

NO. 23695

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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LOUIE V. LARIMER, Plaintiff-Appellee,

vs.

JAMES J. ABIVA, Defendant-Appellant,

and

JOHN and MARY DOES 1-10, and DOE CORPORATIONS,  
PARTNERSHIPS, or OTHER ENTITIES 1-10, Defendants.

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APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT

(CIV. NO. 98-4046-09)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, JJ., and  
Circuit Judge Perkins, in place of Ramil, J., recused)

The defendant-appellant James J. Abiva appeals from the judgment of the first circuit court, the Honorable Gary W.B. Chang presiding, filed on July 6, 2000, and the orders denying his motions for a directed verdict and judgment notwithstanding the verdict (JNOV), filed on June 14, 2000 and July 26, 2000, respectively. Abiva's sole point of error on appeal is that the circuit court erred in ruling that the plaintiff-appellee Louie V. Larimer met the medical-rehabilitative threshold requirement, which is an exception to the general abolition of tort liability, pursuant to Hawai'i Revised Statutes (HRS) § 431:10C-306(b)(2) (1993), when the circuit court denied Abiva's motions for a directed verdict and JNOV.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we hold that Abiva is judicially estopped from raising the issue of Larimer's failure to satisfy the medical-rehabilitative threshold requirement set forth in HRS § 431:10C-306(b) (2) on appeal, inasmuch as Abiva previously admitted in his memorandum in opposition to Larimer's motion for prejudgment interest that Larimer satisfied at least one of the threshold requirements set forth in HRS § 431:10C-306(b), upon exhausting his no-fault benefits under his no-fault insurance policy, see HRS § 431:10C-306(b) (3); see also Roxas v. Marcos, 89 Hawai'i 91, 126, 969 P.2d 1209, 1244 (1998); Rosa v. CWJ Contractors, Ltd., 4 Haw. App. 210, 220, 664 P.2d 745, 752 (1983); Trask v. Tam See, 42 Haw. 324, 332-33 (1958). Therefore,

IT IS HEREBY ORDERED that the judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, July 17, 2002.

On the briefs:

Paul K. Hoshino (of Harakal & Hoshino), for the defendant-appellant James J. Abiva

Myles T. Yamamoto, Terrance M. Revere, Carol A.L. Rosenberg Deborah S. Jackson, (of Love, Yamamoto & Motooka), for the plaintiff-appellee Louie V. Larimer