



# NORMA BLANCO-SANCHEZ v. PERSONAL SERVICE INSURANCE COMPANY

NOT FOR PUBLICATION WITHOUT THE

APPROVAL OF THE APPELLATE DIVISION

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the

internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

OF NEW JERSEY

SUPERIOR COURT

DIVISION

APPELLATE

5393-16T4

DOCKET NO. A-

NORMA BLANCO-SANCHEZ,

Plaintiff-Appellant,

v.

PERSONAL SERVICE  
INSURANCE COMPANY,

Defendant-Respondent.

---

Argued October 23, 2018 - Decided February 28, 2019

Before Judges Rothstadt and Gilson.

On appeal from Superior Court of New Jersey, Law Division, Atlantic County, Docket No. L-2607-16.

(Hyberg, Lars S. Hyberg argued the cause for appellant

White & Mann, attorneys; Lars S. Hyberg, on the briefs).

Jared P. Kingsley argued the cause for respondent (Methfessel & Werbel, PC, attorneys; Jared P. Kingsley, on the brief).

PER CURIAM

In this appeal we are asked to determine whether the driver of an automobile who operates a vehicle with an owner's permission that was given with knowledge that the driver never held a license, is a permissive user who may recover personal injury protection (PIP) benefits under the New Jersey Automobile Reparation Reform Act, N.J.S.A. 39:6A-1 to -35, the "No Fault Act." For the reasons that follow, we conclude that as a matter of public policy,

an owner cannot give permission to a driver who is known to be unlicensed and,

therefore, the unlicensed driver is barred from any recovery under the No Fault

Act for PIP benefits under N.J.S.A. 39:6A-7(b)(2) (authorizing the exclusion

from coverage of any person who "was occupying or operating an automobile without the permission of the owner or other named insured").

Here, plaintiff Norma Blanco-Sanchez filed a complaint against her mother Vilma Sanchez's automobile insurance carrier, defendant Personal Service Insurance Company, after it denied plaintiff's claim for PIP benefits to

cover the cost of her medical treatment for injuries she sustained in an auto

accident. The accident occurred when plaintiff drove her mother's vehicle without having ever been licensed to drive. Plaintiff appeals from the Law

Division's order granting defendant summary judgment after the motion judge

found that PIP coverage was not available to unlicensed drivers. We affirm.

A-5393-16T4

The facts, viewed in the light most favorable to plaintiff, are generally

undisputed. On December 8, 2014, plaintiff was involved in a motor vehicle

accident. On the morning of the accident, Sanchez was driven to work and left

her car on the street. While at work, she remembered that the street sweeper

would be cleaning the roads that day and called plaintiff to have her car moved

to avoid getting a ticket. At the time, Sanchez did not think that plaintiff would

move the car as she knew that plaintiff did not have a driver's license and had

never driven Sanchez's car.

In response to her mother's call, plaintiff said that she was going to get

someone to move the car, as she had done previously when her mother made

similar requests. However, when she could not find anyone to move the car, she

decided to do it herself. The accident occurred while plaintiff was attempting

to relocate the car. Plaintiff sustained shoulder, neck, and arm injuries in the

accident and incurred medical bills for her treatment.

At the time of the accident, Sanchez's insurance policy with defendant

provided PIP coverage for up to \$15,000 in covered medical expenses. The policy specifically defined an "eligible injured person" as "[t]he named insured

or any relative of the named insured, if the named insured or relative sustains

bodily injury . . . [a]s a result of any accident while occupying, using, entering

A-5393-16T4

3

into, or alighting from a private passenger auto . . . ." It excluded from coverage

the "bodily injury of any person at the time of the accident . . . [who] [w]as

operating or occupying a private passenger auto without the permission of the

owner or other named insured."

Plaintiff filed an application for PIP benefits, which defendant denied

because plaintiff did not have Sanchez's permission to operate the vehicle.

Defendant specifically stated that "since the driver . . . was unlicensed, it would

be impossible for the insured to give permission to a person who is not legally

eligible to drive."

Plaintiff filed a complaint for declaratory relief, alleging that "[t]he denial

of benefits [was] wrongful as the issue of permission is a factual [determination],

not a legal argument." She claimed there was "[n]o statutory or regulatory

authority" that stated that an insured could not grant permission to a person

without a license. She requested that judgment be entered "declaring that

[defendant] . . . is required to provide automobile [PIP] benefits[,]" including

payment of plaintiff's "medical expenses, plus cost of suit, attorney fees, [and]

interest . . . ."

Defendant filed its answer, admitting to issuing a policy that included PIP

coverage, but denying that plaintiff was entitled to coverage.

Among its

A-5393-16T4

4

defenses, defendant stated that "[a]ny and all claims of the plaintiff are barred

due to the fact that plaintiff did not have permission to operate the vehicle."

Defendant subsequently filed a notice of motion for summary judgment

and plaintiff cross-moved for the same relief. In her motion, plaintiff did not

dispute that she never had a license and Sanchez never argued that she was

unaware of that fact.

On June 23, 2017, the parties appeared for oral argument. After

considering their arguments, the motion judge granted defendant's motion, denied plaintiff's cross-motion, and dismissed plaintiff's complaint. The judge

placed his reasons on the record, which he began by finding that Sanchez gave

plaintiff "implied permission" to drive her vehicle. He then stated that the

question before him was

whether or not the mother could legitimately and legally confer on the plaintiff the right to operate that vehicle under the circumstances of this case where the plaintiff was not a licensed driver and the mother knew that she was not a licensed driver, albeit she says she forgot that she was not a licensed driver at the time of the conversation.

Reviewing the case law argued by the parties, the judge concluded

"whether it's unlicensed or suspended, the fact is that the plaintiff cannot benefit

from his or her own . . . illegal conduct." The judge stated that while the PIP

A-5393-16T4

5

portion of defendant's policy did not contain a specific exclusion for unlicensed

drivers, "the argument is [not] whether it contains an exclusion . . . you can't

give permission to extend the coverage in a situation where they couldn't have

[gotten] coverage to begin with." This appeal followed.

On appeal, plaintiff argues that she is entitled to PIP benefits as a resident

relative under N.J.S.A. 39:6A-4, and that she was specifically given permission



to use the car by her mother, making her a "permissive user" of the vehicle.

Plaintiff contends that denying her those benefits inserts a provision not found

in the statute or PIP policy that improperly limits an insured's or owner's ability

to give a third party permission to use an insured vehicle. We disagree.

"We review an order granting summary judgment 'in accordance with the

same standards as the motion judge.'" Johnson v. Roselle EZ Quick LLC, 226 N.J. 370, 386 (2016) (quoting Bhagat v. Bhagat, 217 N.J. 22, 38 (2014)). "Such

a motion will be granted if the record demonstrates that there is no genuine issue

of material fact and 'the moving party is entitled to a judgment or order as a

matter of law.'" Ibid. (quoting R. 4:46-2(c)).

An award of summary judgment based upon a trial court's "statutory interpretation is a legal issue requiring our de novo review. Accordingly, 'we

accord no deference to the trial judge's interpretive conclusions.'" Leggette v.

A-5393-16T4

Gov't Emps. Ins. Co., 450 N.J. Super. 261, 264 (App. Div. 2017) (quoting Brick

Twp. PBA Local 230 v. Twp. of Brick, 446 N.J. Super. 61, 65 (App. Div. 2016)).

The same standard applies to our review of a trial court's interpretation of an

insurance policy on a motion for summary judgment. Templo Fuente De Vida

Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016).

On appeal, there is no question that neither the PIP statutes nor defendant's

policy expressly excluded PIP coverage for injuries plaintiff sustained while

driving her mother's vehicle with permission, but without a license. Under

N.J.S.A. 39:6A-4, "[e]very insurance policy must include PIP benefits, which

guarantee 'without regard to fault,' medical expense coverage for the named

insured and members of his or her household." Perrelli v. Pastorelle, 206 N.J.

193, 201 (2011) (quoting Caviglia v. Royal Tours of Am., 178 N.J. 460, 466

(2004)).

The required coverage must be "the primary coverage for the named insured and any resident relative in the named insured's household who is not a named insured under an automobile insurance policy of his own." N.J.S.A. 39:6A-4.2. This "first-party coverage was 'intended to serve as the exclusive remedy for payment of out-of-pocket medical expenses arising from an automobile accident.'" *Walcott v. Allstate N.J. Ins. Co.*, 376 N.J. Super. 384,

A-5393-16T4

7

388 (App. Div. 2005) (permitting a PIP claim by "an insured motorist who was

intoxicated at the time of the accident") (quoting *Caviglia*, 178 N.J. at 466.

"[T]he scope of coverage of a PIP policy should be approached liberally,

N.J.S.A. 39:6A-16, and exclusions from coverage, narrowly interpreted." *Hardy*

ex rel. *Dowdell v. Abdul-Matin*, 198 N.J. 95, 106 (2009) (Long, J., dissenting)).

N.J.S.A. 39:6A-7 delineates specific individuals that "insurers may

exclude" from PIP coverage. Included among them are persons who were

"occupying or operating an automobile without the permission of the owner or

other named insured." N.J.S.A. 39:6A-7(b)(2). "The statute clearly and

unambiguously directs that an insurer may deny the extension of PIP benefits to

any person who, at the time of the accident, 'was occupying or operating an

automobile without the permission of the owner or other named insured .'"

Hardy, 198 N.J. at 103 (emphasis in original) (quoting N.J.S.A. 39:6A-7(b)(2)).

The clear language of the statute, therefore, authorizes defendant's

policy's exclusion. Ibid. "When the terms of the insurance flow from a statute,

'[t]he statute determines the legal operation of the contract.' . . . That is, when

the plain language of a policy provision is based on statutory authority, the

policy must be interpreted and construed in a manner consistent with the

statute." Id. at 102 (alteration in original) (quoting *Saffore v. Atl. Cas. Ins. Co.*,

A-5393-16T4

8

21 N.J. 300, 310 (1956)).  
'are

A policy's "exclusionary provisions

presumptively valid and will be given effect if "specific, plain, clear, prominent,

and not contrary to public policy.'" "  
Co. v.

Ibid. (quoting Princeton Ins.

Chunmuang, 151 N.J. 80, 95 (1997)).

Because defendant's policy did not exclude PIP coverage for permissive

drivers who were unlicensed, we turn to the State's public policy to determine if

it bars recovery by plaintiff here. We begin by observing that it is beyond cavil

that public policy requires all drivers to be licensed. See N.J.S.A. 39:3-29

(requiring a driver's license) and N.J.S.A.39:3-40 (making the operation of a

motor vehicle without one an offense). That policy is also incorporated into

New Jersey's automobile insurance scheme, which, while mandating that

liability and PIP coverage be secured by vehicle owners under N.J.S.A. 39:6A-

4 and N.J.S.A. 39:6B-1, allows insurers to decline to issue policies to

drivers

whose licenses have been revoked or suspended. See N.J.S.A. 17:33B-13(b)

(defining those ineligible from coverage) and N.J.S.A. 17:29C-7

(allowing for

nonrenewal of policies for individuals whose "driver's license . . . has been

under suspension or revocation during the policy period"); see also Martin v.

Rutgers Cas. Ins. Co., 346 N.J. Super. 320, 326 (App. Div. 2002).

A-5393-16T4

Despite that public policy, the Supreme Court has concluded that public

policy dictates that there be coverage for third-party liability claims made by

innocent third parties injured as a result of the negligence of an unlicensed

permissive driver of an insured's vehicle. See Proformance Ins. Co. v. Jones,

185 N.J. 406, 413 (2005); see also Burke v. Auto Mart Inc., 37 N.J. Super. 451,

453 (App. Div. 1955). PIP coverage claims do not involve the same

concerns.

PIP coverage is different from third-party liability coverage. It involves

claims made by the owner, insured, or individuals that operate a vehicle with

permission. "PIP coverage is first-party coverage." *Garden State Fire & Cas.*

*Co. v. Commercial Union Ins. Co.*, 176 N.J. Super. 301, 305 (App. Div. 1980);

see also *Rutgers Cas. Ins. Co. v. LaCroix*, 194 N.J. 515, 523 (2008).  
Based on

that distinction, in *Martin*, we enforced a PIP policy's that "excluded coverage

for bodily injury sustained by a person '[u]sing a vehicle without a reasonable

belief that that person is entitled to do so.'" *Martin*, 346 N.J. Super. at 323

(alteration in original).

The plaintiff in *Martin* was an unlicensed driver of a vehicle owned by her

fiancé's stepfather, who did not know her driver's license had been revoked.

*Ibid.* There was a one-car collision. *Id.* at 321-22. The unlicensed driver sought

PIP and uninsured motorist (UM) coverage for her injuries under the stepfather's

A-5393-16T4

10

policy. She contended that the insurance company's "use of the term 'reasonable

belief' and its definition of that term [were] an unwarranted expansion of . . .

[N.J.S.A. 39:6A-7's] limited exemptions." Id. at 323-24. We disagreed and held

that even if the plaintiff had consent to drive the vehicle, she could not

reasonably believe that she was entitled to drive any car because she was unlicensed and therefore not entitled to PIP or UM coverage for her injuries. Id.

at 325-26. We stated, as a matter of law, "an individual who knows that her

driver's license has been suspended and remains suspended, could form no 'reasonable belief' that she had permission to drive a vehicle." Id. at 324-25.

Although we denied coverage to the unlicensed driver, we distinguished

the claim from a third-party claim. We stated:



We also note the very limited question presented to us. We are not confronted with a claim for PIP coverage put forth by an unwitting, injured passenger. Neither are we presented with a claim for liability coverage by an individual injured as a result of a collision with a vehicle driven by plaintiff. Rather, we are asked to conclude that an individual who had to know she was not entitled to drive this automobile is entitled to PIP coverage and UM coverage for injuries she received while driving with complete disregard of her lack of entitlement.

[Id. at 325 (emphasis added).]

A-5393-16T4

11

Although we recognize that defendant's policy here did not contain any

exclusion from PIP coverage for a permissive user who drove " without a reasonable belief that that person is entitled to do so," we conclude that as matter

of public policy the reasoning in Martin is equally applicable to the facts in this

case. See *id.* at 323. To hold otherwise would require insurer's to provide

coverage for unlicensed individuals who by definition are ineligible for coverage and contravene the State's public policy. See *Reilly v. AAA Mid-*

At1.

Ins. Co. of N.J., 194 N.J. 474, 478, 495 (2008) (stating the general proposition

that an entity cannot exceed the scope of its statutory authority, and is therefore,

restricted from overstepping the limitations imposed on it by the State).

We reject as inapposite plaintiff's reliance upon the Supreme Court's

holding in *Matits v. Nationwide Mut. Ins. Co.*, 33 N.J. 488 (1960) that dealt with

an accident caused by a permissive user who drove while intoxicated . In that

case, the Court "first adopted the initial permission rule." *Proformance Ins. Co.*

185 N.J. at 412.1 It "concluded that the permittee's 'deviation from the purpose

1

The rule states

that 'if a person is given permission to use a motor vehicle in the first instance, any subsequent use short of theft or the like while it remains in his possession, though not within the contemplation of the parties, is a

A-5393-16T4

12

for which she borrowed the vehicle did not annul the protection afforded her and

the injured plaintiffs by the omnibus clause of [the] policy.'" Ibid. (alteration in

original) (quoting Matits, 33 N.J. at 497). Plaintiff argues that if coverage was

afforded to the licensed, but intoxicated driver in Matits, there is no public

policy reason to bar her recovery here. We find that argument to be without any

merit as we are confronted here, not with a third-party claim against a licensed

driver, but with a first-party claim by plaintiff, who was never licensed to

operate any motor vehicle for any purpose.

We are satisfied from our de novo review that the trial court here correctly

dismissed plaintiff's complaint because neither Sanchez's permission nor

defendant's issuing her a policy of insurance gave plaintiff an unlimited right to

permissive use within the terms of . . . an automobile liability insurance policy.

[Jones, 185 N.J. at 412 (quoting Matits, 33 N.J. at 496-97).]

Consistent with our public policy of protecting innocent third parties,  
"[u]nderlying the initial permission rule is the intent 'to assure "that all persons wrongfully injured have financially responsible persons to look to for damages " because "a liability insurance contract is for the benefit of the public as well as for the benefit of the named or additional insured.'" Id. at 413 (quoting Verriest v. INA Underwriters Ins. Co., 142 N.J. 401, 414 (1995)).

A-5393-16T4

13

operate an automobile knowing that she was unlicensed and then to assert a first-

party claim under defendant's policy.

Affirmed.

A-5393-16T4

14