

COURT OF APPEALS GRANTS A "MULLIGAN" IN GOLF COURSE LAWSUIT

Anand v. Kapoor, 15 N.Y.3d 946, 917 N.Y.S.2d 86 (2010)
(Court of Appeals, December 21, 2010)

This personal injury action arose out of an incident that occurred between two friends while playing golf at a course in Suffolk County. On the first hole of play, the defendant "shanked" a shot that struck plaintiff in the left eye, causing him to suffer a retinal detachment and permanent loss of vision. The incident occurred when defendant retrieved his ball that had landed in the "rough" and hit it in his friend's direction without calling "Fore" or otherwise alerting his friend of the ball's impending arrival. When the ball struck the plaintiff, he had been looking for his ball on the fairway.

Plaintiff and his wife sued the defendant, asserting that the defendant's failure to warn of his shot constituted negligence which was the proximate cause of the plaintiff's injuries.

The trial court granted the defendant's motion for summary judgment and dismissed the complaint on grounds that the plaintiff was not in a foreseeable zone of danger and based on the assumption of risk. The Appellate Division affirmed the order of the trial court and plaintiffs took the case to the Court of Appeals. The Court of Appeals affirmed the order of the Appellate Division and dismissed the case, holding that:

A person who chooses to participate in a sport or recreational activity consents to certain risks that 'are inherent in and arise out of the nature of the sport generally and flow from such participation' . . . A court evaluating the duty of care owed to a plaintiff by a coparticipant in sport must therefore consider the risks that the plaintiff assumed

and 'how those assumed risks qualified defendant's duty to him.'

Anand v. Kapoor, 15 N.Y.3d 946, 917 N.Y.S.2d 86 (2010) (internal citations omitted).

The Court of Appeals determined that defendant's failure to warn of his intention to hit the ball did not constitute reckless conduct or unreasonably increase the risks inherent in golf which the plaintiff consented to. Instead, being struck by a "shanked" shot while searching for one's ball on a golf course "reflects a commonly appreciated risk of golf." *Anand*, 15 N.Y.3d at 948 (citing *Rinaldo v. McGovern*, 78 N.Y.2d 729, 733, 587 N.E.2d 264, 579 N.Y.S.2d 626 (1991)).

PATROL OFFICER HELD TO "ORDINARY" NEGLIGENCE STANDARD IN MOTOR VEHICLE ACCIDENT LAWSUIT

Kabir v. County of Monroe (Court of Appeals, February 17, 2011)

In *Kabir v. County of Monroe*, the Court of Appeals considered whether the reckless disregard standard of Vehicle and Traffic Law § 1105(e) ("VTL § 1105(e)") applied to the driver of an authorized emergency vehicle if the driver's conduct fell outside the scope of conduct which is exempt from the rules of the road under Vehicle and Traffic Law § 1105(b) ("VTL § 1105(b)"). In that case, a road patrol deputy in the Monroe County Sheriff's office had just received communication from the Emergency Communications Dispatch "911 center" that directed him to respond to a report of a stolen vehicle in Henrietta, New York. Shortly thereafter, the officer received a second communication requesting backup for another officer who responded to a burglary alarm at a separate location in Henrietta.

The officer, who was traveling at 25 to 30 mph in a 40 mph zone, was not familiar with the location of the burglary alarm, and momentarily looked down at a terminal in his vehicle to view the names of the cross streets. He did not have his emergency lights or siren on at that time because "he didn't want to initiate any emergency equipment without knowing where he was positively going." When the officer looked back at the traffic in front of him, he observed that "traffic had slowed." He quickly applied his brakes but was unable to stop before rear-ending the

plaintiff's vehicle. The trial court applied the reckless disregard standard to the officer's conduct, and granted defendant's motion for summary judgment. On appeal, the Fourth Department reversed, finding that the reckless disregard standard applied only in cases where accidents are caused by conduct that is privileged under VTL § 1104(b). Since the officer's conduct which caused plaintiff's injury was not exempt under this provision, ordinary negligence was the proper standard for determining liability. The Appellate Division granted defendants leave to appeal on March 19, 2010, and certified the question of whether its order was properly made.

The Court of Appeals affirmed the decision of the Appellate Division and answered the certified question in the affirmative, noting that VTL §§ 1104(b) and 1104(e) are interrelated. "Simply put, section 1104(e) establishes a reckless disregard standard of care 'for determining . . . civil liability for damages resulting from the privileged operation of an emergency vehicle . . . if the conduct causing the accident resulting in injuries and damages is not privileged under [VTL § 1104(b)], the standard of care for determining civil liability is ordinary negligence."

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COURT OF APPEALS HOLDS UNINSURED MOTORIST COVERAGE APPLIES TO "INTENTIONAL" ACCIDENT

State Farm Mutual Auto. Ins. Co. v. Langan (Court of Appeals, March 29, 2011).

In *State Farm Mutual Automobile Insurance Company v. Langan*, the Court of Appeals considered whether an insured decedent who was the victim of an intentional crime was entitled to uninsured motorist coverage. Because the occurrence is viewed from the insured's perspective, the Court of Appeals concluded it was an "accident" for which the insured was entitled to benefits under the terms of the insured's automobile liability policy.

The decedent in *Langan* was insured under an automobile liability policy purchased by defendant Langan through State Farm Mutual Automobile Insurance Company. On February 12, 2002, he was struck by a vehicle in Manhattan whose driver intentionally drove the vehicle into a group of pedestrians. He died from complications from a surgery that he required as a result of the incident. The driver of the vehicle pleaded guilty to second degree murder, stating that he intended to cause decedent's death.

Langan, as administrator of the decedent's estate, sought to recover benefits under the policy's uninsured/underinsured motorist (UM) endorsement, mandatory personal injury protection endorsement (PIP

endorsement) and death, dismemberment and loss of sight endorsement, all under the "Coverage S" section of the policy. The endorsements do not exclude coverage for an injury resulting from intentional conduct.

State Farm commenced a declaratory judgment action in Supreme Court seeking a declaration that it was not required to provide benefits related to decedent's death. Defendant answered and counterclaimed, requesting a declaration that State Farm was required to provide coverage. Both parties' motions were denied due to the fact that neither party provided the Court with information regarding the outcome of the criminal action against the vehicle's driver, which the Court considered "essential" in order to determine whether the decedent's injuries were intentionally caused. The Appellate Division affirmed that part of the Supreme Court's order which denied summary judgment to the parties based on whether the incident was covered under the policy given the absence of proof as to whether decedent was the victim of an intended crime.

Once the driver was convicted of second degree murder, plaintiff and defendant

renewed their respective motions for summary judgment.

The Court of Appeals, in reversing the Appellate Division, 2nd Department stated, "[i]t is clear that, viewed from the insured's perspective, the occurrence was an unexpected or unintended event - and therefore an "accident" - even though [the operator] admittedly intended to strike decedent with the vehicle". In attempting to reconcile the insurance axiom that UM coverage is intended..."to provide the insured with the same level of protection he or she would provide to others were the insured tortfeasor in a bodily injury accident", the Court held: "...consistent with the reasonable expectation of the insured under the policy and the stated purpose of the UM endorsement...the intentional assault of an innocent insured is an accident within the meaning of his or her own policy". The Court added that its holding here applies equally to no-fault endorsements. This case is very fact-specific - claimant's decedent was not only the injured party, but the insured as well but is otherwise common UM claims scenario. It will otherwise leave intact the exclusion of coverage for tortfeasors who intentionally cause injury.



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