IN THE COURT OF APPEALS OF IOWA

FILED
SEP 26 1990
CLERK SUPREME COURT

No. 0-137 / 89-594

RAY O. GUTKNECHT, KARON A. GUTKNECHT, and TROY GUTKNECHT, By His Next Friend RAY O. GUTKNECHT,

Appellees,

146

vs.

FARM AND CITY INSURANCE COMPANY,

Appellant.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

Defendant appeals the district court award to the Gutknechts of $20,000, the uninsured coverage limits under their policy. **REVERSED AND REMANDED WITH DIRECTION.**

Scott Lemke of Pieters, Pieters & Lemke, Waterloo, for appellant.

William H. Gilliam, Waterloo, for appellees.

Heard by Oxberger, C.J., and Schlegel and Habhab, JJ.

OXBERGER, C.J.

Ray, Karon, and Troy Gutknecht, plaintiffs were involved in an automobile accident with an uninsured and intoxicated driver. They brought an action against their own automobile insurance carrier to recover the uninsured coverage limits under their policy.

The district court awarded the Gutknechts $20,000.00, the uninsured limits. The insurance carrier appeals contending that it is not liable for any amount because the Gutknechts received a $27,000.00 settlement from three dram shops and that amount is a pro tanto credit against the carrier's $20,000.00 uninsured limits.

In March, 1984, an automobile driven by an intoxicated driver ran a red light and struck an automobile occupied by plaintiffs. The intoxicated driver was uninsured. Karon Gutknecht was seriously injured, Ray suffered minor injuries, and their son, Troy, was not injured.

As a result of the accident the Gutknechts sued the intoxicated driver and the three bars, pursuant to the dram shop act, that sold the alcohol to the driver. In September, 1986, the Gutknechts settled with the dram shops for $27,000.00 and released them from further liability. The intoxicated driver obtained a discharge of liability through the bankruptcy court.

The Gutknechts filed a lawsuit against their automobile insurance carrier under chapter 516.A of the Code, the

uninsured motorists' statue. The trial court found Karon's injuries far in excess of the $27,000.00 received from the dram shops and awarded her $20,000.00 from her insurance carrier, the uninsured policy limit. The insurance carrier appeals.

Our scope of review is limited to correction of errors at law. Iowa R. App. P. 4. We hold that the trial court erred in awarding Karon $20,000.00 from her insurance carrier under her uninsured motorist coverage.

Uninsured motorist coverage is designed to establish a minimum amount which a victim may recover when injured by a person with less coverage than required by Iowa Code section 321A.1(10). McClure v. Northland Ins. Companies, 424 N.W.2d 448, 450 (Iowa 1988). Underinsured coverage, on the other hand aims at full compensation of the victim. Id. "In the uninsured motorist coverage area, we have traditionally taken a narrow coverage view, subtracting from the policy limit any recovery from other sources." Id. at 449 (authorities omitted).

The uninsured motorist coverage provision in the insurance policy involved in this case provides in part: "Any amounts otherwise payable for damages under this coverage shall be reduced by all sums: 1. Paid because of the bodily injury by or on behalf of persons or organizations who may be legally responsible."

In Davenport v. AID Ins. Co. (Mut.), 334 N.W.2d 711, 715 (Iowa 1983), the Court held an insurer may provide in its policy provision for uninsured motorist coverage that its liability to the insured shall be reduced by any other payments the insured receives. Applying the principles enunciated in McClure, we find the defendant insurance company entitled to a pro tanto offset for the recovery from the dram shops potentially liable for part of Karon Gutknecht's injuries. The insurance policy served only to insure that if an insured suffered injury, he or she would receive a minimum recovery of $20,000. In this instance Karon did recover from sources other than the uninsured driver and the insurance policy at issue requires that the recovery offset the amount due from the insurance company. We reverse the district court's order entering judgment in favor of the plaintiffs in the amount of $20,000 with interest.

The uninsured motorist coverage of the insurance policy owned by the plaintiffs provided a $20,000 limit per covered person and a $40,000 limit per accident. The $27,000 dramshop settlement was divided among the Gutknechts by providing $500 to Troy and the balance between Ray and Karon in undivided shares. The record is unclear on how the recovery was divided between Ray and Karon. If Karon's share of the settlement was $13,250 then she did not recover up to the $20,000 uninsured motorist limit available under the insurance policy. Applying the

rationale of American States Insurance Co. v. Tollari, 362 N.W.2d 519, 522 (Iowa 1985), the $20,000 of coverage owed Karon as an insured person should be offset by her share of the settlement, not the full settlement. For example, if Karon received $13,250 of the settlement, she should receive a judgment in the amount of $7,750 with interest. We remand this case for the district court to hold a hearing to ascertain the amount of Karon's share of the $26,500 settlement and order judgment in accordance with this opinion.

Iowa Code section 123.94 provides:

> No right of action for contribution or indemnity shall accrue to any insurer, guarantor or indemnitor of any intoxicated person for any act of such intoxicated person against any licensee or permittee as defined in this chapter.

Iowa Code §123.94 (1989).

Iowa Code section 123.94 does not apply to this case because the defendant was not the insurer of an intoxicated person. Ayers v. Straight, 422 N.W.2d 643, 646 (Iowa 1988). Rather, the defendant served as the insurer of the plaintiffs by providing protection against loss from uninsured motorists up to $20,000. Booth v. Fireman's Fund Ins. Co., 218 So. 2d 580, 583 (La. 1968). Since the defendant did not step into the shoes of the intoxicated driver, section 123.92 does not apply to this situation and the insurance proceeds due Karon pursuant to the insurance contract in force must be offset by her recovery from the dram shops. We reverse and remand this case to the

district court to enter an order in accordance with this opinion.

REVERSED AND REMANDED WITH DIRECTION.