PEDRO GONZALEZ v. LIBERTY MUTUAL INSURANCE COMPANY

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO. A-1877-12T3

PEDRO GONZALEZ,

Plaintiff-Appellant,

v.

LIBERTY MUTUAL INSURANCE COMPANY,

Defendant,

and

TRAVELERS INSURANCE COMPANY,

Defendant-Respondent.

January 10, 2014

Submitted December 2, 2013 Decided

Before Judges Ashrafi and Leone.

On appeal from Superior Court of New Jersey, Law Division, Passaic County, Docket No. L-2634-11.

Koulikourdis and Associates attorneys for appellant (Peter J. Koulikourdis, on the brief).

Law Offices of William E. Staehle, attorneys for respondent (Thomas F. Zborowski, on the brief).

PER CURIAM

This appeal presents a narrow issue that we have previously decided pertaining to the effect of an arbitration provision in an automobile insurance policy. Plaintiff Pedro Gonzalez appeals from summary judgment granted to defendant Travelers Insurance Company precluding plaintiff from rejecting the arbitrators' award and demanding a jury trial on his claim against Travelers for uninsured motorist coverage. We affirm.

Plaintiff was injured in an auto accident with an uninsured driver. Plaintiff's car was insured by defendant Liberty Mutual Insurance Company, and another resident of his household had an auto insurance policy issued by Travelers. Plaintiff was covered under both policies. The Liberty Mutual policy had uninsured motorist coverage of up to $100,000 per injured person; Travelers up to $50,000 per person. Both policies had arbitration clauses, and both had provisions rendering the arbitration decision binding on all parties if the award of damages was no more than $15,000. If the amount was more, either plaintiff or the insurance carrier could reject the award and demand a trial by jury.

Plaintiff filed suit against the two insurance carriers, and the matter was presented to a panel of three arbitrators. The arbitrators determined unanimously that the uninsured driver who struck plaintiff's car was solely responsible for causing the accident and, by a vote of two to one, that plaintiff satisfied the verbal threshold of his policies and was entitled to damages of $40,000. Based on the relative liability limits of the two policies, the award meant that Liberty Mutual would be responsible to pay plaintiff $26,800 and Travelers would be responsible to pay $13,200.1 Liberty Mutual did not accept the arbitrators' decision and demanded a trial by jury. Plaintiff then also rejected the award and demanded a trial by jury against both carriers.

Travelers moved for summary judgment on the ground that the award of $13,200 against it was less than $15,000 and therefore did not permit plaintiff to demand a jury trial as to its liability. The trial court heard argument and granted Travelers' motion. Plaintiff appeals from that decision as of right, having subsequently settled his claim against Liberty Mutual.

The pertinent provision of the Travelers policy states:

A decision agreed to by two of the arbitrators will be binding as to:

whether the insured is legally entitled to recover damages; and

the amount of damages. This applies only if the amount does not exceed $15,000 for bodily injury . . . . If the amount exceeds that limit, either party may demand the right to a trial by jury.

The parties present opposing views of how the phrase "amount of damages" should be interpreted. Plaintiff contends that "the arbitration award should be considered not in terms of each defendant's apportioned share but in its entirety, which was not less than $15,000." Travelers contends that "it is the quantum of the liability as to the particular carrier that determines whether an award is binding as to that carrier."2

We have previously decided the disputed issue in favor of Travelers' interpretation of the policy language. D'Antonio v. State Farm Mut. Auto. Ins. Co., 262 N.J. Super. 247 (App. Div. 1993). In D'Antonio, the plaintiff was injured in an auto accident, and settled with the other driver for the maximum of that driver's liability policy, $25,000. Id. at 248. The plaintiff brought a claim against her own insurance carrier for underinsured motorist coverage. In arbitration, she was awarded $40,000 in damages. Ibid. Interpreting policy language virtually identical to that in this case, we held she was not entitled to reject the award. The carrier's liability did not exceed $15,000 once the recovered $25,000 was subtracted from the amount of the award. Id. at 249-50.

We noted in D'Antonio that the intent of the parties was "to permit a post-arbitration trial only in cases of a certain magnitude, i.e., only where the 'amount of damages' fixed by the arbitrators exceeds $15,000." Id. at 249. We reasoned further that:

The arbitration is conducted to determine the carrier's liability for UIM payments. If a trial is available, it too will determine only the carrier's UIM obligation. It follows that the extent of the carrier's UIM liability not the tortfeasor's liability should determine whether the case is of sufficient magnitude to justify a trial. The parties' purpose in foreclosing trials in modest cases would be substantial-ly frustrated if the right to demand a trial turned on the damages attributable to the underinsured tortfeasor.

[Id. at 249-50.]

In recent years, we have confirmed the holding and reasoning of D'Antonio three times in unpublished decisions. We see no basis to depart from that precedent in the circumstances of this case.

Plaintiff attempts to draw a distinction that is not significant namely, that in D'Antonio the plaintiff's other claim and recovery was against the tortfeasor while in this case plaintiff's claim is against a second insurance carrier. In both cases, however, the arbitrators fixed the total damages at $40,000, and the liability of the carrier did not exceed $15,000.

Nor do we find merit in plaintiff's argument that the provision of the Travelers policy we quoted is ambiguous and should be interpreted in favor of him as the insured. See Longobardi v. Chubb Ins. Co., 121 N.J. 530, 537 (1990). D'Antonio was decided more than twelve years before Travelers issued its policy in this case. As other decisions reveal, virtually the same policy language pertaining to binding arbitration awards has been used in the intervening years by a variety of auto insurers. The meaning of "amount of damages" in the disputed provision has been established in our case law and is not at this late date subject to a claim of ambiguity.

Affirmed.

1 We take these figures from the parties' briefs on appeal without questioning their mathematical precision.

2 To place its potential liability in perspective, Travelers adds that, even in the event of a jury trial, its maximum liability to plaintiff under the anti-stacking provision of its policy is $33,333.33, that is, one third of the higher maximum available under either policy. See N.J.S.A. 17:28-1.1(c).