

[J-39A-B-2012]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, ORIE MELVIN, JJ.

RICHARD A. MARLETTE, SR. AND : No. 41 WAP 2011
MARLEEN MARLETTE, HIS WIFE :
 :
 : Appeal from the Order of the Superior
 : Court entered December 10, 2010 at No.
v. : 623 WDA 2009 vacating the Order of the
 : Court of Common Pleas of Allegheny
 : County entered March 24, 2009, at No.
 : GD-06-015333 and remanding the case.
STATE FARM MUTUAL AUTOMOBILE :
INSURANCE COMPANY AND HERMAN :
L. JORDAN :
 :
 : ARGUED: April 10, 2012
APPEAL OF: STATE FARM MUTUAL :
AUTOMOBILE INSURANCE COMPANY :

RICHARD A. MARLETTE, SR. AND : No. 42 WAP 2011
MARLEEN MARLETTE, HIS WIFE :
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 : Appeal from the Order of the Superior
 : Court entered December 10, 2010 at No.
v. : 703 WDA 2009 vacating the Order of the
 : Court of Common Pleas of Allegheny
 : County entered March 24, 2009, at No.
 : GD-06-015333 and remanding the case.
STATE FARM MUTUAL AUTOMOBILE :
INSURANCE COMPANY AND HERMAN :
L. JORDAN :
 :
 : ARGUED: April 10, 2012
APPEAL OF: STATE FARM MUTUAL :
AUTOMOBILE INSURANCE COMPANY :

OPINION

MADAME JUSTICE TODD

DECIDED: DECEMBER 28, 2012

We granted allowance of appeal in this consolidated case to consider whether a plaintiff may recover delay damages on the full amount of a jury verdict in his favor, or whether delay damages are limited to the amount of the legally-recoverable molded verdict, as it was adjusted by the court to reflect insurance policy limits. For the reasons that follow, we hold that a plaintiff may recover delay damages only on the amount of legally-recoverable damages to which he is entitled pursuant to the molded verdict. Thus, we remand this matter to the Superior Court for remand to the trial court for reinstatement of its original award of delay damages.

On July 2, 2002, Richard Marlette and his wife Marleen (collectively, the “Marlettes”) were stopped in traffic in the City of Pittsburgh when a vehicle operated by Herman Jordan crossed the center line and sideswiped the Marlettes’ vehicle. Mr. Marlette, who occupied the driver’s seat, sustained serious physical injuries, as well as lost wages and impairment of his earning capacity. On October 13, 2006, the Marlettes filed an action in the Allegheny County Court of Common Pleas against Jordan, who was uninsured, and their own insurer, State Farm Mutual Automobile Insurance Company (“State Farm”), for uninsured motorist (“UM”) coverage. Liability was uncontested, and the case proceeded to trial on damages.

Following a two-day trial, the jury returned a verdict in favor of the Marlettes, awarding Mr. Marlette \$550,000 for his bodily injuries and lost wages, and Mrs. Marlette \$150,000 for loss of consortium. The trial court molded the \$700,000 verdict to reflect the \$250,000 policy limit of the Marlettes’ UM policy with State Farm, which was issued

in Florida.¹ The trial court credited an earlier payment of \$16,693.02 by State Farm, resulting in a verdict of \$233,306.98. Subsequently, pursuant to Pa.R.Civ.P. 238,² the Marlettes filed a motion for delay damages on the \$550,000 verdict in favor of Mr. Marlette,³ which State Farm opposed. The trial court granted the Marlettes' motion, but awarded delay damages in the amount of \$28,223.76, which the trial court calculated by applying the applicable interest rate to the molded verdict of \$233,306.98.

¹ The Marlettes' policy provided for coverage of \$50,000 per vehicle, and the Marlettes had five vehicles insured with State Farm, resulting in stacked coverage of \$250,000. Complaint at 3 (R.R. at 11a).

² Rule 238 provides, in relevant part:

(a)(1) At the request of the plaintiff in a civil action seeking monetary relief for bodily injury, death or property damage, damages for delay shall be added to the amount of compensatory damages awarded against each defendant or additional defendant found to be liable to the plaintiff in the verdict of a jury, in the decision of the court in a nonjury trial or in the award of arbitrators appointed under section 7361 of the Judicial Code, 42 Pa.C.S. § 7361, and shall become part of the verdict, decision or award.

(2) Damages for delay shall be awarded for the period of time from a date one year after the date original process was first served in the action up to the date of the award, verdict or decision.

(3) Damages for delay shall be calculated at the rate equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the damages are awarded, plus one percent, not compounded.

Pa.R.Civ.P. 238(a).

³ Delay damages are not available for awards based on loss of consortium. See Anchorstar v. Mack Trucks, Inc., 620 A.2d 1120, 1122 (Pa. 1993). Thus, when we refer in this opinion to "the amount of the jury verdict," we are referring only to the \$550,000 awarded to Mr. Marlette.

The Marlettes and State Farm filed cross-appeals with the Superior Court. The Marlettes argued the trial court abused its discretion by calculating its award of delay damages based on the molded verdict, rather than the actual jury verdict of \$550,000 in favor of Mr. Marlette. State Farm argued, *inter alia*, that the trial court erred in awarding any delay damages whatsoever because, when added to the molded verdict amount, it resulted in a judgment in excess of the Marlettes' \$250,000 UM policy limit, which State Farm alleged was impermissible under both Pennsylvania and Florida law.⁴ Alternatively, State Farm argued that calculation of delay damages must be based on the verdict as molded to reflect the Marlettes' UM policy limits. In support of its argument, State Farm relied on this Court's decision in Allen v. Mellinger, 567 Pa. 1, 784 A.2d 762 (2001), wherein we held that delay damages recoverable from Commonwealth parties are limited to those calculated based on the statutory cap established by the Sovereign Immunity Act, 42 Pa.C.S.A. §§ 8521 *et seq.*, rather than the jury's award.

In a divided opinion, the Superior Court vacated the trial court's judgment on delay damages, and remanded for recalculation of delay damages based on the amount of the jury verdict. Marlette v. State Farm Mut. Auto. Ins. Co., 10 A.3d 347 (Pa. Super. 2010). The majority first rejected State Farm's argument that the Marlettes were not entitled to any delay damages, noting that an award of delay damages was not precluded by Pennsylvania or Florida law, or by the language of the Marlettes' UM policy. The majority further determined that the amount of delay damages should be

⁴ The Marlettes are residents of Florida, but commenced their action against State Farm in Allegheny County pursuant to the terms of their UM policy. Before the Superior Court, State Farm raised issues regarding the choice of law; however, this Court's grant of review does not encompass those issues, and, accordingly, they are not discussed further.

calculated based on the amount of the jury verdict, concluding State Farm's reliance on Allen was misplaced:

Unlike Allen, here, there was no statutory cap on the liability of State Farm, a private litigant. As this Court stated in [Thompson v. T.J. Whipple Const. Co., 985 A.2d 221 (Pa. Super. 2009)], “[t]he interplay of the Sovereign Immunity Act with Pa.R.C.P. 238 [in Allen] created a unique scenario not applicable here, where the parties were not bound by statutorily-imposed limits on recovery.” Thompson, 985 A.2d at 225. The policy limit for UM coverage in this case simply cannot be equated with a statutorily-imposed cap on liability for Commonwealth parties.

Marlette, 10 A.3d at 354.

The majority recognized that “appellate courts have not strictly limited the holding of Allen to only those cases involving Commonwealth parties,” Marlette, 10 A.3d at 354, noting that, in LaRue v. McGuire, 885 A.2d 549 (Pa. Super. 2005), the Superior Court determined that a slip-and-fall victim's delay damages should be calculated based on the \$15,000 damages cap to which the victim stipulated in exchange for entry of his medical reports into evidence without authentication, rather than on the jury verdict in his favor, which was in excess of \$600,000. The majority, however, distinguished LaRue, stating:

unlike LaRue, the Marlettes did not enter into an agreement with State Farm to limit the insurer's potential liability in exchange for some form of benefit at trial. The voluntary decision by the plaintiff in LaRue to proceed under Pa.R.C.P. 1311.1 is not akin to the inherent “limitation” of the compensatory damages recoverable by the Marlettes in a UM action, which was imposed not by a pre-trial stipulation and the Rules of Civil Procedure, but solely by the terms of the Policy issued by State Farm.

Marlette, 10 A.3d at 355.

Next, the majority reasoned that, under the plain language of Rule 238, delay damages against State Farm should be calculated based on the amount of the jury's award:

Rule 238 provides, in relevant part, that “damages for delay **shall be added to the amount of compensatory damages awarded against each defendant or additional defendant found to be liable to the plaintiff in the verdict of a jury . . . and shall become part of the verdict, decision or award.**” Pa.R.C.P. 238(a)(1) (emphasis added). Here, the amount of compensatory damages that the jury **awarded** in its verdict for Mr. Marlette was \$550,000.

Id. at 355.

Finally, the majority concluded its holding was supported by the policy considerations underlying this Court's enactment of Rule 238, namely, to encourage settlements. The majority opined that such purpose “can only be effectuated by calculating delay damages based upon the jury's verdict and not upon the verdict as molded to reflect the insurance policy limits,” because, if delay damages are calculated on the molded verdict,

there would be no “unknown” that would motivate an insurer/defendant to make a reasonable settlement offer. Indeed, it could actually provide an insurer with a disincentive to settle a meritorious claim in hopes of forcing the plaintiff to settle a claim for less than the amount of the insurer's liability exposure under the insurance policy.

Id. at 356.

Judge Bowes filed a dissenting opinion, wherein she suggested that the majority, in distinguishing this Court's decision in Allen on the basis that it involved a Commonwealth defendant and a statutorily-imposed limit on recovery, failed to recognize that the Superior Court ignored that very distinction in LaRue, and applied Allen where private parties stipulated to a limit on the recovery of compensatory

damages. Judge Bowes further opined that the majority's holding was "based on a reinterpretation of the plain language of Rule 238 that is contrary to Allen and LaRue," and that this Court in Allen rejected the majority's suggestion that limiting the calculation of delay damages to the actual amount recoverable by a plaintiff would be detrimental to the policy of encouraging settlements.

State Farm filed a petition for allowance of appeal with this Court, which we granted limited to the issue of whether the Superior Court erred in holding that the Marlettes may recover delay damages based on the amount of the jury verdict in favor of Mr. Marlette, as opposed to the amount which the Marlettes were entitled to recover under their policy with State Farm. As questions regarding the interpretation of the Rules of Civil Procedure are questions of law, our standard of review is *de novo* and our scope of review is plenary. American and Foreign Ins. Co. v. Jerry's Sports Center, Inc., 606 Pa. 584, 595, 2 A.3d 526, 532-33 (2010).

As noted above, in support of its position that the Superior Court erred in holding the Marlettes were entitled to delay damages based on the amount of the jury verdict, State Farm argues that the Superior Court's decision conflicts with this Court's holding in Allen, a case in which an injured motorist filed an action against another driver who struck her vehicle and the Pennsylvania Department of Transportation ("PennDOT"). A jury awarded the plaintiff nearly \$2.9 million, and apportioned liability as follows: 20% to the injured motorist; 40% to the other driver; and 40% to PennDOT. The trial court molded the verdict to conform to the statutory cap of \$250,000 imposed by the Sovereign Immunity Act. Thereafter, the injured motorist filed a motion for delay damages, which the trial court granted based on the statutory cap. The Commonwealth Court affirmed, and Allen appealed to this Court.

In addressing the parties' arguments as to the proper method for calculating delay damages against the Commonwealth, this Court in Allen acknowledged that, in Woods v. Com., Dep't of Transp., 531 Pa. 295, 612 A.2d 970 (1992), we considered the text of Rule 238 in its entirety and concluded:

Rule 238 provides that delay damages shall be added to the 'verdict of the jury, . . . the decision of the court in a nonjury trial or . . . the award of arbitrators appointed under section 7361 of the Judicial Code, 42 Pa.C.S. § 7361, and shall become part of the verdict, decision or award.' . . . This language is clear and unambiguous and is indicative of the intent to have damages apply to the verdict or award itself, which represents the actual factfinder's assessment of the plaintiff's damage, as opposed to the amount the plaintiff is legally entitled to recover.

Woods, 531 Pa. at 299, 612 A.2d at 972. We further noted in Allen that the Woods Court expressed concern that the purposes of Rule 238 – to compensate the plaintiff for a delay in receiving his recovery and to encourage settlements – would be frustrated if delay damages were computed based on the statutory cap. See Woods, 531 Pa. at 299-300, 612 A.2d at 972.

However, in Allen, we concluded our reasoning in Woods “was fundamentally flawed” and that the decision must be overruled:

First, the analysis of the language of the Rule proceeded from a misleading paraphrase of the text. The actual language of the rule states “damages for delay shall be added **to the amount of compensatory damages awarded against each defendant or additional defendant** found liable to the plaintiff in the verdict of a jury, in the decision of the court . . . or in the award of arbitrators . . . and shall become part of the verdict, decision or award.” (Emphasis added). The Woods opinion, however, ignored the emphasized language and declared that the Rule “provides that delay damages shall be added to the ‘verdict of the jury . . . decision of the court . . . or award of arbitrators....’”

612 A.2d at 971. When the text is read in full, delay damages are added to the compensatory damages awarded against each defendant and then become part of the verdict. According to the Woods paraphrase, delay damages are simply added to the verdict. The difference in meaning is readily apparent and all the more critical because the next step of the Woods analysis characterized the “verdict or award” as representing the factfinder’s assessment of the plaintiff’s damage and contrasted it with the amount the plaintiff is legally entitled to recover.

The Woods opinion is similarly inadequate in its analysis of the purposes underlying Rule 238. With respect to the rule’s purpose of compensating the plaintiff for delay in receiving his or her recovery, it defies reason to suggest that the basis for calculating such compensation could be anything other than the amount the Commonwealth party could actually be responsible for paying to the plaintiff. Since a plaintiff’s compensatory damages can never exceed the statutory cap, there can be no delay in receiving amounts in excess of that cap. And if there is no delay, the stated justification for compensating the plaintiff with delay damages is illusory.

Allen, 567 Pa. at 10-11, 784 A.2d at 767-768 (emphasis original).

Finally, this Court in Allen rejected the Woods Court’s theory that, if delay damages were computed on the statutory cap, “there would be a distinct disincentive [to seek settlement] since the delay damages would be based upon a predictable constant and there would then be no unknown which would motivate the Commonwealth to discuss settlement.” Woods, 531 Pa. at 300, 612 A.2d at 972. We held that the Court in Woods

failed to perceive that the absence of an “unknown” originates in and cannot be separated from the statutory cap. The Woods rationale allows the Court to **create** an uncertainty of outcome to motivate settlement where no uncertainty otherwise exists. This is far different from channeling the uncertainty of outcome that exists in the case of private litigants not subject to limitations on liability.

Allen, 567 Pa. at 12, 784 A.2d at 768 (emphasis original). Accordingly, the Allen Court expressly overruled Woods, and held, *inter alia*, that “delay damages recoverable from Commonwealth parties are limited to those calculated based upon the statutory cap.” Id. at 12-13, 784 A.2d at 768-69.

As noted above, the majority of the Superior Court below distinguished Allen on the basis that the defendant therein was the Commonwealth and not a private party, opining that a statutorily-imposed cap on liability under the Sovereign Immunity Act “cannot be equated” with a policy limit for UM coverage. Marlette, 10 A.3d at 354. The Marlettes similarly argue that our holding in Allen “was specifically limited to Commonwealth parties.” Appellees’ Brief at 4. However, as Judge Bowes noted in her dissent, in LaRue, *supra*, the Superior Court itself applied Allen to hold that the plaintiff’s delay damages were to be calculated based on the damages cap stipulated to by the parties.

The majority below attempted to distinguish LaRue on the basis that the Marlettes “did not enter into an agreement with State Farm to limit the insurer’s potential liability in exchange for some form of benefit at trial,” and that “the voluntary decision by the plaintiff in LaRue . . . is not akin to the inherent ‘limitation’ of the compensatory damages recoverable by the Marlettes in a UM action” pursuant to their policy with State Farm. Marlette, 10 A.3d at 355. The Marlettes likewise contend that the voluntary pretrial stipulation in LaRue “bears no material relation to uninsured motorist coverage limits selected by an insured years before any claim or litigation is initiated.” Appellees’ Brief at 6. We cannot agree with these attempts to distinguish Allen and LaRue.

The Marlettes voluntarily elected and paid for a UM policy with a \$250,000 coverage limit. Under a UM policy, “the insured is not responsible for paying a deductible prior to recovery but may recover only up to the policy’s specified coverage

limits.” Jones v. Nationwide Prop. and Cas. Ins. Co., 32 A.3d 1261, 1263 (Pa. 2011). We agree with the dissent that, absent a bad faith claim, the Marlettes’ “self-imposed limitation on compensatory damages” is sufficiently analogous to the statutory limitation in Allen, wherein the plaintiff had *no* control over the statutory cap on compensatory damages, and the stipulation in LaRue, to warrant the same treatment under Rule 238. See Marlette, 10 A.3d. at 357 (Bowes, J., dissenting).

As discussed above, the majority below also concluded the plain language of Rule 238 requires that delay damages be calculated based on the jury’s award of damages. It further opined that limiting delay damages to the amount of a molded verdict would eliminate the “unknown” that motivates an insurer to make a reasonable settlement offer. Indeed, the majority below offered that “in **every** insurance coverage dispute, an insurer’s liability, absent a claim of bad faith, is limited by the applicable insurance policy limits,” Marlette, 10 A.3d at 355 (emphasis original), and, as a result, “an insurer has no incentive to settle where the financial returns on the insurer’s investment of the retained funds . . . exceed the maximum potential delay damages exposure should the plaintiff prevail at trial.” Id. at 356. This concern is echoed by the Marlettes in their brief. Appellees’ Brief at 5. However, this Court clearly considered, and rejected, both of these propositions in Allen, and we specifically denounced Woods’ proposition that a plaintiff may recover, pursuant to Rule 238, delay damages based on the factfinder’s assessment of damages. See Allen, 567 Pa. at 12, 784 A.2d at 767-68.

For all of the reasons discussed above, and consistent with our decision in Allen, we hold that a plaintiff’s recovery of delay damages under Pa.R.Civ.P. 238 is limited to the amount of the legally-recoverable molded verdict as reflected by the insurance policy limits. Accordingly, we vacate the Superior Court’s decision and remand this

matter to the Superior Court for remand to the trial court for reinstatement of the trial court's original award of delay damages.

Madame Justice Orié Melvin did not participate in the decision of this case.

Mr. Chief Justice Castille and Messrs. Justice Saylor, Eakin and Baer join the opinion.

Mr. Justice McCaffery files a dissenting opinion.