STATE OF MICHIGAN

COURT OF APPEALS

MONROE CHATMAN,

Plaintiff-Appellant,

v

NATIONAL UNION FIRE INSURANCE COMPANY,

Defendant-Appellee.

September 30, 1993

No. 157547
LC No. 91-728 NI

Before: Shepherd, P.J., and Holbrook, Jr. and MacKenzie, JJ.

PER CURIAM.

Plaintiff, a Louisiana resident, was a truck driver employed by Poole Truck Line, an Alabama interstate motor carrier. On February 9, 1990, plaintiff was severely injured when the truck he was driving in Michigan was hit head-on by a van. Pursuant to a commercial automobile policy with truckers declarations, defendant is the no-fault insurance carrier for the Poole tractor-trailer rig plaintiff operated. At issue in this declaratory judgment action is whether defendant or plaintiff's personal automobile insurer is liable to plaintiff for benefits under the no-fault act, MCL 500.3101 et seq.; MSA 24.13101 et seq. The trial court ruled that plaintiff's personal insurer, rather than defendant, was liable for his benefits. Plaintiff appeals as of right. We reverse.

As a preliminary matter, plaintiff contends that the trial court erred in refusing to enforce a settlement agreement reached by the parties prior to the court's ruling. We disagree. An examination of the record and the letters exchanged by counsel for the parties during the negotiation process discloses a March 10, 1992 letter from defendant offering to settle on the terms stated, followed by plaintiff's March 24, 1992 letter seeking additional compensation for plaintiff's replacement services claim. Analyzed under contract principles, see Gojcaj v Moser, 140 Mich App 828, 834; 366 NW2d 54 (1985), plaintiff's response to defendant's offer constituted a counteroffer rather than an unconditional acceptance of defendant's terms. It therefore appears that the parties' settlement negotiations, though approaching finality, were never completed. Moreover, under MCR 2.507(H), a settlement agreement is not binding unless it was made in open court or is in writing and signed by the party against whom it is offered. Here, no final settlement agreement was made in open court, and the letters exchanged during the negotiation process never documented the final terms of an agreement reached by the parties. Accordingly, the trial court did not err in refusing to enforce the incomplete agreement.

Plaintiff next contends that the trial court erred in ruling that defendant is not liable to him for personal injury protection (PIP) benefits. In support of this contention, plaintiff cites § 3114(3) of the no-fault act, MCL 500.3114(3); MSA 24.13114(3), which provides that employees injured while occupying a vehicle owned or registered by their employer are entitled to PIP benefits from the insurer of the furnished vehicle.

Standing alone, § 3114(3) seems to compel the conclusion that defendant, as no-fault insurer of the Poole tractor-trailer rig operated by plaintiff, must provide PIP benefits to plaintiff. However, in Parks v Detroit Automobile Inter-Ins Exchange, 426 Mich 191; 393 NW2d 833 (1986), our Supreme Court held that an out-of-state vehicle not required to be registered in Michigan and not operated within the state for more than thirty days a year is not subject to § 3114(3) of the no-fault act. 426 Mich 196.

Here, the parties agree that the semi-tractor plaintiff was driving at the time of the accident was not required to be registered in Michigan pursuant to the no-fault act. Further, it was confirmed that the vehicle had not been driven in Michigan for more that thirty days in the calendar year of plaintiff's accident. Under Parks, supra, therefore, plaintiff's argument that he is entitled to PIP benefits from defendant pursuant to § 3114(3) fails. The trial court did not err in finding § 3114(3) inapplicable in this case.

However, as noted by plaintiff, Parks, supra, also addressed an insurer's liability to out-of-state residents under § 3163 of the no-fault act. MCL 500.3163(1); MSA 24.13163(1) provides:

> An insurer authorized to transact automobile liability insurance and personal and property protection insurance in the state shall file and maintain a written certification that any accidental bodily injury or property damage occurring in this state arising from the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle by an out-of-state resident who is insured under its automobile liability insurance policies, shall be subject to the personal and property protection insurance system set forth in this act.

The only conditions of insurer liability under this section are: (1) certification of the insurer in Michigan, (2) existence of an automobile liability policy between the nonresident and the certified insurance carrier, and (3) a sufficient causal relationship between the nonresident's injuries and his or her ownership, operation, maintenance or use of a motor vehicle as a motor vehicle. Transport Ins Co v Home Ins Co, 134 Mich App 645, 651; 352 NW2d 701 (1984).

Here plaintiff is a nonresident of Michigan. Defendant admitted in its answer to plaintiff's amended complaint that it is a certified insurer in Michigan. Further, its policy covering plaintiff as a Poole employee is a commercial automobile policy with truckers declarations. Moreover, it is undisputed that plaintiff's injuries were related to his operation of the Poole truck. Thus, it may be concluded as a matter of law that defendant falls within the ambit of § 3163(1).

As the Court in Parks observed, § 3163(1), if applicable, constitutes an alternative basis for imposing benefit payment priority upon an insurer, and is independent of the registration requirements which affect the applicability of § 3114(3). Parks, supra, at 207-210. Since the requirements of § 3163(1) are satisfied under the circumstances of this case, we conclude that defendant is obligated to pay plaintiff's PIP benefits pursuant to that section of the no-fault act. We therefore reverse the decision of the trial court and remand for entry of an order requiring defendant to pay plaintiff's PIP benefits as first-priority payor, pursuant to MCL 500.3163(1); MSA 24.13163(1). This disposition makes it unnecessary to address plaintiff's remaining claim on appeal.

Reversed and remanded. We retain no further jurisdiction.

/s/ John H. Shepherd
/s/ Donald E. Holbrook, Jr.
/s/ Barbara B. MacKenzie