Michigan Law Review

Volume 40 | Issue 1

1941

INSURANCE - PUBLIC LIABILITY POLICY - LIABILITY OF INSURER FOR PUNITIVE DAMAGES AND PENALTIES

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INSURANCE — PUBLIC LIABILITY POLICY — LIABILITY OF INSURER FOR PUNITIVE DAMAGES AND PENALTIES — Under an automobile liability policy, the defendant insurer paid the plaintiff, on his judgment against the insured, the amount of compensatory damages recovered for injuries. The insurer refused, however, to pay the additional sum awarded as double damages under a statute providing that the court in its discretion might award double or treble damages where the injury was caused by a violation of certain statutory rules of the road. By the terms of the policy defendant insurance company agreed to pay "all sums which the insured shall become obligated to pay by reason of liability imposed upon him by law for damages . . . because of bodily injury." Plaintiff sued insurer, who demurred to the complaint on the ground that the sum sought to be recovered was a penalty. The demurrer was overruled and defendant appealed. *Held*, the demurrer should be sustained. The allowance of double damages is an imposition of a penalty rather than a recovery of punitive damages and hence the liability is not "for damages because of bodily injury." *Tedesco v. Maryland Casualty Co.*, (Conn. 1941) 18 A. (2d) 357.

In construing the terms of the policy to exclude liability for double damages the court was guided by considerations of public policy. The decision clearly indicated that had the insurer expressly undertaken responsibility for such damages, public policy would have rendered the undertaking nugatory.[1] Although a liability insurance policy may properly encompass damages resulting from the violation of a criminal statute by the insured,[2] the general holding is that injuries inflicted intentionally or through wanton conduct are not within liability insurance coverage.[3] Yet a few courts, emphasizing the protection afforded to the injured members of the public, impose liability upon the insurer even where the injury was wantonly or intentionally inflicted.[4] However, insurance against fines and penalties imposed by the criminal law would contravene public policy.[5]

[1] "A policy which permitted an insured to recover from the insurer fines imposed for a violation of a criminal law would certainly be against public policy. The same would be true of a policy which expressly covered an obligation of the insured to pay a sum of money . . . imposed as a penalty because of a public wrong." Principal case, 18 A. (2d) at 359.

[2] 6 BLASHFIELD, CYCLOPEDIA OF AUTOMOBILE LAW AND PRACTICE, § 3974 (1935); Security Underwriters v. Rousch Motor Co., 88 Ind. App. 112, 161 N. E. 569 (1928); Fireman's Fund Ins. Co. v. Haley, 129 Miss. 525, 92 So. 635 (1922); McMahon v. Pearlman, 242 Mass. 367, 136 N. E. 154 (1922); Messersmith v. American Fidelity Co., 232 N. Y. 161, 133 N. E. 432 (1921).

[3] Tinline v. White Cross Ins. Assn., [1921] 3 K. B. 327; Commonwealth Casualty Co. v. Headers, 118 Ohio St. 429, 161 N. E. 278 (1928); Messersmith v. American Fidelity Co., 232 N. Y. 161, 133 N. E. 432 (1921).

[4] Robinson v. United States Fidelity & Guaranty Co., 159 Miss. 14, 131 So. 541 (1931); Wheeler v. O'Connell, 297 Mass. 549, 9 N. E. (2d) 544 (1937). In the last-named case, the Massachusetts court stated that liability under compulsory insurance is broader and may cover injuries due to willful wrong, but the court recognized that under ordinary insurance this would be against public policy and void.

[5] See 6 BLASHFIELD, CYCLOPEDIA OF AUTOMOBILE LAW AND PRACTICE, § 3833 (1935); APPLEMAN, AUTOMOBILE LIABILITY INSURANCE 67 (1938); Taxicab Motor Co. v. Pacific Coast Casualty Co. of San Francisco, Cal., 73 Wash. 631, 132 P. 393

If, therefore, under Connecticut law the double damages, though payable to the injured individual rather than to the state, constitute a criminal penalty, certainly there can be no quarrel with the decision.[6] The problem presents itself whether there is an adequate basis for the distinction between recovery of punitive damages and the imposition of a penalty. It has been held by two courts that an insurer is liable for punitive damages.[7] Even if the authority of one of these decisions be somewhat discounted because the insured's responsibility in the first instance was predicated upon the doctrine of respondeat superior,[8] still the Alabama court in the second case held that a judgment against the insured which included punitive damages was within the coverage of an insurance policy worded similarly to the policy in the principal case.[9] Punitive damages may be awarded where the tort is committed maliciously, wantonly, or through such gross negligence as to evince a willful disregard of the rights of others.[10] In the great majority of jurisdictions, therefore, where insurance does not cover injuries inflicted intentionally or wantonly,[11] the question will not arise frequently. Punitive damages are allowed by way of punishment and for deterrence.[12] Consequently, so far as insurability is concerned, the same public policy ought to apply whether the additional award is technically called a "penalty" or "punitive damages." Insurance against the punishment intended would defeat the purpose of the law of punitive damages. It has been frequently asserted that motorists should be encouraged to carry public liability insurance.[13] The end in view is protection to the public, although necessarily liability insurance directly benefits the insured by relieving him of a personal financial obligation toward an injured person. Damages which are more than compensatory, however, are not necessary for the protection of the injured person.

Alfred I. Rothman

(1913); Ohio Casualty Ins. Co. v. Welfare Finance Co., (C. C. A. 8th, 1934) 75 F. (2d) 58.

[6] Since in Connecticut punitive damages cannot exceed the amount of expenses of litigation, Doroszka v. Lavine, 111 Conn. 575, 150 A. 692 (1930), the court held that the award of double damages was a penalty.

[7] Ohio Casualty Ins. Co. v. Welfare Finance Co., (C. C. A. 8th, 1934) 75 F. (2d) 58; American Fidelity & Casualty Co. v. Werfel, 230 Ala. 552, 162 So. 103 (1935).

[8] Ohio Casualty Ins. Co. v. Welfare Finance Co., (C. C. A. 8th, 1934) 75 F. (2d) 58, wherein the court differentiated between the situation where the insured caused the injury himself and that where the insured's liability arises out of the relation of master and servant.

[9] American Fidelity & Casualty Co. v. Werfel, 230 Ala. 552, 162 So. 103 (1935).

[10] COOLEY, TORTS, Throckmorton ed., § 95 (1930); Milwaukee & St. Paul Ry. v. Arms, 91 U. S. 489 (1875); Rhodes v. Rodgers, 151 Pa. St. 634, 24 A. 1044 (1892).

[11] See supra, note 3.

[12] COOLEY, TORTS, Throckmorton ed., § 95 (1930); Kirschbaum v. Lowrey, 165 Minn. 233, 206 N. W. 171 (1926); Shea v. Cassidy, 257 Ill. App. 557 (1930); Waters v. Western Union Telegraph Co., 194 N. C. 188, 138 S. E. 608 (1927).

[13] City of Rochester v. Alling, 170 Misc. 477, 10 N. Y. S. (2d) 373 (1939).