

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

TOM DUNLAP

Plaintiff

v.

OHIO UNIVERSITY

Defendant

Case No. 2009-06010-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On June 30, 2009, a 2004 Toyota Highlander owned by plaintiff, Tom Dunlap, was damaged as a result of negligence on the part of an employee of defendant, Ohio University, in conducting lawn maintenance activity on university grounds.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$418.03, the cost of automotive repair for his vehicle. In his complaint plaintiff acknowledged he carries insurance coverage for automotive damage with a \$250.00 deductible provision. The filing fee was paid.

{¶ 3} 3) Defendant filed an investigation report noting: "Ohio University does not contest this claim-our internal investigation confirms the damage to this car being caused by our employee's operation of landscape equipment."

{¶ 4} 4) Plaintiff filed a response expressing his agreement with the findings in defendant's investigation report.

CONCLUSIONS OF LAW

{¶ 5} 1) Defendant was charged with a duty to exercise reasonable care for the protection of plaintiff's property while performing any maintenance work. *Hoelle v. Miami Univ.*, Ct. of Cl. No. 2005-06970-AD, 2005-Ohio-4643. In regards to the facts of this claim, negligence on the part of defendant has been shown. *Rust v. Miami Univ.*, Ct. of Cl. No. 2005-01226-AD, 2005-Ohio-1248.

{¶ 6} 2) R.C. 2743.02(D) provides:

{¶ 7} "(D) Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant. This division does not apply to civil actions in the court of claims against a state university or college under the circumstances described in section 3345.40 of the Revised Code. The collateral benefits provisions of division (B)(2) of that section apply under those circumstances."

{¶ 8} Also, R.C. 3345.40(B)(2) states in pertinent part:

{¶ 9} "If a plaintiff receives or is entitled to receive benefits for injuries or loss allegedly incurred from a policy or policies of insurance or any other source, the benefits shall be disclosed to the court, and the amount of the benefits shall be deducted from any award against the state university or college recovered by plaintiff."

{¶ 10} 3) Defendant is liable to plaintiff for his insurance coverage deductible, \$250.00, plus the \$25.00 filing fee which may be reimbursed as compensable costs pursuant to R.C. 2335.19. See *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19, 587 N.E. 2d 990.

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ENTRY OF ADMINISTRATIVE
DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of plaintiff in the amount of \$275.00, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
8/4
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