Demeo v. State Farm Mut. Auto. Ins. Co.

Appeals Court of Massachusetts

May 16, 1995, Decided

94-P-289.

Reporter
38 Mass. App. Ct. 955 *; 649 N.E.2d 803 **; 1995 Mass. App. LEXIS 430 ***

MICHAEL J. DEMEO vs. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY.

Core Terms

settlement

Case Summary

Procedural Posture

Plaintiff sought review of an order from the trial court (Massachusetts), which entered judgment in favor of defendant insurer in plaintiff's action alleging that the insurer violated Mass. Gen. Laws ch. 176D, § 3(9)(f) by failing to effectuate prompt, fair, and equitable settlement of a claim in which the liability of its insured for injuries sustained by plaintiff in an automobile accident was reasonably clear.

Overview

Plaintiff alleged that he was injured when defendant's insured stopped at a green light, causing a car behind plaintiff to strike the rear of plaintiff's automobile. The insured declined to make a settlement offer, arguing that the automobile that struck the rear of plaintiff's automobile was the exclusive cause of the accident. Plaintiff filed suit and judgment was subsequently entered in favor of the insurer. On appeal, the court affirmed. In so doing, the court found that although the trial judge applied factors not relevant under § 3(9)(f) in reaching his decision, such as the insurer's business judgment, the decision would have been no different had the judge applied the required objective test of whether the insured's liability became reasonably clear. The court stated that the probability that a jury would conclude that the automobile that struck the rear of plaintiff's automobile was solely responsible for the accident was approximately equal to the probability that the jury would find that the insured's brief stop at a green light contributed to the accident. On that basis, the court concluded that the insured's liability was not reasonably clear.

Outcome

The court affirmed the trial court's judgment in favor of the insurer in plaintiff's action alleging that the insurer failed to effectuate prompt, fair, and equitable settlement of a claim in which the liability of its insured for injuries plaintiff sustained in an automobile accident became reasonably clear.

LexisNexis® Headnotes

Civil Procedure > Appeals > Standards of Review

HN1 **Appeals, Standards of Review**

On appeal, the court may consider any ground apparent on the record that supports the result reached in the lower court.

Insurance Law > Liability & Performance Standards > Settlements > General Overview

HN2 **Liability & Performance Standards, Settlements**

In the context of determining whether an insurer failed to effectuate prompt, fair, and equitable settlement of a claim in which liability was "reasonably clear," as

required by Mass. Gen. Laws ch. 176D, § 3(9)(f), the objective test of whether a defendant's liability became "reasonably clear" calls upon the fact finder to determine whether a reasonable person, with knowledge of the relevant facts and law, would probably have concluded, for good reason, that the insurer was liable to the plaintiff.

Headnotes/Summary

Headnotes

[*1]** *Insurance,* Motor vehicle insurance, Settlement of claim. *Words,* "Reasonably clear."

Counsel: Hans R. Hailey for the plaintiff.

Robert P. Turner for the defendant.

Opinion

[*955] **[**803]** The single issue before us is whether the defendant failed to "effectuate prompt, fair and equitable settlement of [a] claim[] in which liability has become reasonably clear." G. L. c. 176D, § 3(9)(f), as inserted by St. 1972, c. 543, § 1.

The essential facts of the controversy are not in dispute: [1] the defendant's insured (Wallace) was in her automobile travelling in the passing lane of a divided highway. The **[**804]** light was red at the approaching intersection, but as Wallace came closer to the intersection, the light turned green. Apparently confused about her location, Wallace stopped at the green light for about five seconds. The automobile behind Wallace stopped safely, as did the following automobile, which contained the plaintiff. The fourth automobile (Robichaud) did not stop; it hit the rear of the plaintiff's automobile, causing injuries. The defendant declined to make any offer in settlement on the ground that the Robichaud vehicle was the exclusive cause of the accident, [2] **[*956]** and this suit was **[***2]** brought alleging a violation of G. L. c. 176D, § 3(9)(f). See G. L. c. 93A, § 9(1). [3]

[*3]** Following a bench trial, the judge entered his findings. He concluded that the defendant did not violate either c. 93A or c. 176D. [4] The judge found that the decision of the defendant's claims specialist (Collins) to make no settlement offer was made in good faith and was not an unreasonable business judgment because (the judge found) Collins believed that the defendant had a fifty percent chance of prevailing and that the cost of defending the action was far less than the amount of the plaintiff's settlement demand.

Whether the defendant's liability in this case became "reasonably clear" calls for an objective standard of inquiry into the facts and the applicable law. See Van Dyke v. St. Paul Fire & Marine Ins. Co., 388 Mass. 671, 677 n.8, 448 N.E.2d 357 (1983). Compare Heller v. Silverbranch Constr. Corp., ***[***4]*** 376 Mass. 621, 627-628, 382 N.E.2d 1065 (1978). Compare also Thaler v. American Ins. Co., 34 Mass. App. Ct. 639, 642-643, 614 N.E.2d 1021 (1993); Guity v. Commerce Ins. Co., 36 Mass. App. Ct. 339, 343, 631 N.E.2d 75 (1994). The judge applied factors not relevant under the statute; the cost of the defense, the size of the plaintiff's demand, and the insurer's "business judgment" are all unrelated to the likelihood of the defendant's liability. Moreover, the judge made no independent, objective assessment, based on the evidence before him, [5] regarding the

[1] We take the facts from the uncontradicted testimony of the defendant's claims specialist. The plaintiff's brief acknowledges that the facts of the accident "have never been disputed." The judge made no findings as to the facts we recite, other than that a third person, the last in a line of automobiles, struck the vehicle in front of him, causing injury to the plaintiff, the first in the line of vehicles.

[2] If Wallace was negligent, and her negligence contributed to the plaintiff's injuries, she would be jointly and severally liable to the plaintiff who was without fault. See O'Connor v. Raymond Indus., Inc., 401 Mass. 586, 591, 518 N.E.2d 510 (1988). The defendant does not dispute this rule.

[3] The plaintiff is entitled to relief under G. L. c. 93A, § 9, if his rights were affected by the defendant's violation of G. L. c. 176D, § 3(9). See Van Dyke v. St. Paul Fire & Ins. Co., 388 Mass. 671, 675, 448 N.E.2d 357 (1983). The defendant does not challenge the applicability of G. L. c. 176D on the ground that this case involves only a single claim, see id. at 676, and we do not discuss the issue.

[4] In earlier proceedings in the Boston Municipal Court, there was a judgment for the plaintiff. The case, which originated in the Superior Court, was then retransferred to that court.

[5] In cases involving the allegation of an unfair claims settlement practice, the plaintiff may introduce evidence that the defendant's investigation of the facts or the law was inadequate in some material respect. See Heller v.

defendant's chance of prevailing at trial.

Nevertheless, we conclude that the decision would have been no different had the judge applied the required objective test **[***5]** of whether the defendant's liability became reasonably clear. See *Gabbidon v. King, 414 Mass. 685, 686, 610 N.E.2d 321 (1993)* ("It is well established that, ***HN1***[] on appeal, we may consider any ground apparent on the record that supports the result reached in the lower court"). See also *Magliozzi v. P & T Container Serv. Co., 34 Mass. App. Ct. 591, 593-594 n.5, 614 N.E.2d 690 (1993)*. ***HN2***[] That objective test calls upon the fact finder to determine whether a reasonable person, with knowledge **[*957]** of the relevant facts and law, would probably have concluded, for good reason, that the insurer was liable to the plaintiff.

The closest authority to which we have been referred by the parties is *Stamas v. Fanning, 345 Mass. 73, 185 N.E.2d 751 (1962)*, overruling *Conrey v. Abramson, 294 Mass. 431, 2 N.E.2d 203 (1936)*, where the court held on (somewhat) similar facts [6] that "it was open to the jury to find that the negligent act of the defendant set in motion a train of events which, unbroken by any new **[**805]** cause, continued as an operative factor down to the time of the accident and was the proximate cause of it." *345 Mass. at 77*. Thus, the court held that causation was a question **[***6]** of fact to be decided by the jury.

We are of opinion that on the facts presented to the judge, a reasonable person, with knowledge of those facts and the *Stamas* case, would probably conclude that the defendant was liable to the plaintiff. We have in mind the plaintiff's argument that the plaintiff need only prove, as we have said in note 2, that Wallace's conduct merely contributed to the accident. Nevertheless, we are of the opinion that the probability of the jury concluding that Robichaud -- who, alone among the three trailing vehicles, was unable to stop his automobile -- was *solely* responsible for the accident, see *Frazier v. Cordialino, 356 Mass. 465, 466, 253 N.E.2d **[***7]** 843 (1969)*, was approximately equal to the probability that the jury would find that Wallace's five-second stop at a green light contributed to the accident. On that basis, it cannot be said that the defendant's liability was reasonably clear. Compare *Van Dyke v. St. Paul Ins. Co., 388 Mass. at 677* & n.8. The judgment, therefore, must be affirmed.

So ordered.

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Silverbranch Constr. Corp., 376 Mass. at 628.

[6] In *Stamas,* the defendant cut across a line of traffic without warning. The first two vehicles in the line stopped abruptly, the third went off the road, and the fourth, belonging to the plaintiff, skidded on wet pavement, went off the road, and hit a telephone pole, injuring the occupants of the plaintiff's vehicle.