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SUPREME COURT OF VIRGINIA
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IN THE

Supreme Court of Virginia

AT RICHMOND

NO. 740578

NATIONWIDE MUTUAL INSURANCE COMPANY,

Appellant,

v.

RUBY S. FINLEY,

Appellee.

APPENDIX

William F. Stone, Jr.
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Counsel for the Appellant

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NOTE TO APPENDIX

This Appendix does not reflect the filing dates of the various pleadings and other documents printed herein by reason of the presence of the records in the Clerk's Office of the Supreme Court of Virginia and the failure of the Clerk's Office of the Circuit Court of Henry County to retain any other record of such filing dates.

VIRGINIA: IN THE CIRCUIT COURT OF HENRY COUNTY

RUBY S. FINLEY, Plaintiff,	)	
v.	)	MOTION FOR JUDGMENT
NATIONWIDE INSURANCE COMPANY, Defendant.	)	

The Plaintiff, Ruby S. Finley, alleges as follows:

(1) On the 2nd day of April, 1973, the Plaintiff recovered a judgment against Bobby Ray Crow and Douglas Stevens, T/A Stevens Trucking Company, Defendants, in the amount of $25,000. The judgment was rendered for injuries sustained in an accident, the details of which are set forth in an amended motion for judgment in said suit, a copy of which is attached hereto marked Exhibit "A" and made a part hereof.

(2) Nationwide Insurance Company, pursuant to § 38.1-381 of the Code of Virginia, appeared and defended said action in its own name as the uninsured motorist carrier.

(3) Subsequent to the judgment entered on April 2, 1973, Nationwide Insurance Company appealed the judgment to the Supreme Court of Virginia. Said appeal was denied on November 9, 1973.

(4) Pursuant to its uninsured motorist coverage, afforded in the policy covering the vehicle described in Exhibit "A", the Defendant, on the 26th day of November, 1973, paid to the Plaintiff $20,000, but has refused to pay the costs in the suit of Ruby S. Finley v. Bobby Ray Crow and Douglas Stevens, T/A Stevens Trucking Company, and has refused to pay interest on the $20,000 which accrued from April 2, 1973 until November 26, 1973, at the rate of six per cent (6%) per annum. The costs of the aforesaid suit amounted to $68.50 and the accrued interest amounts to $779.73.

WHEREFORE, Plaintiff moves the Court for judgment in the amount of Eight Hundred Forty Eight and 23/100 Dollars ($848.23).

RUBY S. FINLEY

By Jackson L. Kiser
Of Counsel

Young, Kiser & Haskins, Ltd., p.q.
60 West Church Street
Martinsville, Virginia 24112

"EXHIBIT A TO MOTION FOR JUDGMENT"

VIRGINIA: IN THE CIRCUIT COURT OF HENRY COUNTY

RUBY S. FINLEY, Plaintiff, v. BOBBY RAY CROW and DOUGLAS STEVENS, T/A Stevens Trucking Company, Defendants.	)	AMENDED MOTION FOR JUDGMENT

THE HONORABLE JOHN D. HOOKER, JUDGE OF SAID COURT:

Plaintiff respectfully shown the following case:

1. On or about April 20, 1972, Plaintiff was riding as a passenger in a 1964 Chevrolet which was being operated by Robert Lee Joyce on Route 701, in Henry County, Virginia.

2. At the time and place aforesaid, the Defendant, Bobby Ray Crow, was operating as agent and servant of Douglas Stevens, T/A Stevens Trucking Company, while within the scope of his employment a 1969 International Tractor Trailer truck.

3. At the time and place aforesaid, the Defendant, Bobby Ray Crow, and the Defendant, Douglas Stevens, T/A Stevens Trucking Company, acting by and through Bobby Ray Crow, its agent and servant, notwithstanding their duties owed to the Plaintiff, were careless and negligent

in that:

(a) The said Bobby Ray Crow operated the motor vehicle under his control carelessly and recklessly and in a manner and at a speed so as to endanger the life, limb, and property of other users of the highway;

(b) The said Bobby Ray Crow operated the motor vehicle under his control without keeping a careful and proper lookout for other vehicles;

(c) The said Bobby Ray Crow operated the motor vehicle under his control in such a negligent manner that he pulled from a drive way into the path of the automobile in which the Plaintiff was riding as a passenger, thereby wrecking both of the said vehicles and injuring the Plaintiff.

4. As a direct and proximate result of the carelessness and negligence of the Defendants, the Plaintiff was caused serious and permanent injuries about her person, internally and externally, was caused excruciating pain and mental anguish, was required to incur great medical expenses and will be required to do so in the future, was permanently maimed and disabled, was required to suffer loss of earnings and earning capacity, and was rendered less capable of performing her normal daily tasks, all to her damage.

WHEREFORE, the undersigned doth move the Court for Judgment against the Defendants, jointly and

severally, in the amount of Seventy-five Thousand Dollars ($75,000.00).

RUBY S. FINLEY

By_____
Of Counsel

DEMURRER

Now comes the undersigned, by counsel, and says that the Motion for Judgment heretofore filed in this cause is insufficient in law.

NATIONWIDE MUTUAL INSURANCE COMPANY

By: William F. Stone, Jr.
Counsel

Stone, Joyce, Worthy & Stone
46 West Main Street
Martinsville, Virginia 24112

MEMORANDUM OF DECISION

The plaintiff Ruby S. Finley on the 2nd day of April, 1973, recovered a judgment against Bobby Ray Crow and Douglas Stevens, T/A Stevens Trucking Company, defendants, in the amount of $25,000.00. The judgment was rendered for injuries sustained in an accident. At the time of the accident the plaintiff was covered under a policy issued to her by Nationwide by which it agreed to pay plaintiff the amount that she should be entitled to recover as damages from the owner or operator of an uninsured motor vehicle as provided in Section 38.1-381(b) of the 1950 Code of Virginia, as amended. Nationwide was served with notice, appeared and defended this action in its own name as the uninsured motorist carrier. Nationwide appealed the judgment to the Supreme Court of Virginia, and the petition was denied on November 9th, 1973. Pursuant to its coverage Nationwide on the 26th day of November, 1973, paid to the plaintiff $20,000.00 but has refused to pay the costs in the suit against Bobby Ray Crow and Douglas Stevens, T/A Stevens Trucking Company and has refused to pay interest on the $20,000.00 which accrued from April 2, 1973, until November 26th, 1973. The costs of the suit amounted to $68.50 and the accrued interest at the rate of 6% per annum amounts to $779.73. The plaintiff Ruby S. Finley has filed this motion for judgment against Nationwide Insurance Company

to recover the interest and the costs. Nationwide has filed a demurrer to the motion for judgment and, while the demurrer does not so state, the gist of its position is that Nationwide is not liable for interest on the judgment or the costs of the case. I do not agree.

It may be noted in passing that in the tort action Nationwide employed counsel, filed pleadings in its own name and identified itself before the jury as plaintiff's uninsured motorist carrier. Whether or not such participation makes Nationwide "a party to the action" or "a party defendant" in the usual and accepted sense is perhaps debatable. To say the least, however, Nationwide was an "adverse party" and certainly the real party in interest. More important, Nationwide instituted the appeal or filed a petition for a writ of error and Nationwide is solely responsible for the delay in the plaintiff being paid the amount of the judgment recovered on the 2nd day of April, 1973. This being true, the plaintiff Finley is entitled to recover interest from the date of her judgment. The interest in question is awarded by law as damages for nonpayment of money when due. The interest does not represent any liability on account of or for the accident or the policy but is a liability imposed by law for the delay of the defendant insurance company in paying the judgment which as between the parties it was legally obligated to do. United States Fidelity and Guaranty Company v. John H. Rowe, Jr.,

Administrator, etc., et als, 249 F. Supp. 993 (1966); American Automobile Insurance Company v. Fulcher, 201 Fed. 2nd 751; Bryant v. State Farm Mutual, 205 Va. 902.

As noted above I am of the opinion that Nationwide is legally liable for interest from the date of judgment, namely: April 2nd, 1973, until paid at the rate of 6% per annum and for the costs of the civil action of Finley v. Bobby Ray Crow and Douglas Stevens, T/A Stevens Trucking Company. Any other conclusion would be contrary to justice equity and logic.

J.D.H.

February 13, 1974

ORDER

This day came the parties by counsel, and presented arguments on the Demurrer filed in this cause by the defendant. Counsel for the defendant urged in support of its Demurrer that an uninsured motorist insurance carrier is not, in the absence of policy provisions or allegations or wilfulness or maliciousness, liable for Court costs and interest from the date of judgment against the uninsured motorist when an appeal is undertaken from such judgment but a writ of error is denied; and that the judgment in question against the uninsured motorist only awarded the amount of the verdict and did not award either costs or interest. Upon consideration and for the reasons set forth in the memorandum of decision dated February 13, 1974, the Court doth overrule the Demurrer of the defendant. The defendant not desiring to plead further, it is ORDERED and ADJUDGED that the plaintiff recover from the defendant the sum of Eight hundred forty-eight dollars twenty-three cents ($848.23) plus its costs in this cause expended and interest from the date of this judgment. To this action of the Court, the defendant, by counsel, notes its objection and exception for the reasons heretofore urged in support of its Demurrer.

Enter this 20th day of February, 1974.

Jno. D. Hooker
JUDGE

Seen:

Jackson L. Kiser
Jackson L. Kiser, of counsel for the Plaintiff

Seen, objected and Excepted to:

William F. Stone, Jr.
William F. Stone, Jr., of counsel for the Defendant

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

Now comes the undersigned, by counsel, pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia for the purpose of noting its appeal of the Judgment of this Court entered in the above styled matter on the 20th day of February, 1974 and assigning the following error to such judgment of this Court.

1. The Honorable Trial Court erred in overruling the defendant's demurrer.

NATIONWIDE MUTUAL INSURANCE COMPANY

By: William F. Stone, Jr.
Counsel