

Supreme Court Upholds NJ Transit's Right to Recoup Workers' Compensation Benefits Payment to Employee Through Subrogation

July 21, 2020 | by Thomas F. Dorn, Jr

On May 12, 2020, the New Jersey Supreme Court affirmed the Appellate Division in New Jersey Transit Corp. v. Sandra Sanchez (A-68-18)(082292), finding that New Jersey Transit could file a claim against a driver's automobile policy to recover workers' compensation benefits that NJ Transit had paid to an employee following a motor vehicle accident caused by the other driver.

This decision shows that subrogation rights are primary and that when someone else is at fault they should bear responsibility. When a workers' compensation insurance company pays thousands of dollars in benefits and someone else besides the employer or employee caused the accident, the workers' compensation insurance company is entitled to subrogate and recover benefits paid to the employee pursuant to N.J.S.A. 34:15-40.

The Facts: Accident Occurred During Course of Employment with NJ Transit

In 2014, David Mercogliano ("Mercogliano") was driving a vehicle owned by his employer, New Jersey Transit Corporation ("NJ Transit"), when his vehicle was struck in the rear by a vehicle driven by Sandra Sanchez ("Sanchez").

Because Mercogliano's accident occurred during the course of his employment with NJ Transit, he was entitled to file a workers' compensation claim against Liberty Mutual, the workers' compensation insurance carrier for NJ Transit. Mercogliano did file a workers' compensation claim and received a settlement whereby Liberty Mutual paid a total of \$33,625.70 in workers' compensation benefits, allocated as \$6694.04 for medical bills, \$3982.40 in lost time from work benefits, and \$22,949.26 in partial permanent disability benefits.

Because, as explained below, the verbal threshold of his own automobile insurance policy required a permanency standard for his injuries, which he did not meet, he was not able to collect further compensation from the insurance company of the vehicle that caused the accident.

How Workers' Compensation Claims Work

As part of any admitted workers' compensation claim, the workers' compensation insurance company is required to authorize and pay for medical treatment, lost time from work payments (provided the injured worker is out of work for more than seven days), and permanent disability benefits if the injured worker suffers any type of partial permanent disability.

The total amount of money paid for the medical bills, lost time from work and permanent disability paid is referred to as *the workers' compensation lien*. A lien only comes into effect if the injured workers' accident was caused by the negligence of someone else, i.e., a third party. If the accident had been Mercogliano's fault then he could only pursue a workers' compensation claim, and not a negligence claim against a third party. But in this case, Sanchez was at fault for the accident and Mercogliano had the right to pursue a third-party negligence claim.

The Tort Threshold – Verbal or Zero

Under the Auto Insurance Cost Recovery Act (AICRA), New Jersey residents who own motor vehicles have to choose, at the time automobile insurance is purchased, a verbal threshold (also known as a limitation on lawsuit) or the more expensive option of a zero threshold (also known as no limitation on lawsuit).

- If a verbal threshold is selected, an individual injured in a motor vehicle accident, with a few exceptions including a fracture, cannot file a lawsuit for noneconomic losses against the negligent driver unless a medical professional certifies that the individual suffered a *permanent injury*.
- In motor vehicle accidents that are not work-related, an injured individual's medical bills are paid by their household automobile insurance carrier. An injured driver is bound by the tort threshold they selected in their household automobile policy unless

the vehicle that caused the accident is a commercial vehicle; the zero threshold applies if the other vehicle is a commercial vehicle.

Following his injury, Mercogliano received treatment for two months before returning to work without any restrictions. His diagnosis was a cervical strain and right trapezius strain. His household automobile insurance with New Jersey Manufacturers had the verbal threshold/limitation on lawsuit selection.

Were the Injuries of a Permanent Nature?

The Supreme Court noted that that all parties agreed that Mercogliano's injuries did not meet the permanency standard within the verbal threshold. As such, Mercogliano could not pursue a third-party negligence claim against Sanchez.

The Issue on Appeal: Whether NJ Transit Could Recoup Payment by Filing a Claim Against Other Driver

The issue on appeal was whether NJ Transit could recoup its workers' compensation benefits that it paid to Mercogliano by filing a claim against Sanchez's automobile insurance company, even though Mercogliano could not file such a claim. Sanchez's insurance carrier claimed that the Auto Insurance Cost Recovery Act (AICRA) limitation on lawsuit laws prevented Mercogliano from filing a third-party claim and consequently, NJ Transit could not pursue a subrogation claim.

New Jersey Laws Considered by The Supreme Court

The Supreme Court considered N.J.S.A. 34:15-40, which states that the employer or the injured worker has the right to file a third-party claim against the negligent third party.

Therefore, although Mercogliano could not file a claim, the Supreme Court agreed with NJ Transit that it was entitled to pursue a subrogation claim to recoup its worker's compensation benefits payment and be reimbursed by Sanchez's automobile insurance carrier.

Reimbursement

The Supreme Court turned to N.J.S.A. 34:15-40, which states that two-thirds of the total workers' compensation benefits paid, less \$750 in court costs, is entitled to be reimbursed. The court focused on the Legislature's intention and applicability of the collateral source rule, N.J.S.A. 39:6A-6 and concluded that, "the Legislature made clear that when an employee injured in a work-related accident is entitled to benefits under the Workers' Compensation Act, that statute- not AICRA—provides his or her primary source of recovery for medical expenses and lost wages."