STATE OF MICHIGAN

COURT OF APPEALS

ANDREW POKOSNIK,

Plaintiff-Appellant,

v No. 93430

UNITED CANADA INSURANCE CO.,

Defendant-Appellant.

BEFORE: D. F. Walsh, P.J., E. A. Weaver and M. Warshawsky*, JJ.

PER CURIAM

Plaintiff appeals as of right from an order for partial summary disposition entered in favor of defendant. We affirm.

I

Following plaintiff's injury in Michigan while driving the semi-tractor-trailer truck of his Canadian employer, plaintiff received no-fault benefits from the defendant insurer. As a Canadian employee, plaintiff also received benefits from the Workers' Compensation Board of Ontario, Canada, but agreed to reimburse the Board for these benefits in the event of future recovery from any third-party tortfeasor. Plaintiff's no-fault benefits were offset by his workers' compensation benefits pursuant to MCL 500.3109; MSA 24.13109. Upon the Board's demand following plaintiff's subsequent recovery from the third-party torfeasors, plaintiff reimbursed the Board in the amount of $90,000.

When plaintiff then sued the defendant no-fault insurer seeking recovery of the reimbursed $90,000, the circuit court granted defendant's motion for partial summary disposition on the basis that plaintiff's claim was barred by the statute of limitations, MCL 500.3145(1); MSA 24.13145(1). Plaintiff appeals as of right.

II

In Michigan, an employee's rights and entitlement to compensation for injuries are governed by both the workers'

compensation act and the no-fault act, MCL 418.101 et seq.; MSA 17.237(101) et seq.; MCL 500.3101 et seq.; MSA 24.13101 et seq. Great American Ins Co v Queen, 410 Mich 73, 86; 300 NW2d 895 (1980). Under the Michigan no-fault act, an employee's entitlement to workers' compensation benefits is set off against his no-fault benefits, thereby reducing the no-fault insurer's liability for payment. MCL 500.3109; MSA 24.13109. Matthis v Interstate Freight System, 408 Mich 164, 187; 289 NW2d 708 (1980).

As for recovery against third-party tortfeasors, this Court has held that the Federal Employees' Compensation Act, 5 USC 8101 et seq., authorizes the United States government to use a plaintiff's tort recovery for noneconomic damages as a basis to demand reimbursement of workers' compensation benefits previously paid for the injured employee's economic damages. Sibley v Detroit Auto Inter-Insurance Exchange, 156 Mich App 519, 524; 402 NW2d 51 (1986), lv gtd 428 Mich 908 (1987). However, a plaintiff's reimbursement to the federal government does not entitle him to repayment of that amount by the no-fault carrier, since such reimbursement to the government does not constitute authorized medical or wage-loss benefits and therefore is not an "allowable expense" as described at MCL 500.3107; MSA 24.13107. Id. If a plaintiff does not recover in tort, he incurs no reimbursement obligation to the federal government; but if he does recover in tort, the plaintiff must reimburse the government even if he never receives no-fault benefits. Id. at 524-525. The Court recognized the disparity between state and federal law arising from the fact that Michigan workers' compensation carriers are not reimbursed for compensation benefits which were set off against no-fault benefits, but the Court felt constrained to follow the law as it presently exists. Id. at 525-526.

In the instant case, because the reimbursement provisions of the Workers' Compensation Board of Ontario, Canada, are similar to those of the Federal Employees Compensation Act,

plaintiff's tort recovery obligated him to make reimbursement for the workers' compensation benefits which he had received. This reimbursement, however, was not an "allowable expense" under Michigan's no-fault act, since plaintiff had already been made whole for his economic damages. Id. at 524. Therefore, plaintiff had no cause of action against defendant.

Because plaintiff had no cause of action, the circuit court erred when granting defendant's motion for partial summary disposition based upon the statute of limitations, MCL 500.3145(1); MSA 24.13145(1). However, the error was harmless, since the court achieved the right result for the wrong reason. Warren v Howlett, 148 Mich App 417, 426; 383 NW2d 636 (1986).

On the basis of our holding that there is no cause of action, it is unnecessary to discuss whether plaintiff's claim against the defendant no-fault insurer was timely made.

Affirmed.

/s/ Daniel F. Walsh
/s/ Elizabeth A. Weaver
/s/ Meyer Warshawsky