**[J-235-1998]**
**IN THE SUPREME COURT OF PENNSYLVANIA**
**MIDDLE DISTRICT**

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| DEBORAH L. PRICE AND HARRY F. PRICE, | : | 30 M.D. Appeal Dkt. 1998 |
| | : | Appeal from the Order and Memorandum |
| Appellants, | : | Opinion of the Superior Court entered July |
| | : | 30, 1997 at No. 557 HBG 1996, affirming |
| | : | the judgment entered August 20, 1996 in |
| v. | : | the Court of Common Pleas of Centre |
| | : | County, Civil Division, at No. 1994-1905. |
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| ANTHONY B. GUY AND THOMAS R. STINE, | : | |
| | : | |
| Appellees. | : | ARGUED: November 17, 1998 |

## OPINION OF THE COURT

**MR. JUSTICE CASTILLE** **DECIDED: JULY 23, 1999**

This Court granted allocatur in order to determine whether, in a negligence action, a trial court may inform the jury that the plaintiffs elected the limited tort option in a motor vehicle insurance policy and that such election resulted in their paying lower premiums. For the reasons that follow, we find that the trial court committed an error of law in instructing the jury regarding this information, and that appellants suffered prejudice as a result of this error. Accordingly, we reverse the Superior Court's affirmance of the trial court's judgment.

On July 29, 1992, appellant, Deborah L. Price, suffered soft tissue injury as well as a partially herniated disc, necessitating medical treatment for over a two-year period, as a result of a motor vehicle accident. Prior to the accident, appellant and her husband ("appellants") elected motor vehicle insurance coverage under the limited tort option of

the Pennsylvania Motor Vehicle Financial Responsibility Law ("MVFRL"), 75 Pa.C.S. §§ 1701 et seq. By electing the limited tort option, appellants received reduced insurance premiums. In exchange for reduced premiums, appellants were generally precluded from recovering for non-economic losses[1] unless they sustained a "serious injury"[2] as a result of the accident. 75 Pa.C.S. § 1705(d).

Appellants brought a civil action in tort to recover non-economic damages allegedly suffered as a result of the automobile accident, including a loss of consortium claim filed on behalf of appellant Harry F. Price. During the closing jury charge, the trial court instructed the jury pursuant to Pennsylvania Suggested Standard Jury Instruction (Civil), 6.02D, pertaining to recovery of non-economic loss damages in cases where the plaintiff has suffered serious impairment of a body function.[3] Prior to this instruction, the trial court, over appellants' objections, also instructed the jury as follows:

> [Appellants] have admitted that they selected the limited tort option. I will now instruct you regarding that. When a person elects the limited tort option the cost of insurance premiums to be paid by the insured are reduced. However, that person in selecting the limited tort option gives up their right to sue for non-economic loss such as pain and suffering except where the insured suffers a serious injury.

R.R. at 244a.

On March 30, 1996, following jury deliberations, appellants were denied all non-economic damages. Appellants filed post-trial motions seeking judgment n.o.v. or a

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[1] The MVFRL defines a "non-economic loss" as "pain and suffering and other nonmonetary detriment." 75 Pa.C.S. § 1702.

[2] The MVFRL defines a "serious injury" as "a personal injury resulting in death, serious impairment of body function or permanent serious disfigurement." 75 Pa.C.S. § 1702.

[3] The portion of the instruction pertaining to recovery of non-economic loss damages and defining "serious impairment of body function" comported with the standards approved by this Court in Washington v. Baxter, 719 A.2d 733, 740 (Pa. 1998).

new trial, which the trial court denied. Subsequently, on appeal to the Superior Court, appellants alleged that the trial court committed reversible error by instructing the jury that appellants had chosen the limited tort option resulting in lower insurance premium payments. The Superior Court rejected appellants' argument and affirmed the trial court. On March 31, 1998, this Court granted allocatur to determine whether the aforementioned jury instruction amounted to reversible error.

In reviewing a trial court's denial of a motion for a new trial, we determine whether the trial court abused its discretion or committed an error of law which affected the outcome of the case. See Vignoli v. Standard Motor Freight, Inc., 418 Pa. 214, 217, 210 A.2d 271, 272-73 (1965)(citations omitted). In reviewing a claim regarding error with respect to a specific jury charge, we must view the charge in its entirety, taking into consideration all the evidence of record to determine whether or not error was committed. Lockhart v. List, 542 Pa. 141, 147, 665 A.2d 1176, 1179 (1995). If we find that error was committed, we must then determine whether that error was prejudicial to the complaining party. Id. (citing Reilly by Reilly v. SEPTA, 507 Pa. 204, 489 A.2d 1291 (1985)). Error will be found where the jury was probably misled[4] by what the trial judge charged or where there was an omission in the charge which amounts to fundamental error. Id. (citing Sweeny v. Bonafiglia, 403 Pa. 217, 169 A.2d 292 (1961); Voitasefski v.

[4] Madame Justice Newman takes issue with the words "probably misled," and would focus instead on whether the jury was "palpably misled." However, the standard of review for a faulty jury charge must be expressed in terms of probabilities, as there is simply no way to determine whether a juror was, in fact, misled. A reviewing court has no means to access a juror's actual thought processes to determine whether the juror "palpably" relied on the faulty jury charge in reaching a decision. Accordingly, we believe that the standard of review in this context is best articulated in terms of probabilities.

Pittsburgh Railways Co., 363 Pa. 220, 69 A.2d 370 (1949)).

Appellants argue that the trial court's reference to the limited tort insurance option and to the corresponding lower insurance premium payment was irrelevant, misleading and prejudicial, and that the reference amounted to a reversible error of law. For the reasons expressed below, we agree.

The Superior Court correctly ascertained the general rule that, in a negligence suit, evidence that a defendant carries liability insurance is inadmissible, with certain narrow exceptions, due to the fact that it is prejudicial to the defendant and generally irrelevant to the real issues in the case. See Trimble v. Merloe, 413 Pa. 408, 410, 197 A.2d 457, 458 (1964). However, the Superior Court determined that, under the circumstances of this case, the rationale driving the aforementioned evidentiary rule does not apply because the court concluded that appellants' election of the limited tort option was relevant to issues in this matter. Specifically, the Superior Court determined that the fact that appellants elected the limited tort option resulting in lower premium payments was relevant, first, to explain to the jury why appellants had to carry the high burden of establishing that Deborah Price had suffered a "serious injury" before they could recover and, second, to aid in determining what level of damages were appropriate. We disagree with the Superior Court on both points.

First, the jury simply did not require an explanation of why appellants had to demonstrate the existence of a "serious injury" before they could recover non-economic damages. All that was required was a clear explanation of the criteria which the jury was permitted to consider in determining whether appellants had demonstrated the existence of a "serious injury." By delving into an explanation of why appellants

shouldered their burden, the trial court brought facts to the jury's attention which were of no consequence to any issue in the case. The fact that appellants had declined to contract for the more expensive insurance option did not aid the jury at all in determining whether Deborah Price had suffered a "serious injury."

Second, the fact that appellants paid lower insurance premiums in exchange for limited tort coverage was wholly irrelevant on the issue of the amount of damages required to compensate appellants if the jury determined that they had suffered non-economic damages. The severity of the non-economic injuries suffered by a plaintiff and the corresponding level of damages simply bears no causal nexus whatsoever to the nature of the insurance option which that plaintiff selected.

Moreover, the extraneous facts which were brought to the jury's attention in this matter were prejudicial to appellants. When the trial court informed the jury that appellants had "admitted" that they had voluntarily chosen the less expensive limited tort insurance option, the court risked imparting to the jury the notion that appellants' selection of the less expensive alternative was, in and of itself, a factor to be considered in determining whether appellants should be compensated for their non-economic injuries. Just as this Court views evidence of the fact that a defendant carried insurance as prejudicial to the defendant in a negligence case, we equally view evidence of the fact that a plaintiff selected a less expensive insurance option as prejudicial to the plaintiff. In either case, there is a risk that, in determining liability, the jury will depart from the relevant standards and definitions on which they have been charged and instead consider the fact of a party's insurance coverage, or lack thereof, as relevant on the issue of liability. Just as a jury is more likely to attach liability to a defendant

covered by insurance who will not suffer financially from a plaintiff's verdict, so too is a jury less likely to award damages to a plaintiff who it views as having bargained away its right to non-economic damages in exchange for having obtained less expensive insurance coverage.

The purpose of jury instructions is to keep jurors focused on resolving factual disputes based on the governing law rather than on their own ideas of how best to balance the equities. By allowing jurors to consider the extent to which parties have elected to insure themselves, trial courts afford jurors the opportunity to determine the issue of liability in accordance with their own notions of fairness, cost allocation, and risk management, rather than in accordance with the law on which they have been instructed.

Thus, we conclude that the trial court erred by informing the jury that appellants elected the limited tort option and that such election resulted in their paying lower premiums. On this record, we cannot conclude that this error did not affect the verdict. Consequently, we remand this matter for a new trial.

Madame Justice Newman files a concurring opinion.