STATE OF MICHIGAN

COURT OF APPEALS

LINDA L. BRICE, Personal Representative of the Estate of BRETT J. BRICE, Deceased,

Plaintiff-Appellee,

v

AUTOCLUB INSURANCE ASSOCIATION, a Michigan corporation,

Defendant-Appellant.

August 12, 1992

No. 135741

UNPUBLISHED

Before: Neff, P.J., and Gribbs and Cavanagh, JJ.

PER CURIAM.

In this action for declaratory relief, defendant appeals as of right the trial court's determination that plaintiff could recover uninsured motorists benefits under a no-fault automobile insurance policy issued by defendant. We reverse.

Plaintiff's decedent, Brett Brice, was killed while a passenger in a Dodge truck that was involved in a motor vehicle accident with an uninsured Dodge van. At the time of the accident, Brett was living with his brother who owned a motor vehicle that was insured by the defendant. The Dodge truck was insured by Liberty Mutual Fire Insurance Company. Although both of these policies provided uninsured motorist coverage with $20,000/$40,000 limits of liability, each insurer denied coverage when plaintiff applied for benefits.

Plaintiff filed a complaint for declaratory relief against both insurers and alleged that, under the priorities established in the no-fault insurance act, MCL 500.3114; MSA 24.13114, defendant was the primary insurer and Liberty Mutual was secondarily liable. In responding, defendant asserted that the no-fault priority provisions did not apply because that part of the policy that concerned uninsured motorist coverage was not governed by the act. In addition, defendant argued that it was not liable because the decedent was not an "insured" as that term is defined in the policy. Consequently, defendant insisted that Liberty Mutual was solely responsible.

In light of the undisputed factual matters, the trial court entertained cross-motions for summary disposition and agreed with defendant that the priorities found in the no-fault act did not apply. However, the trial court did not agree that the decedent was not an "insured" under the terms of defendant's policy. In the absence of a priority provision, the trial court found both insurance companies equally liable up to their liability limits of $20,000.

On reconsideration, defendant relied for the first time on a different clause in the policy to argue that coverage did not apply to bodily injury sustained by an insured person "while occupying a motor vehicle which provides the same or similar coverage for you or a relative." In light of the fact that Liberty Mutual had to provide "the same or similar coverage," defendant claimed that this exclusion blocked any liability based on defendant's policy. The trial court denied defendant's motion for reconsideration.

In this appeal, defendant contends that the trial court erred in its interpretation of the insurance contract and erred in refusing to apply the insurance contract's "anti-stacking" provision. We agree in part and reverse.

Insurance contracts are viewed the same as other contracts, as a matter of agreement between the parties, and courts will determine what the agreement was and enforce it accordingly. Dimambro-Northend Associates v United Construction, Inc, 154 Mich App 306, 312-313; 397 NW2d 547 (1986). Where the policy language is not ambiguous, the court will accept the plain meaning of the written terms as the agreement of the parties. Id. at 313. When the language of the insurance contract is clear, its construction is a question of law for the court. Hafner v DAIIE, 176 Mich App 151, 155; 438 NW2d 891 (1989). Exclusions limit the scope of coverage provided and are to be read with the insuring agreement and independently of every other exclusion. Hawkeye-Security Ins Co v Vector Construction Co, 185 Mich App 369, 384; 460 NW2d 329 (1990).

In this case, the scope of uninsured motorist coverage provided by defendant's policy was limited and bodily injury sustained "while occupying a motor vehicle which provides the same or similar coverage for you or a relative" was clearly excluded. It is undisputed that the decedent was injured while occupying a motor vehicle which provided for uninsured motorist coverage. Consequently, we are convinced that the trial court erred in interpreting the terms of the defendant's insurance policy. We express no opinion on defendant's "anti-stacking" argument.

Reversed.

/s/ Janet T. Neff
/s/ Roman S. Gribbs
/s/ Mark J. Cavanagh