STATE OF MICHIGAN

COURT OF APPEALS

SANFORD MOORE,

Plaintiff-Appellant,

v No. 99241

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellee.

Before: Holbrook, Jr., P.J., and MacKenzie and N.A. Baguley,* JJ.

PER CURIAM

This case involves a claim for $2,556.07 deducted by defendant Auto Club Insurance Association from no-fault insurance personal protection benefits (PIP) paid by defendant to plaintiff Sanford Moore. Moore was injured in an automobile accident on February 27, 1985, and was disabled from his job at Grand Trunk & Western Railroad until August 1, 1985. Moore had a no-fault automobile policy with Auto Club that had full, uncoordinated benefits under which Moore received no-fault PIP benefits. Moore received $2,556.07 in Railroad Unemployment Insurance Act benefits pursuant to 45 USC §§ 351-368. Auto Club subtracted from the no-fault wage loss benefits otherwise due Moore this amount, which is the subject of this dispute.

On October 31, 1985, Moore filed a complaint in Washtenaw Circuit Court to determine, in part, whether or not the set-off in the amount of $2,556.07 claimed by Auto Club was appropriate. On January 12, 1987, Auto Club moved for summary disposition pursuant to MCR 2.116(C)(8), arguing that the deduction of $2,556.07 was made under the authority of the "governmental benefit set-off" provision of § 3109(1) of the Michigan no-fault insurance act, MCL 500.3101 et seq.; MSA 24.13101 et seq.

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

Following oral argument, the court granted defendant's motion for summary disposition ruling that the two-part test set forth in Jarosz v DAIIE, 418 Mich 565; 345 NW2d 563 (1984), was met, therefore, the set-off of the federal benefits was mandatory. We agree with the trial court's ruling.

Section 3109(1) of the Michigan no-fault insurance act requires a subtraction of benefits provided under the laws of state or federal government from the amount of personal protection insurance benefits payable under any no-fault insurance policy. The purpose of the provision is to eliminate duplicative recovery of benefits and to contain insurance costs. See LeBlanc v State Farm Mutual Automobile Ins Co, 410 Mich 173, 197; 301 NW2d 775 (1981). However, not all governmental benefits are required to be subtracted from no-fault personal protection insurance benefits otherwise due. Jarosz, supra, at 573. Benefits bearing no relationship whatsoever to no-fault benefits or to the reason no-fault benefits are paid are not subject to set-off. Jarosz, supra, at 573-574.

In Jarosz, our Supreme Court held that social security retirement (old age) benefits were not required to be subtracted pursuant to § 3109(1) because they do not serve the same purpose as no-fault work loss benefits and are not provided or required to be provided as the result of injuries received in a motor vehicle accident which give rise to a claim for work loss benefits. In so holding, the Jarosz Court stated:

"We conclude that the correct test is: state or federal benefits 'provided or required to be provided' must be deducted from no-fault benefits under section 3109(1) if they:

"1) Serve the same purpose as the no-fault benefits, and

"2) Are provided or are required to be provided as a result of the same accident." Jarosz, supra, at 577.

We find that the trial court properly concluded that under the above test set-off was appropriate. Plaintiff's federal railroad unemployment insurance benefits were computed as

a percentage of his earnings pursuant to 45 USC § 352(a) and were clearly for the purpose of replacing wages lost during the period of disability. As Justice Ryan stated in Jarosz, supra, at 580-581: "No-fault work loss benefits...are a substitute for wages which a person actually would have earned but for an automobile accident". Thus, as the federal benefits serve the same purpose as the no-fault benefits, the first prong of the Jarosz test is met.

The second prong of the test is also satisfied by the fact that both the no-fault and federal railroad retirement disability benefits were payable as a result of disability from injuries sustained in the automobile accident on February 27, 1985. Since both parts of the Jarosz test are met, we conclude that set-off was appropriate. We affirm the trial court's grant of summary disposition and the set-off by defendant in the amount of $2,556.07 from the no-fault wage loss benefits otherwise due plaintiff.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Barbara B. MacKenzie
/s/ Norman A. Baguley