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Appeals Court Says Workers' Comp Carriers Can Pursue Subrogation in Minor-Injury Accidents

A New Jersey appeals court ruled that a workers' compensation carrier can sue the tortfeasor in an auto accident case even though the beneficiary, who wasn't permanently injured, couldn't.

By **Michael Booth** (/author/profile/Michael-Booth/) | December 04, 2018 at 03:05 PM

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A New Jersey appeals court **ruled Tuesday** (<https://images.law.com/contrib/content/uploads/documents/399/19253/a0761-17.pdf>) that a workers' compensation carrier can sue the tortfeasor in an auto accident case even though the beneficiary, who wasn't permanently injured, couldn't.

In a published ruling, the three-judge Appellate Division panel reversed a decision to dismiss the subrogation claim, filed by the workers' compensation carrier for NJ Transit against the carriers for the two people responsible for the minor injuries caused to NJ Transit's employee.

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"A workers' compensation carrier has a right to seek reimbursement from the tortfeasor," said Appellate Division Richard Geiger for the panel. Judges Richard Hoffman and Lisa Firko joined in the ruling.

The panel rejected arguments made by the tortfeasors' personal carriers that subrogation claims were barred by the Automobile Insurance Cost Reduction Act, which prohibits claims for noneconomic damages when there is no personal injury.

Geiger said the panel decided that the question was instead governed by the Workers' Compensation Act, which does allow for subrogation claims in such situations.

None of the carriers involved in this case were identified in the decision.

The accident in this case occurred Dec. 14, 2015, according to the ruling. A car owned by NJ Transit and driven by one of its employees, David Mercogliano, was struck by a car owned by Chad Smith and driven by Sandra Sanchez.

All parties had auto insurance and were compliant with AICRA, the panel said.

Because Mercogliano's injuries were not serious enough to overcome the verbal threshold, he was not able to file claims for non-economic damages, the court said.

Mercogliano was working at the time of the accident, and so NJ Transit's workers' compensation carrier paid out a total of \$33,625 as compensation for his injuries. The carrier paid \$6,694 in medical bills, \$3,922 in temporary indemnity benefits and \$22,949 in permanent indemnity benefits, according to the decision.

The workers' comp carrier then filed a subrogation claim against the tortfeasors in Bergen County Superior Court.

The judge below, identified in electronic court records as Superior Court Judge Robert Polifroni, granted summary judgment, holding that AICRA barred the subrogation claim.

The workers' compensation carrier then appealed, and the Appellate Division reversed.

"We hold that in subrogation actions against tortfeasors, the reimbursement rights of workers' compensation carriers are governed by the WCA, not AICRA," Geiger said. "Therefore, the workers' compensation carrier is entitled to reimbursement from the negligent tortfeasor, even though the injured employee could not recover medical expenses and wage loss from his own automobile insurer or non-economic damages from the tortfeasor."

Geiger added that AICRA was enacted 87 years after the WCA, and that the Legislature, in passing AICRA, did not include any language barring workers' compensation subrogation claims.

"If the Legislature had intended to treat workers injured in automobile accidents differently from workers injured in any other manner, it would have unambiguously expressed such an intent," Geiger said.

NJ Transit was represented by Shawn Huber of Brown & Connery in Westmont. He said he could not comment until he consulted with NJ Transit.

John Mallon of Chasan Lamparello Mallon & Cappuzzo in Secaucus represented the carrier for the tortfeasors. He did not return a call for comment.

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