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May 03 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2022-000082

Case No. 2019-CP-26-005892

RONALD L. MIMS

Appellant

vs.

DIANE W. RAY

Respondent.

**APPELLANT’S REPLY TO RESPONDENT’S MOTION FOR AWARD OF COSTS ON
APPEAL**

Appellant requests Respondent’s motion for award of costs on appeal be denied, and or reduced, as Respondent was provided a defense by her automobile liability insurance company and the request is unduly burdensome to the Appellant.

Appellant appealed the lower court’s decisions granting Respondent’s motion for summary judgement. Appellant argues the lower court erred in determining the evidence generated only a single inference – that Appellant’s negligence amounted to more than fifty percent of the total fault in the underlying collision. Appellant properly exercised his right to an appeal and his arguments

were not frivolous but rather based on the common law and case law of this Court and the Supreme Court of South Carolina. *See* Final Brief of Appellant.

Respondent Diane Ray, an owner and the President of Garden City Furniture in Garden City, South Carolina (Depo. of Ray, R. p. 202, lines 13-25) seeks \$2,500.00 in costs for, among other things, \$2,347.11 in attorneys fees *See* Respondent's Motion for Award of Costs on Appeal.

Respondent's request should be denied as South Carolina liability insurance policies provide a defense to their insureds. "A liability insurance policy contains two insuring provisions of major significance: one, providing for the payment by the insurer of sums the insured shall become obligated to pay, the other providing, in substance, for the defense of any suit alleging bodily injury or property damage and seeking damages payable under the terms of the policy." *Sloan Const. Co., Inc. v. Central Nat. Ins. Co. of Omaha*, 269 S.C. 183, 236 S.E.2d 818 (S.C. 1977). Although Respondent is seeking costs and attorneys fees, a defense was provided to her by the \$750,000.00 combined limits liability policy issued by Auto Owners Insurance Company on the 2015 BMW X5 she was driving in the underlying 2019 motor vehicle collision. According to the declarations page attached as Exhibit A, she paid a \$1,316.38 premium for this policy which includes a provision providing for a defense. (See attach Exhibit A).

Appellant was injured when he collided with Respondent's vehicle and incurred approximately \$45,503.15 in medical bills to diagnosis and repair 1. Right intraarticular distal radius fracture, 2. Right acute carpal tunnel syndrome, and 3. Right displaced ulnar styloid fracture. The following invasive procedures were performed by Appellant's orthopedic surgeon: 1. Open reduction and internal fixation of right distal radius fracture, 2. Right open carpal tunnel release, and 3. Closed treatment of right ulnar styloid fracture.

In his June 1, 2020 deposition, Appellant Mims testified that he completed three semesters at Horry-Georgetown Technical College (Depo. of Mims, R. p. 236, lines 10-16) and works at Save More Super Store as a bicycle mechanic (R. p. 237, lines 4-9). At the time of the loss, Appellant was making \$13.00 per hour working as a landscaper (Depo. of Mims, R. p. 238, lines 19-24). At this rate, Appellant would need to work more than 192 hours, nearly five weeks, to pay for the costs and attorneys fees sought by Respondent Ray.

Respondent Ray's liability policy provided her a defense and Appellant would be burdened by an award of costs and fees. Therefore, this Court should deny Respondent's motion for an award of the same.

Respectfully submitted,

Date this 3rd day of May 2024

GEORGE SINK, P.A. INJURY LAWYERS

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Exhibit A

OWNERS INS. CO.

Issued 05-15-2019

AGENCY WACCAMAW INSURANCE SERVICES INC
16-0604-00 MKT TERR 106

Company POLICY NUMBER 47-963-116-00
Bill Company Use 36-02-SC-0906

NAMED INSURED GARDEN CITY FURNITURE CO INC

Term 06-30-2019 to 06-30-2020

	TERRITORY	CLASS
5. 2015 BMW X5 XDRIVE35I VIN: 5UXKR0C55F0K59015	022 Georgetown County, SC	

COVERAGES	LIMITS	PREMIUM
Combined Liability	\$ 750,000 each accident	\$591.72
Combined Uninsured Motorist BI & PD	\$ 750,000 each accident	75.67
Combined Underinsured Motorist BI & PD	\$ 750,000 each accident	165.02
Excess Medical Payments	\$ 5,000 each person	15.35
Comprehensive	ACV - \$1,000 deductible Full Glass	180.84
Collision	ACV - \$1,000 deductible Full Glass	287.78
Terrorism Coverage		Excluded
TOTAL		\$1,316.38

Interested Parties: None

Additional Endorsements For This Item: 58321 (11-15) 58322 (11-15) 58461 (11-15)

ITEM DETAILS: Auto driven for pleasure/commute 0-3 use by a 72 year old operator.

Cost Symbol: 57-1A-48-8B-64.

15% Anti-Theft Device Discount applies to Comprehensive premium.

Vehicle Count Factor Applies.

5% ABS Discount applies to BI, PD, and Coll premiums.

Multi-Car Discount applies.

35% Air Bag Discount applies to Med Pay premium.

Owners Insurance Company Standard rates apply.

Rate Effective Date 07-30-2018

150 0772

6. 2015 GMC SIERRA C1500 VIN: 1GTNITEC3FZ906204	022 Georgetown County, SC
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COVERAGES	LIMITS	PREMIUM
Combined Liability	\$ 750,000 each accident	\$711.45
Combined Uninsured Motorist BI & PD	\$ 750,000 each accident	55.30
Combined Underinsured Motorist BI & PD	\$ 750,000 each accident	87.42
Excess Medical Payments	\$ 5,000 each person	25.65
Terrorism Coverage		Excluded
TOTAL		\$879.82

Interested Parties: None

Additional Endorsements For This Item: 58321 (11-15) 58322 (11-15) 58461 (11-15)

ITEM DETAILS: Light truck operated within a 100 mile radius - commercial use.

USE CLASS (00721): NOC - Miscellaneous.

Vehicle Count Factor Applies.

Rate Effective Date 06-05-2018

150 0026001 0772

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CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2024, I have mailed, regular first-class mail, postage prepaid, and emailed, to opposing counsel a copy of Appellant's Reply to Respondent's Motion for Costs of Appeal to:

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Attorney Signature on Following Page

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May 3, 2024
North Charleston, SC