STATE OF MICHIGAN

COURT OF APPEALS

JAMES C. HURST, JR.,

Plaintiff-Appellee,

v

AUTO CLUB INSURANCE ASSOCIATION, a/k/a, AAA MICHIGAN,

Defendant-Appellant.

UNPUBLISHED
August 2, 1996

No. 178225
LC No. 93-001216-NZ

Before: Wahls, P.J., and Murphy and C.D. Corwin,* JJ.

PER CURIAM.

Defendant appeals as of right from an August 12, 1994, judgment granted in favor of plaintiff, James C. Hurst, on his cause of action against defendant for denial of benefits in this no-fault insurance, automobile property damage case. We affirm in part and reverse in part.

On March 2, 1992, plaintiff was involved in an automobile accident with his ex-wife's new boyfriend. Plaintiff filed a claim with defendant, AAA Michigan, who denied the claim, stating that denial was based on the fact that the damage was caused by plaintiff's own intentional acts; that the claims were not covered by the insurance policy; and because of the fact that plaintiff had intentionally concealed or misrepresented material facts and circumstances surrounding the incident. A jury trial was held on plaintiff's cause of action against defendant for denial of benefits. In a post-trial hearing, after the jury returned a verdict in favor of the plaintiff and awarded damages in the amount of $13,378.77, the lower court held that penalty interest under MCL 500.3142; MSA 24.13142, in the amount of $3,612.24, should be awarded on the judgment.

Defendant first contends that the trial court erred in granting plaintiff interest under §3142 of the no-fault act. Defendant contends that this section applies only to no-fault personal insurance protection benefits and plaintiff's award was based on optional collision coverage, which is outside the no-fault act. We agree.

* Circuit judge, sitting on the Court of Appeals by assignment.

This issue, involving statutory interpretation, raises a question of law, which we review de novo. *Smeets v Genesee Co Clerk*, 193 Mich App 628, 633; 484 NW2d 770 (1992). In reviewing the relevant statute, we adhere to the maxim that when the language of a statue is clear and unambiguous, legislative intent is manifest and judicial interpretation is precluded. *Reisman v Regents of Wayne State Univ*, 188 Mich App 526, 536; 470 NW2d 678 (1991).

MCL 500.3142; MSA 24.13142 specifically addresses personal protection insurance and allows interest to be applied to judgments of personal protection benefits; not to property protection benefits. *Michigan Basic Property Ins Ass'n v Michigan Mutual Inc Co*, 122 Mich App 420, 426; 332 NW2d 504 (1983). To establish a definition for personal protection insurance, the no-fault act mandates that "[u]nder personal protection insurance an insurer is liable to pay benefits for *accidental bodily injury* arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter." MCL 500.3105(1); MSA 24.13105(1) (emphasis added). Plaintiff's claim at trial was for property damage to his automobile under collision coverage he carried through defendant. No claim was ever made for personal protection benefits as plaintiff was not injured in the automobile accident. Therefore, the trial court erred in granting penalty interest on plaintiff's judgment under MCL 500.3142(3); MSA 24.13142(3).

Defendant next contends that the trial court erred in giving SJI2d 6.01, which permits a jury to draw an adverse inference if it believes that material evidence not produced by a party was under the party's control and no reasonable excuse was given for the failure to produce the evidence. *In re Skulina Estate*, 187 Mich App 649, 654; 468 NW2d 322 (1991). We disagree with defendant's contention.

Prior to trial, plaintiff requested defendant produce a copy of the policy and "any other language" relied upon by defendant in refusing the claim. Defendant produced the policy and declarations, but did not produce any endorsements, stating that they were not longer available pursuant to defendant's document retention policy. At trial, evidence was presented by defendant's representative that the contract of insurance between defendant and plaintiff consisted of the policy, declarations and contract endorsements. Defendant further testified that contract language was the basis for denial of plaintiff's claim. Plaintiff requested the trial court give SJI2d 6.01 due to the failure of defendant to produce the entire contract of insurance.

When requested by a party, a standard jury instruction must be given if the court feels it is accurate and applicable in light of the circumstances presented by the particular case. *Constantineau v DCI Food Equip, Inc*, 195 Mich App 511, 516; 491 NW2d 262 (1992). Defendant's failure here to produce the endorsements, which were under their direct control, warranted the trial court's jury instruction on the inference to be given a failure to produce evidence.

Finally, defendant alleges that a new trial should be granted on the issues presented in this case because plaintiff's attorney conducted improper questioning which inflamed and misled the jury. Reviewing plaintiff's allegation to determine whether the alleged misconduct evidences a deliberate

course of conduct on the part of the offending attorney aimed at preventing the opposing side from receiving a fair and impartial trial, we find a new trial is not mandated here. *Guider v Smith*, 157 Mich App 92, 101; 403 NW2d 505 (1987).

On appeal, defendant asserts that because plaintiff's attorney repeated questions about an arrest at a "crack house" and the "crack house event" concerning the party with whom plaintiff had the automobile accident, the jury was prejudiced to such an extent that a new trial is mandated. However, an examination of the transcript of the trial in this case reveals that the "crack house event" was only mentioned twice in the course of a two-day trial. Further, the second time the crack house event was mentioned, defense counsel objected. The court sustained the objection and instructed the jury not to consider the crack house event in their deliberations. Therefore, any taint caused by the crack house reference was thereby rendered harmless by the court's timely instruction, and a new trial is not mandated. *Reetz v Kinsman Marine Transit Co*, 416 Mich 97, 102-103; 330 NW2d 638 (1982).

Affirmed in part, but reversed as to the trial court's award of $3,612.24 in interest on the judgment pursuant to MCL 500.3142; MSA 24.13142.

/s/ Myron H. Wahls
/s/ William B. Murphy
/s/ Charles D. Corwin