

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2021 CA 0647

DANIEL PRESTON

VERSUS

SAFECO INSURANCE COMPANY OF OREGON



Judgment Rendered: DEC 22 2021

Appealed from the 21st Judicial District Court
In and for the Parish of Livingston
State of Louisiana
Case No. 163273

The Honorable Brenda Bedsole Ricks, Judge Presiding

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Daniel Preston

BEFORE: LANIER, WOLFE, AND BURRIS,¹ JJ.

¹ The Honorable William J. Burris, retired, is serving *pro tempore* by special appointment of the Louisiana Supreme Court.

LANIER, J.

This matter is before us on appeal by the defendant, Safeco Insurance Company of Oregon (Safeco), from the granting of a default judgment in favor of the plaintiff, Daniel Preston, by the Twenty-First Judicial District Court. For the following reasons, we amend the judgment and affirm as amended.

FACTS AND PROCEDURAL HISTORY

On or about May 30, 2017, Mr. Preston was involved in an automobile accident with a vehicle owned by Nicholas Dimm. At the time of the accident, Mr. Dimm's vehicle was allegedly insured by Progressive Insurance Company (Progressive) with a policy that had a limit on liability in the amount of \$15,000. Also at the time of the accident, Mr. Preston carried uninsured/underinsured motorist (UM) insurance with a limit of \$100,000. Mr. Preston claimed in his petition for damages that his damages exceed the policy limit of Mr. Dimm's policy, making Safeco obligated to pay the remainder of his damages. Mr. Preston further alleged that Safeco failed to open a claim and confirm coverage, thereby breaching the contract of insurance.

Mr. Preston filed the petition for damages against Safeco on May 14, 2019. On December 29, 2020, Mr. Preston filed a motion for preliminary default, which the district court entered on the same date. A hearing on the confirmation of preliminary default was held on January 19, 2021. Mr. Preston submitted into evidence his petition for damages, the return of service made on Safeco, Mr. Preston's own live testimony, the Safeco UM insurance policy, notice of payment by Progressive of \$15,000, the accident report, photographs of the vehicle damage, Mr. Preston's medical records, bills for MRI and medical treatment related to the accident, doctor reports, Mr. Preston's health insurance claim, and the deposition of his treating physician Dr. Kevin McCarthy. The district court signed a judgment of default against Safeco on the same date of the hearing, awarding a total of

\$524,669.50 in damages to Mr. Preston.² Safeco filed a motion for suspensive appeal of the default judgment on March 8, 2021.

DISCUSSION

The sole assignment of error asserted by Safeco is that the district court erred in awarding Mr. Preston damages in an amount exceeding the \$100,000 limit of the UM policy.

A preliminary default must be confirmed by proof of the demand that is sufficient to establish a prima facie case and that is admitted on the record prior to the entry of a final default judgment. La. C.C.P. art. 1702(A). A plaintiff seeking to confirm a default must prove both the existence and the validity of his claim. There is a presumption that a default judgment is supported by sufficient evidence, but this presumption does not attach when the record upon which the judgment is rendered indicates otherwise. *Sessions & Fishman v. Liquid Air Corp.*, 616 So.2d 1254, 1258 (La. 1993). Safeco has not raised as an issue in the instant appeal the sufficiency of the default judgment.

Based on the submitted evidence, the district court found Mr. Preston's damages totaled \$524,669.50, and that he was entitled to legal interest and costs; however, the district court erred in casting Safeco for the entire amount when the UM policy had a coverage limit of \$100,000. Safeco's obligation to Mr. Preston was contractual. An insurance policy is a contract between the insured and the insurer and has the effect of law between the parties. *Miller v. Superior Shipyard and Fabrication, Inc.*, 2001-2907 (La. App. 1 Cir. 8/20/03), 859 So.2d 159, 162.

The parties' intent, as reflected by the words of the insurance policy, determines the extent of coverage, and the intent is to be determined in accordance with the plain, ordinary, and popular sense of the language used in the policy.

² The damages award is comprised of \$64,569.50 in past medical expenses, \$100,000 in future medical expenses, and \$360,000 in general damages.

Miller, 859 So.2d at 163. The Safeco insurance policy clearly states its UM coverage as \$100,000 per person and \$300,000 per accident. Mr. Preston was the only occupant of his vehicle at the time of the accident; so therefore, Safeco's liability under the UM policy cannot exceed \$100,000.

On appeal, Preston concedes that Safeco's liability is limited to \$100,000, but argues Safeco nonetheless owes judicial interest on the entire amount of the district court's judgment. Louisiana Revised Statutes 13:4203 states that legal interest shall attach from date of judicial demand on all "ex delicto" judgments. While La. R.S. 13:4203 prohibits an insurer from reducing its liability for interest on its policy limits, that section does not prohibit insurers from lowering, excluding or extending their interest liability on amounts in excess of their policy limits. Limiting interest obligations for excess judgments does not violate the public policy of La. R.S. 13:4203, which mandates legal interest on the policy limits from the date of judicial demand. *Martin v. Champion Ins. Co.*, 95-0030 (La. 6/30/95), 656 So.2d 991, 995.

In the "Supplementary Payments" section, the Safeco UM policy states, "In addition to our limit of liability we will pay to an **insured** prejudgment interest awarded by a court to the insured on that part of a judgment we pay." Legal interest on a tort claim is not discretionary with the court. *Beebe v. Larche*, 51,365 (La. App. 2 Cir. 4/5/17), 218 So.3d 1114, 1117; *Duplechain v. Jalili*, 2010-736 (La. App. 3 Cir. 12/8/10), 52 So.3d 1072, 1077 writ denied, 2011-0087 (La. 3/25/11), 61 So.3d 664; *Turner v. Ostrowe*, 2001-1935 (La. App. 1 Cir. 9/27/02), 828 So.2d 1212, 1223 writ denied, 2002-2940 (La. 2/07/03), 836 So.2d 107. In tort cases, legal interest on judgments for damages attaches automatically, by operation of law, and is owed until the judgment is paid, regardless of whether it was prayed for in the petition or specifically awarded in the judgment. See *Beebe*,

218 So.3d at 1117; *Stewart v. Ice*, 2007-0871 (La. App. 4 Cir. 4/09/08), 982 So.2d 928, writ denied, 2008-1000 (La. 8/29/08), 989 So.2d 101.

Under the terms of its policy, Safeco is therefore liable for legal interest only on the \$100,000 policy limit from the date of judicial demand, May 14, 2019. In accordance with La. C.C.P. art. 2164, we will amend the judgment accordingly.

DECREE

The default judgment of the Twenty-First Judicial District Court is amended to read:

IT IS ORDERED, ADJUDGED AND DECREED that damages of Petitioner, DANIEL PRESTON, are as follows:

Past Medicals	\$64,569.50
Future Medicals	\$100,000.00
General Damages	\$360,000.00
TOTAL damages	\$524,669.00

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of Petitioner, DANIEL PRESTON and against defendant, SAFECO INSURANCE COMPANY OF OREGON in the amount of the uninsured motorist's policy's maximum coverage limit of \$100,000, together with legal interest on that amount from the date of judicial demand, until paid, including all costs of court.

We affirm the judgment as amended.

AMENDED; AFFIRMED AS AMENDED.