STATE OF MICHIGAN

COURT OF APPEALS

JUN 11 1990

AUSTIN SIBLEY,

Plaintiff-Appellant,

v No. 112453

DETROIT AUTOMOBILE INTER-INSURANCE EXCHANGE,

Defendant-Appellee.

Before: Holbrook, Jr., P.J., and Wahls and T. M. Burns,* JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order on remand, awarding plaintiff $12,186.69 plus prejudgment and post-judgment interest. We affirm.

Although the facts are not in dispute, a brief summary is helpful. Plaintiff was injured in a 1978 automobile accident during the course of his employment with the United States Postal Service. Plaintiff filed a worker's compensation claim against the federal government and was ultimately paid $17,221.87.

Plaintiff also filed a claim with defendant, the insurer of plaintiff's automobile which was not involved in the accident, for no-fault benefits. The claim was honored but defendant deducted from the no-fault benefits the benefits plaintiff received pursuant to the Federal Employees' Compensation Act (FECA) and paid plaintiff $14,498.68.

Plaintiff also pursued a tort claim against the owner and driver of the other vehicle involved in the accident, eventually settling that claim for $32,500. The U.S. Department of Labor then demanded reimbursement of benefits paid under FECA from plaintiff's tort claim settlement.

Plaintiff repaid the Department of Labor $12,186.69 plus $2,195.60 in interest and thereafter sought reimbursement of this payment from defendant. Defendant denied plaintiff's claim and litigation ensued.

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

Following summary disposition in favor of defendant at the trial court, plaintiff appealed as of right to this court. In Sibley v DAIIE, 156 Mich App 519; 402 NW2d 51 (1986), the trial court's grant of summary disposition was affirmed. Our Supreme Court, in Sibley v DAIIE, 431 Mich 164; 427 NW2d 528 (1988), reversed this Court's decision and held that plaintiff was entitled to reimbursement and remanded the matter to circuit court.

On remand, plaintiff filed a motion for entry of judgment requesting $14,382.29, the total amount repaid to the federal government, plus statutory prejudgment and post-judgment interest. Plaintiff subsequently amended his motion, seeking $17,221.87, the amount set off by defendant. Plaintiff also sought "no-fault penalty interest" pursuant to MCL 500.3142; MSA 24.13142. The trial court awarded plaintiff $12,186.69 plus prejudgment and post-judgment interest. Plaintiff's request for no-fault penalty interest was denied.

Plaintiff asserts on appeal that the trial court erred in denying his request for $17,221.87 plus statutory interest, contending that pursuant to the Supreme Court's ruling, he was entitled to the full amount set off by defendant as a result of his worker's compensation benefits paid by the federal government. We disagree.

Plaintiff's contention is based on two apparently conflicting paragraphs in the Supreme Court's Sibley decision. The first paragraph of the opinion states:

> We hold that because plaintiff was required by law to refund the benefits he had received, those benefits were not "provided or required to be provided" and therefore should not be subtracted from the personal protection insurance benefits otherwise available to plaintiff under the no-fault insurance act. 431 Mich at 166.

The last paragraph of the opinion reads:

> We find that section 3109(1) of the no-fault act does not apply in this case. Therefore, the amount plaintiff initially received in FECA benefits should not be subtracted from the personal protection insurance benefits otherwise available to plaintiff under the no-fault insurance act. Plaintiff is entitled to personal protection benefits plus

> interest. We therefore reverse the decision of the Court of Appeals and remand this case to the circuit court for entry of an order consistent with this opinion. 431 Mich at 171.

This apparent conflict stems from the use of the words "initially received" in the last paragraph which would refer to the $17,221.87 plaintiff received pursuant to FECA. This conflicts with the $12,186.69 plaintiff was required to pay back to the federal government.

Taking the final paragraph alone, plaintiff would be quite right that he is entitled to $17,221.87. However, our review of the opinion in its entirety leads us to the conclusion that the Court was clearly addressing only the sums paid back by the plaintiff. To interpret the last paragraph of the decision as plaintiff would have us do would be not only illogical but inconsistent with the rest of the opinion.

We hold, therefore, that plaintiff was entitled to reimbursement of only those monies he actually paid back to the federal government.

Plaintiff next argues the trial court erred when it failed to award him no-fault penalty interest. Plaintiff again relies on the last paragraph of the Sibley decision:

> Plaintiff is entitled to personal protection benefits plus interest. 431 Mich at 171.

Plaintiff would have us interpret this language as including no-fault penalty interest pursuant to MCL 500.3142; MSA 24.13142. We disagree.

The no-fault penalty interest provision was intended as an insured's remedy for the insurer's bad faith refusal to perform a no-fault insurance contract. Butt v DAIIE, 129 Mich App 211, 218; 341 NW2d 474 (1983). Since a legitimate question of statutory construction was presented in the case at bar, no-fault penalty interest would not have been appropriate. We believe that if the Supreme Court had intended that no-fault penalty interest be paid, it would have stated so explicitly. We therefore hold that the words "plus interest" were used in reference to the statutory prejudgment and post-judgment

interest. Plaintiff was automatically entitled to such interest by statute. MCL 600.6013; MSA 27A.6013.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Myron H. Wahls
/s/ Thomas M. Burns