IN THE COURT OF APPEALS OF IOWA

FILED
JAN 27 1988
CLERK SUPREME COURT

JERRY W. McCLURE,	)	
Plaintiff-Appellant,	)	
vs	)	Filed January 27, 1988
NORTHLAND INSURANCE COMPANIES and LeMARS MUTUAL INSURANCE COMPANY OF IOWA,	)	7-491 / 87-175
Defendants-Appellees.	)	

Appeal from the Iowa District Court for Lee County (Law No. CL 1349-(N)0486) - David R. Fahey, Judge.

Plaintiff appeals from the order granting summary judgment. **REVERSED AND REMANDED.**

John C. Heinicke and J. W. McGrath of McGrath & McGrath, P.C., Keosauqua, and Arthur Buzzell, Davenport, for plaintiff-appellant.

Betty J. Ratekin and Craig D. Warner of Aspelmeier, Fisch, Power, Warner & Engberg, Burlington, for defendant-appellee LeMars Mutual Insurance Company of Iowa.

Michael D. Huppert of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, Des Moines, for defendant-appellee Northland Insurance Companies.

Heard by Oxberger, C.J., and Hayden, and Sackett, JJ. Schlegel, J., takes no part.

SACKETT, J. 139

This case involves the issue of the reduction of underinsured benefits by amounts received from a tortfeaser and as workers' compensation benefits. We determine where the injured party's damages exceed the amounts he has received from the tortfeasor and workers' compensation carrier he is entitled to underinsured motorist coverage up to the amount of his injury subject to the limitation of the underinsured coverage. We reverse the trial court's order granting summary judgment to the insurers and reverse for proceedings consistent with this opinion.

Plaintiff-Appellant Jerry W. McClure was injured in the course of his employment in a two-car automobile accident and was rendered a quadruplegic. Plaintiff collected $100,000 from the driver of the car that hit him and gave the driver and his insurance carrier a covenant not to sue in exchange for the payment. Plaintiff then settled with his employer's workers' compensation carrier for $251,024.19. As a part of the settlement the workers' compensation carrier waived subrogation rights for any sum plaintiff received up to $100,000.

In this action McClure sued Defendants-Appellees Northland Insurance Companies and LeMars Mutual Insurance Company of Iowa claiming they owed him underinsured motorist coverage. Plaintiff had purchased $25,000 of underinsured coverage from LeMars and was covered by a provision in the Northland policy covering the employer's vehicle he was driving in the amount of $100,000. It is conceded McClure had rights under these two underinsured policies. There is evidence which would support a finding his injuries were such that he was not adequately compensated by the $351,024.19 he received. Both defendants' policies had provisions that stated, in effect, that any amount payable under

the underinsured motorists coverage shall be reduced by all sums paid or payable under the workers' compensation or similar law.

Defendants-Appellees filed a motion for summary judgment. The trial court sustained the motion for summary judgment holding that the exclusions and limitations clauses in both insurers' policies limiting coverage were permissible under Iowa Code section 516A.2 as long as they did not reduce the underinsured protection below the statutory minimum of $10,000 for each person and $20,000 for each accident. The court also found the contract limitations reduced plaintiff's recovery to zero. From this order plaintiff has appealed.

The first question, whether the underinsured benefits should be reduced by the $100,000 paid by the other driver, was answered by the Iowa Supreme Court in American States Insurance Company v. Estate of Tollari, 362 N.W.2d 519, 522 (Iowa 1985). The court held if the tortfeasor has some liability insurance, but it is insufficient to pay the loss fully, the plaintiff can under his own underinsured motorist coverage recover his loss from the tort less the tortfeasor's available liability insurance proceeds, subject to the limit of that underinsured coverage and assuming no duplication of benefits exists.

The next question is whether underinsured benefits should be reduced by the amount plaintiff received as workers' compensation.

The provisions of the policies must be read in connection with section 516A and if contrary to the statute are not effective. See Davenport v. Aid Ins. Co., 334 N.W.2d 711, 712 (Iowa 1983); Benzer v. Iowa Mutual Tornado Ins. Ass'n, 216 N.W.2d 385, 388 (Iowa 1974); Selken v. Northland Ins. Co., 249 Iowa 1046, 1052, 90 N.W.2d 29, 32 (1958). Iowa Code section 516A.2 provides in part that:

> . . . forms of coverage may include terms, exclusions, limitations, conditions, and offsets which are designed to avoid duplication of insurance or other benefits.

In McClure v. Employers Mut. Casualty Co., 238 N.W.2d 321, 329 (Iowa 1976), the Iowa court determined the words "insurance or other benefits" in the second sentence of section 516A.2 encompasses workers' compensation. Having determined that underinsured motorist coverage can be reduced by workers' compensation, the issue is whether the underinsured coverage is a duplication of the workers' compensation benefits. We hold it is not. In McClure, the court dealt with uninsured motorist coverage. The purpose of uninsured motorist coverage is to provide a set minimum level of recovery. Kluiter v. State Farm Mut. Auto. Ins. Co., ___ N.W.2d ___, ___ (Iowa 1987); Davenport v Aid Ins. Co., 334 N.W.2d at 713-15. Here we deal with underinsured coverage. The purpose of underinsured motorist coverage is to provide compensation up to the amount of the injury, subject to the policy limit, rather than up to a set minimum amount as is the case with uninsured motorist coverage. Kluiter, ___ N.W.2d at ___; Tollari, 362 N.W.2d at 522. Any amount paid from underinsured motorist coverage does not stand for or duplicate the workers' compensation, consequently there is no subrogation against the benefits in favor of the workers' compensation carrier.

There is evidence plaintiff has not been compensated for the full amount of his injury. If it is determined he has not been compensated for the full amount of his injury, the underinsured coverage in the two policies should be available to him.

We reverse the order granting summary judgment and remand to the trial court.

REVERSED AND REMANDED.