1976

Donald J. Jamison Sr. v. Utah Home Fire Insurance Company : Brief of Respondent

Utah Supreme Court

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BRIEF

IN THE SUPREME COURT OF THE STATE OF UTAH

DONALD J. JAMISON, SR., et al.,	)	
Plaintiffs and Respondents,	)	Case No.
vs.	)	14523
UTAH HOME FIRE INSURANCE COMPANY,	)	
Defendant and Appellant.	)	

RESPONDENT'S BRIEF

Appeal from the Judgment of the

Third Judicial District Court, Salt Lake County

Honorable Stewart M. Hanson, Jr.

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RESPONDENT'S BRIEF

NATURE OF THE CASE

Respondent, Donald Jamison, Jr., was injured in an automobile accident and sought to recover $12.00 per day in lieu of reimbursement for expenses for services, together with attorneys fees, interest and costs, from the Insurance Company, Utah Home Fire, under Utah's No-Fault Law.

DISPOSITION IN THE LOWER COURT

The Trial Judge, Honorable Stewart M. Hanson, Jr., found in favor of Plaintiff and awarded $12.00 per day for

112 days, from November 19, 1974, to March 11, 1975, the period of disability of Plaintiff, totalling $1,344.00. In addition, the Trial Court allowed $475.00 as attorneys fees, interest at 18% per annum on the $1,344.00 commencing from May 22, 1975 until paid, and costs of Court.

STATEMENT OF FACTS

In addition to the facts stated by counsel for appellant, it should be noted that Plaintiff, Donald Jamison, Jr., by reason of the accident and injuries bringing him within Utah's No-Fault Law, was unable to perform his usual household duties and services for a period of 112 days, November 19, 1974, to March 11, 1975 (R - 23). Furthermore, demands were made upon Defendant through their agent, to pay the benefits under the No-Fault Law and a form, provided by Defendant's agent, was submitted by Plaintiff on April 16, 1975 (R - 16), and more than 35 days elapsed before any benefits were paid to Plaintiff, but no benefits have been paid to date involving the "Disability benefits" referred to under the statute 31-41-6 (b)(ii).

Certain medical benefits were paid by Defendant company for Plaintiff by the middle of June, 1975, and a stipulation was entered into reserving Plaintiff's rights as to the $12.00 per day, attorneys fees and interest issues under the No-Fault laws. (Exhibit 3)

At the trial it was further stipulated that the failure to pay the disability benefits ($12.00 per day) by Defendant is part of the claim, or benefits, referred to in 31-41-8 of the act for which interest and attorneys fees may be applicable. (R 6-8)

Also, counsel for Plaintiff performed considerable legal services in this case, the reasonable value of which does not seem to be in dispute. (R-41-42)

ARGUMENT

POINT I.

THE TRIAL COURT CORRECTLY INTERPRETED SECTION 31-41-6 (b)(ii) IN ALLOWING $12.00 PER DAY TO PLAINTIFF IN LIEU OF REIMBURSEMENT FOR EXPENSES FOR SERVICES, UNDER THE UTAH AUTOMOBILE NO-FAULT INSURANCE ACT.

The Respondents could not better submit an argument against Appellant's Point I than to quote the studied and well reasoned comments of Judge Stewart M. Hanson, Jr. following submission of the case for the Court's decision, beginning at Page 44 of the record, Judge Hanson reasoned as follows:

> "THE COURT: Of course, in the State of Utah we do not have a legislative history such as the Congressional Record or the laws and record of proceedings that Congress has, so we don't always have the best information as to what the Legislature had in mind when it enacted any particular provision. But I'm sure that if there is anything that is clear from the legislative history

from the no-fault legislation, it is first of all and foremost of all that it was not insurance provisions, but rather, it was the insurance carriers who were pushing that, and this was done with the representation that in the long haul the costs of insurance would be considerably less and that this would be in the interest of Utah. It may not have turned out exactly that way, but that was the original intent, I am sure, when the insurance carriers were lobbying for this particular legislation. Now, the effect of this legislation is really reflected in Section 31-41-9 which says, 'No person for whom direct benefit coverage is provided for in this Act shall be allowed to maintain a cause of action for general damages arising out of personal injuries alleged to have been caused by an automobile accident, except where there has been caused by this accident any one or more of the following: death, dismemberment, or fracture, permanent disability, permanent disfigurement, or medical expenses to a person in excess of $500.'

Now, apparently there is no claim that the injuries that were sustained here fall without the no-fault coverage, so we then look to the no-fault provisions to see what type of coverage was contemplated by the Legislature in lieu of general damages or damages of a general nature.

First of all will be medical benefits not to exceed $2,000.

The second type of coverage -- and I am not taking these necessarily in order -- would be funeral, burial benefits not to exceed $1,000, survivor benefits to compensate survivors or heirs in the sum of $2,000.

Then finally, disability benefits of two types: one relating to a loss of gross income described in terms of 85 percent for up to 52 weeks, and thereafter not to exceed $150 per week based upon inability to work; the second type of disability benefit talks in terms that have been discussed by counsel as "in lieu of" reimbursement for expenses, which would have been reasonably

incurred for services that but for the injury insured insured person would have performed for his household, and regardless of whether any of these expenses are actually incurred. And of course that is the problem that we are dealing with here.

The Legislature also talked in terms of minimum benefits and this, of course, referred to insurance policies containing at least this minimum coverage that we just talked about. I take it that it was contemplated that one could acquire insurance policies that would provide for greater benefits, but that no no-fault coverage could have less than this, and I think that is what the word "minimum" meant, so it wasn't in terms that someone is entitled to more than is set forth in this, unless the insurance policy provides for more than is set forth in 31-41-6.

Now, when the Legislature took away the general right, the common law right of an injured person to recover general damages, the question then arises: What did they intend to give in lieu thereof? What were they intending to take away? Everything? Or were they intending to somewhat fix the risk that an insurance carrier would have to have in this type of situation, that is, were they not attempting to do something similar to Workmen's Compensation so that the insurance carrier could say, "We look at this particular injury and we know under our policy that we will have no more than $2,000 plus 85 percent of the lost gross income if a person is working" -- and in this case the person wasn't working, so they could exclude that $2,000 medical and $12 x 365, or the sum of approximately $4,000 there, and funeral benefits and survivor benefits didn't apply here -- so the insurance company knew that its reserves for this type of injury would have to be something in the neighborhood of $6,000 as opposed to the former situation where they had to hold out reserves based upon a prayer in a Complaint of maybe 30 or 40 thousand dollars. Of course, the reserves problem has plagued the insurance companies all along. We see this particularly in medical malpractice. So it was legislation that was directed toward giving the insurance carrier some certainty as to the amount of risk that they would have to bear.

Now, with that general discussion we look, then, at the situation here. There's no doubt about the fact that dealing with a 12-year-old boy, and I suppose that there would be no dispute if we were dealing with a 32-year-old housewife that the housewife would be entitled to $12 reimbursement for that period of time which she would be unable to perform services. The Legislature talks about the services that an injured person would have performed for his household. And in defining 'person' in 31-41-3, the Legislature didn't feel it was important to define 'person' in any other way than to say 'person includes every natural person, firm, partnership, association, corporation, or any governmental entity, or agency of it.' So it includes everything, everything and everyone. There was no exclusion as to what 'person' meant. And I take it by that that there was no exclusion as to what 'injured person' meant.

The question then resolves itself since the Legislature did not intend to limit who the injured person was who had performed services for his household, that they did not intend to limit it to 32-year-old housewives or exclude a 32-year-old husband who also performed chores around the house, or a 12-year-old boy who likewise performs services, even though they may have some additional purposes such as training him in the useful art of performing chores around the house.

So I find that the Legislature intended this provision to be somewhat of a Workmen's Compensation like provision to provide a reparation on some certain basis for anyone who is injured, who the evidence shows performed household services.

Now, also, they did not intend or attempt to describe what they meant by 'household services' or what the extent of those services would be, and I suppose that if you had a factual situation where the husband does the dishes, gets the kids ready for school, makes the beds, cooks the meals, and does the housekeeping, that an injured 32-year-old housewife would be excluded. I don't thing that they intended that. So the fact that a minimal or nominal amount of service is provided by a 12-year-old boy, I think the Legislature intended

> that this be covered. And I find that based upon the testimony, he did provide household services and that during a period of time he was unable to perform those because of his injuries."

No doubt the legislature put the "allowance of $12.00 per day" for household services "whether any of these expenses are actually incurred" so there would be no quibling about what those services are worth. If this were a housewife involved, rather than young man, and she had to hire someone to perform her household services it would cost from $30.00 to $50.00 a day. So if the shoe were on the other foot and she actually paid $30.00 a day to have her household services performed, would appellants be willing to pay the actual expense? Of course they wouldn't. So Appellant's argument, it would seem, is asking the Court to construe the $12.00 as the maximum but not the minimum it is liable for.

There is only one construction that can be drawn from the statue, and that is for any loss of service "in lieu of reimbursement regardless whether any of these expenses are actually incurred," the allowance shall be $12.00 a day.

Young Jamison did perform household services that he was prevented from doing because of the injuries. He took out the garbage, cleaned his room, washed dishes, vacuumed carpets, helped with the groceries, washed the car and was available to help out wherever needed as a son. It is enough under 31-41-6 (b)(ii) that he performed services, prior to the injuries, and further than that is not material in this case.

POINT II.

THE TRIAL COURT CORRECTLY ALLOWED ATTORNEYS FEES, INTEREST, AND COSTS IN THE CASE.

Inasmuch as the attorneys for the parties hereto stipulated with the Court that if Plaintiff were entitled to an allowance of $12.00 per day "in lieu of reimbursement for expenses," then it was understood and agreed that such claim, or disability benefit under 31-41-6 (b)(ii) came within 31-41-8 of the Act and would be applicable as covering the issue of interest and attorneys fees in that section. (R-6-8)

Counsel for Appellant argues in his brief, however, that the section is not applicable here because no reasonable proof was offered of the expenses incurred for the services which the injured Jamison boy would have performed.

It appears obvious that the wording of Section 31-41-8 to-wit: "after the insurer receives reasonable proof of the fact and amount of expenses incurred during the period," refers to actual expenses incurred, such as the medical expenses, funeral and burial expenses, etc. mentioned under 31-41-6. No actual expenses were incurred by Plaintiff in connection with his services and none were required under the Act for the $12.00 per day is "in lieu of reimbursement for expenses" and also "regardless of whether any of these

expenses are actually incurred."

Thus, when demand was made upon the Defendant insurance company to pay the benefits under the act, which was done by April 16, 1976 (R.15), by filing the Proof of Claim form provided by the insurance company themselves, said Defendant company was provided all the facts and proof needed or required. There was nowhere on the form reference to the $12.00 per day matter, but demands had been made and refused, finally resulting in the Complaint, filed on June 6, 1976, setting forth the $12.00 per day issue.

This Court is also referred to Judge Stewart Hanson Jr's comments and reasoning on this issue for they are very germane. See pages 50 and 51 of the Record.

POINT III.

THE TRIAL COURT DID NOT ERR IN ALLOWING 18% PER ANNUM INTEREST ON THE AMOUNT FOUND DUE UNDER THE ACT.

Section 31-41-8 provides among other things:

> "The person entitled to such benefits may bring an action in contract to recover these expenses plus the applicable interest."

First, what is the applicable interest? It is 1 1/2% per month as stated in the same section. In other words, the action in contract is for 1 1/2% interest per month. When the Respondent has a right of action in contract under the Statute it is the same as if Appellant had agreed in

contract to pay said expenses which shall draw 1 1/2% per month interest.

Appellants are taking a wrong construction of section 15-1-4 when counsel states that the 18% interest called for in 31-41-8 "only applies until the Court judgment is rendered." Let us analyze it further. The section says "Any judgment rendered on a lawful contract shall conform thereto and shall bear the interest agreed upon by the parties, which shall be specified in the judgment." In other words this is a judgment, a lawful contract made so by statute and it was specified in the judgment. How could the language be plainer?

It is not material here what other jurisdictions may have decided. Our statute, 15-1-4, has made it clear what Utah law is in this respect.

POINT IV.

RESPONDENT IS ENTITLED ADDITIONAL ATTORNEYS FEES AND COSTS IN ARGUING THIS APPEAL.

By reason of the fact that Plaintiffs and Respondents have been required to pay additional attorneys fees in the sum of $400.00 in appealing these issues to the Supreme Court of the State of Utah, it is submitted to this Court that Plaintiffs should be entitled to reimbursement of these attorneys fees and costs, also as a part of section 31-41-8, Utah Code Annotated, 1953 as amended.

CONCLUSION

The Trial Court's decision, allowing the $12.00 per day for 112 days to Plaintiff under 31-41-6 (b)(ii) of Utah's No-Fault Insurance Act, and the decision allowing attorneys fees and interest under 31-41-8 of the Act should be affirmed, together with costs and additional attorneys fees for this appeal.

DATED this 29 day of June, 1976.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing RESPONDENT'S BRIEF this 29 day of June, 1976, to L. L. Summerhays, attorney for Defendant-Appellant, at 604 Boston Building, Salt Lake City, Utah 84111.

Colleen Young