NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

KENNETH HUSTON, Appellant v. GEICO GENERAL INSURANCE COMPANY, Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 892 MDA 2012

Appeal from the Order Entered April 24, 2012
In the Court of Common Pleas of Cumberland County
Civil Division at No(s): 11-8757

BEFORE: BOWES, GANTMAN and OLSON, JJ.

MEMORANDUM BY OLSON, J.: Filed: February 22, 2013

Appellant, Kenneth Huston, appeals from the order of April 24, 2012 entering judgment on the pleadings in favor of Appellee, Geico General Insurance Company (Geico). Bound by Pennsylvania Supreme Court precedent, we affirm.

The facts of this case are not in dispute. Appellant claimed he was injured in a motor vehicle accident with an uninsured driver who was subsequently convicted of driving under the influence of alcohol (DUI). Appellant made a claim for non-economic damages with his insurance carrier, Geico. Geico denied coverage of non-economic damages based upon Appellant's choice of limited tort insurance. Appellant instituted a cause of action before the Cumberland County Court of Common Pleas and both parties filed motions for judgment on the pleadings. Citing ***Rump v. Aetna***

Casualty and Surety Co., 710 A.2d 1093 (Pa. 1998), the trial court granted Geico's motion. This timely appeal followed.[1]

On appeal, Appellant presents the following issues for our review:

> 1. Whether the holding in ***Rump v. Aetna Casualty Surety Company***, 710 A.2d 1093 (Pa. 1998) was misinterpreted by the trial court in granting [Geico's] motion for judgment on the pleadings because ***Rump*** applies solely to 75 Pa.C.S.A. § 1705(d)(1)(ii) exception?
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> 2. Whether the 75 Pa.C.S.A. § 1705(d)(1)(i) exception to the limited tort limitation dealing with DUI drivers applies to the instant case, and [] Appellant should therefore be eligible to recover non-economic damages?

Appellant's Brief at 6.[2]

Appellant argues that the trial court's erroneous reliance on ***Rump*** essentially "punish[es] the victims of uninsured drunk drivers." ***Id.*** at 12. Appellant claims ***Rump*** dealt specifically with out-of-state drivers, but not DUI accidents. ***Id.*** Thus, he contends "the instant case therefore falls under the exception to the limited tort limitations carved out by § 1705(d)(1)(i), and he should be treated as if he selected the full tort option and eligible to seek pain and suffering damages against his [uninsured motorist] policy." ***Id.*** Accordingly, Appellant contends the trial court erred in granting Geico's motion for judgment on the pleadings.

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[1] Appellant and the trial court complied timely with Pa.R.A.P. 1925.

[2] While Appellant presents two issues in his statement of questions involved, in the argument section of his brief, Appellant argues both issues together.

"[A]ppellate review of a trial court's decision to grant or deny judgment on the pleadings is limited to determining whether the trial court committed an error of law or whether there were facts presented which warrant a jury trial." ***Erie Ins. Exch. v. Conley***, 29 A.3d 389, 391 (Pa. Super. 2011).

The Motor Vehicle Financial Responsibility Law (MVFRL) provides in relevant part:

> (1) An individual otherwise bound by the limited tort election who sustains damages in a motor vehicle accident as the consequence of the fault of another person may recover damages as if the individual damaged had elected the full tort alternative whenever the person at fault:
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> > (i) is convicted or accepts Accelerated Rehabilitative Disposition (ARD) for driving under the influence of alcohol or a controlled substance in that accident;
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> > (ii) is operating a motor vehicle registered in another state;
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> > (iii) intends to injure himself or another person, provided that an individual does not intentionally injure himself or another person merely because his act or failure to act is intentional or done with his realization that it creates a grave risk of causing injury or the act or omission causing the injury is for the purpose of averting bodily harm to himself or another person; or
> >
> > (iv) has not maintained financial responsibility as required by this chapter, provided that nothing in this paragraph shall affect the limitation of section 1731(d)(2) (relating to availability, scope and amount of coverage).

75 Pa.C.S.A. § 1705(d)(1)(i).

The MVFRL further provides:

> (2) A person precluded from maintaining an action for noneconomic damages under section 1705 (relating to election of tort options) may not recover from uninsured motorist coverage or underinsured motorist coverage for noneconomic damages.

75 Pa.C.S.A. § 1731(d)(2).

In ***Rump***, as Appellant notes, our Supreme Court was called upon to examine a different exception to limited tort coverage under Section 1705(d)(1)(ii) above, relating to injuries inflicted by an uninsured, out-of-state driver. While noting that ***Rump*** dealt specifically with Section 1705(d)(1)(ii),[3] the Supreme Court granted allocatur in order to determine whether the language under Section 1705(d)(1)(iv) applied to **all** subparts of Section 1705. ***Id.*** at 1096. Ultimately, the Court concluded that it did. ***Id.*** at 1097. More specifically, the ***Rump*** Court, looking at the plain language of the MVFRL, determined:

> the limitations of 75 Pa.C.S. § 1731(d)(2) apply to **all** the subparagraphs contained in paragraph (1) of subsection 1705(d). Accordingly, a driver who elects limited tort coverage is unable to collect noneconomic damages from uninsured or underinsured motorist provisions of his insurance policy for any accidents set forth in paragraph 1 of 75 Pa.C.S. § 1705(d) because of the limitation at 75 Pa.C.S. § 1731(d)(2).
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> This conclusion is consistent with the policy behind the enactment of the MVFRL, the concern over the spiraling costs of insurance to residents of Pennsylvania. In three of

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[3] ***See Rump***, 710 A.2d at 1095, n.4.

> the four exceptions contained in paragraph (1) of 75 Pa.C.S. § 1705(d), **the General Assembly must have concluded that the importance of limiting insurance costs were outweighed by the need to punish or deter tortfeasors who drove under the influence** (subparagraph (i)), who intentionally injured others (subparagraph (iii)) and who operated an uninsured vehicle (subparagraph (iv)). In the fourth exception, the General Assembly obviously concluded that it needed to level the playing field between Pennsylvania limited tort insureds and the rights of out-of-state motorists since the MVFRL does not limit the ability of out-of-state motorists from recovering noneconomic damages from Pennsylvania tortfeasors and the allowance of this exception will not affect the insurance rates charged to Pennsylvania motorists. However, the limitation placed **on these four exceptions** by 75 Pa.C.S. § 1731(d)(2) reflects a legislative determination that allowing uninsured claims **under the four exceptions** would not deter or punish unacceptable conduct or level the playing field between parties. Instead, allowing such a recovery from the "limited tort" driver's uninsured or underinsured provisions of his policy would act to eliminate the cost savings associated with choosing the limited tort option because it would have an upward effect on insurance rates charged to Pennsylvania insureds.

Id. (emphasis added). The Supreme Court found that such a conclusion does not foreclose recovering non-economic damages from the tortfeasor, but merely limits the ability to recover from the limited tort insured's own insurance carrier. ***Id.*** at 1098.

Based upon our standard of review and established case law, we conclude that the trial court did not err in granting Geico's motion for judgment on the pleadings. Appellant elected limited tort coverage. As a matter of law, he was simply not permitted to recover non-economic damages from his own insurance carrier, despite the fact that an uninsured drunk driver allegedly injured him.

Order affirmed.