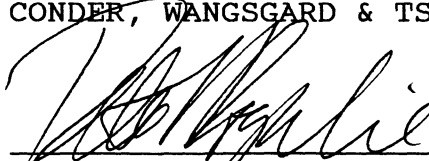
CONCLUSION

The jury awarded Plaintiff \$4,000.00 for his medical expense damages. He received that amount through the \$3,000.00 PIP benefits he was paid prior to trial and the additional \$1,000.00 ultimately awarded to him after trial. Under the authority of § 31A-22-309(6) and Utah case law, the trial court properly reduced the \$4,000.00 medical expense damages verdict by \$3,000.00, which represented the PIP benefits Plaintiff had previously received from his own insurer. The parties' Stipulation to Summary of Medical Charges did not require the jury to award Plaintiff \$7,815.00, and his argument before this court rests entirely on the incorrect assertion that it did. His argument is therefore without merit. Defendant requests that this court affirm the trial court's order reducing the medical expenses verdict by \$3,000.00, the amount of

the PIP benefits paid by plaintiff's insurer.

RESPECTFULLY submitted this 12th day of January, 1994.

CONDER, WANGSGARD & TSAKALOS

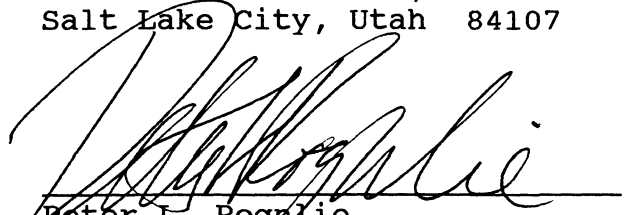


T. J. Tsakalos
Peter L. Rognlie
Attorneys for Defendant/Appellee,
Steve Quimby

CERTIFICATE OF MAILING

I, Peter L. Rognlie, certify that on the 12th day of January, 1994, I served 2 copies of the attached Brief of Appellee Steve Quimby, upon John Farrell Fay and Jim Mouritsen, counsel for the appellant in this matter, by mailing the copies to them by first-class mail, with sufficient postage prepaid, to the following address:

John Farrell Fay
Jim Mouritsen
SIEGFRIED & JENSEN
310 East 4500 South, Suite 620
Salt Lake City, Utah 84107



Peter L. Rognlie
Attorney for Defendant/Appellee

THIRD DISTRICT COURT
Third Judicial District

FEB 22 1993

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R. G. Grotas
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

WINTON APOSHIAN,
Plaintiff,

-VS-

STEVE QUIMBY,
Defendant.

STIPULATION TO SUMMARY
OF MEDICAL CHARGES

Civil No. 920900339 PI

Judge Richard Moffat

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

[Signature]
John Farrell Fay
Attorneys for Plaintiff

DATED this 19 day of January, 1993.

HANSON, EPPERSON & SMITH

[Signature]
T.J. Tsakalos
Attorneys for Defendant

Exhibit "A"

0114

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.

FEB 25 1993

SALT LAKE COUNTY

R. G. Golepas
Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----ooo0ooo-----

WINTON APOSHIAN,)	SPECIAL VERDICT FORM
)	
Plaintiff,)	
)	
vs.)	Civil No. 920900339 PI
)	
STEVE QUIMBY)	Judge Richard Moffat
)	
)	
Defendants.)	

-----ooo0ooo-----

LADIES AND GENTLEMEN OF THE JURY:

Please answer the following questions. If you are persuaded by the evidence in favor of the issue presented, answer "Yes." If you are not persuaded, answer the question "No." In order to answer each question, the agreement of only six jurors is required. Any six jurors may agree on any question. The same six jurors are not required to agree to each question before moving on.

We, the jury, find by a preponderance of the evidence the indicated answers to the following questions:

1. Was Defendant Steve Quimby negligent in causing the collision of November 28, 1990?

Answer: Yes X No _____

If you have answered "Yes" to the above question please go on. If you have answered the above question "No" you will not answer the remaining questions but will simply sign the verdict and inform the bailiff.

2. Did Plaintiff Winton Aposhian sustain personal injuries arising out of the automobile collision of November 28, 1990?

Answer: Yes X No

3. Was the negligence of Defendant Steve Quimby a substantial factor in causing the injuries which Winton Aposhian suffered in the collision on November 28, 1990?

Answer: Yes X No

4. What amount of damages, if any, do you find Plaintiff Winton Aposhian sustained as a proximate result of the injuries he sustained in the collision of November 28, 1990?

Medical expenses: 4,000

General damages:

(Pain, Suffering &
Reduction of quality of life, etc.) 5,000

TOTAL: 9,000

DATED this 25 day of February, 1993.

Michael J. Otter
Foreperson