08/31/79 LAVINIA HAGUE v. ALLSTATE INSURANCE

289 N.W.2d 43 (1979) | Cited 0 times | Supreme Court of Minnesota | August 31, 1979

YETKA, Justice.

Appellant moved this court for a rehearing after the case was originally heard and decided. The petition having been granted, the case was reheard en banc on December 12, 1978. Upon reconsideration by the court, we are of the opinion that since there was no manifest error of fact, the case was fully argued, and no new issues of fact or of law have been presented, there has been no adequate reason presented to the court which justifies a reversal.

By way of further explanation for its earlier decision, the court is of the opinion that the questions of jurisdiction and conflict of laws must be separated. We are of the opinion that there is no real question of jurisdiction of the Minnesota court. Where plaintiff is a resident of the state and decedent's estate is probated in Minnesota, defendant does business in this state and was properly served with process, the Minnesota court has jurisdiction of the case.

The only remaining question is whether Wisconsin or Minnesota law should be applied on the question of "stacking" insurance coverage. For all of the reasons stated in our original opinion and for the additional reason that contracts of insurance on motor vehicles are in a class by themselves and must be so treated, we believe Minnesota law was properly applied. When an insurance company doing business in a number of states writes a policy on an automobile, the company knows the automobile is a movable item which will be driven from state to state. The company, therefore, accepts the risk that the insured may be subject to liability not only in the state where the policy is written, but also in states other than where the policy is written, and that in many instances those states will apply their own law to the situation. See Clay v. Sun Insurance Office, Ltd., 377 U.S. 179, 84 S. Ct. 1197, 12 L. ed. 2d 229 (1964). Such a contract is not like the usual commercial transaction where the law of the state where the contract is made should and does play a more important role. Application of Minnesota law in this case is, therefore, not so arbitrary and unreasonable as to violate due process.

OTIS, Justice (dissenting).

I agree with the majority that this case presents no serious question of jurisdiction. The only issue is one of choice-of-law. Although I share the view that the Minnesota rule permitting stacking is better law than the Wisconsin rule which denies it, I cannot accept the position that the application of Minnesota law does not deprive the defendant of a constitutional right to the protection of its "justified expectation." Neither the original opinion nor the supplemental opinion which followed

reargument, deals with the constitutional problems inherent in depriving the defendant of the right to invoke the more favorable Wisconsin rule.

The Honorable Justice Black and Mr. Justice Brennan have commented on the similarity between the constitutional questions presented in cases dealing with choice of law and those governing jurisdictional problems. In Hanson v. Denckla, 357 U.S. 235, 258, 78 S. Ct. 1228, 1242, 2 L. ed. 2d 1283, 1300 (1958), Mr. Justice Black, dissenting, noted:

"* * * True, the question whether the law of a State can be applied to a transaction is different from the question whether the courts of that State have jurisdiction to enter a judgment, but the two are often closely related and to a substantial degree depend upon similar considerations."

More recently, in Shaffer v. Heitner, 433 U.S. 186, 224, 97 S. Ct. 2569, 2591, 53 L. ed. 2d 683, 710 (1977) Mr. Justice Brennan, concurring in part and dissenting in part, stated:

"* * * I recognize that the jurisdictional and choice-of-law inquiries are not identical. * * * In either case an important linchpin is the extent of contacts between the controversy, the parties, and the forum State. While constitutional limitations on the choice of law are by no means settled, * * * important considerations certainly include the expectancies of the parties and the fairness of governing the defendants' acts and behavior by rules of conduct created by a given jurisdiction,"

citing Restatement, Conflict of Laws 2d, § 6. The Restatement, § 6, Comment g, defines the problem as follows:

"g. Protection of justified expectations.

This is an important value in all fields of the law, including choice of law. Generally speaking, it would be unfair and improper to hold a person liable under the local law of one state when he had justifiably molded his conduct to conform to the requirements of another state. Also, it is in part because of this factor that the parties are free within broad limits to choose the law to govern the validity of their contract * * * and that the courts seek to apply a law that will sustain the validity of a trust of movables * * *."

The accident which gave rise to this litigation occurred on July 1, 1974, in Pierce County, Wisconsin, when a motorcycle owned and operated by Ronald Hague, on which his father, Ralph Hague, was a passenger, collided with an automobile owned and operated by Richard Borst. Ralph Hague died as a result of that collision. The Hagues, father and son, and Borst, were all residents of Wisconsin at the time of the accident. Both vehicles were licensed and garaged in the State of Wisconsin.

Neither vehicle was covered by insurance. However, the decedent had a single policy of insurance written by the defendant which extended coverage to three automobiles owned by decedent in

Wisconsin on which three separate premiums were paid. That policy provided for uninsured motorist coverage up to $15,000 for each of the three automobiles owned by decedent. The insurance contract was entered by the defendant and the decedent in the State of Wisconsin, the premiums were paid in the State of Wisconsin, and the policy was retained in the State of Wisconsin.

The decedent's only connection with Minnesota was his employment in this state, but at no time prior to his death did either he or his family live in this state. His widow subsequently moved to Minnesota following her remarriage. She was appointed representative of his estate in Minnesota, and brought this action against defendant which does business in Minnesota.

In our decision in Van Tassel v. Horace Mann Mutual Ins. Co. 296 Minn. 181, 207 N.W.2d 348 (1973) our court unanimously held that an insured who pays premiums on more than one policy is entitled to stack the benefits covered by each policy under its uninsured motorist coverage. On the other hand, under the law of Wisconsin as enunciated by its Supreme Court in Nelson v. Employers Mutual Cas. Co. 63 Wis. 2d 558, 217 N.W.2d 670(1974)stacking of the kind sought in this case is denied.

At the outset it should be noted that no case has been called to our attention, and we are aware of none, which applies the better choice-of-law principle to a case such as this, where at the time of the occurrence there were no contacts whatever with the forum state other than a place of employment which played no part in the events giving rise to the litigation. The majority relies strongly on our decision in Milkovich v. Saari, 295 Minn. 155, 203 N.W.2d 408 (1973). In that case we applied Minnesota law rather than the law of Ontario where the parties all resided. However, in so doing we cited as dispositive on the question of Minnesota's interest the fact that the accident occurred in Minnesota as well as the fact that plaintiff was hospitalized for well over a month in this state. We said:

"The compelling factors in this case are the advancement of the forum's governmental interests and the application of the better law. * * * We might also note that persons injured in automobile accidents occurring within our borders can reasonably be expected to require treatment in our medical facilities, both public and private. In the instant case, plaintiff incurred medical bills in a Duluth hospital which have already been paid, but we are loath to place weight on the individual case for fear it might offer even minor incentives to 'hospital shop' or to create litigation-directed pressures on the payment of debts to medical facilities. Suffice it to say that we recognize that medical costs are likely to be incurred with a consequent governmental interest that injured persons not be denied recovery on the basis of doctrines foreign to Minnesota." 295 Minn. at 170, 203 N.W.2d at 417.

Significantly neither of these factors is present in the case before us. The accident did not happen in Minnesota, and whatever economic loss resulted to the decedent's survivors occurred only in the State of Wisconsin.

More nearly in point is our decision in Bolgrean v. Stich, 293 Minn. 8, 196 N.W.2d 442 (1972).The factors we there specified as determining the applicable law compel a finding in this case that the "center of gravity" is in Wisconsin. In Bolgrean, Minnesota law was applied where the plaintiff was a resident of North Dakota and the accident occurred in South Dakota. The considerations which governed our application of Minnesota law located the "center of gravity" and were described by us as being (1) the state where the driver and the owner of the vehicle causing the injuries was a resident, here Wisconsin; (2) the state where that vehicle was garaged, licensed, and insured, here Wisconsin; (3) the state where the injured party lived most of her life and was a resident at the time of the accident, here Wisconsin; and, (4) the state where the trip which resulted in the injury was initiated, here Wisconsin. See, 293 Minn. at 10, 196 N.W.2d at 444. We further noted in Bolgrean than "the only party concerned with predictability is the insuror of the host's vehicle," Id., here the defendant. That insuror, we said, must be assumed to have charged rates applicable to the state of the owner's residence, again the State of Wisconsin.

Every factor which governed our decision in Bolgrean applies to the facts of the instant case, plus two additional elements not present in Bolgrean, namely the fact the decedent was not a resident of the forum state and the accident did not occur in the forum state.

It seems to me wholly inconsistent for us now to ignore all of the criteria we set forth in Bolgrean. The only question in Bolgrean and Milkovich was whether Minnesota had sufficient interest in the litigation to apply this state's better rule of law. Bolgrean makes clear the conditions under which we will apply the Minnesota law in derogation of the law of a different state and I submit none of those conditions has been met in the instant case.

Only passing reference is made by the majority to the decisions of the U.S. Supreme Court which deal with the constitutional problems involved in applying the better rule of law. Lest there be any doubt about the viability of Home Ins. Co. v. Dick, 281 U.S. 397, 50 S. Ct. 338, 74 L. Ed. 926 (1930) and Hartford Accident and Indem. Co. v. Delta & Pine Land Co. 292 U.S. 143, 54 S. Ct. 634, 78 L. ed. 1178 (1934) both of those cases were referred to and distinguished in Clay v. Sun Insurance Office, Ltd.,377 U.S. 179, 84 S. Ct. 1197, 12 L. ed. 2d 229(1964).

In Dick, the Supreme Court held that an insuror was denied due process where a Texas statute of limitations permitted a fire insurance claim to be made against the insuror in a Texas court, at a time when the claim was barred by a statute of limitations in Mexico where the loss occurred.

In the Hartford case, a Connecticut insuror contracted with a Mississippi corporation in Tennessee for a fidelity bond which required claims to be made within 15 months after termination of the suretyship. A Mississippi court struck down that condition and was reversed by the U.S. Supreme Court, which held:

"The Mississippi statutes, so construed, deprive the appellant of due process of law. A state may limit

or pretory * * *; but it cannot extend the effect to its laws beyond its borders so as to destroy or impair the right of citizens of other states to make a contract not operative within its jurisdiction, and lawful where made. * * * Nor may it in an action based upon such a contract enlarge the obligations of the parties to accord with every local statutory policy solely upon the ground that one of the parties is its own citizen.

"* * * [A state] may not, on grounds of policy, ignore a right which has lawfully vested elsewhere, if, as here, the interest of the forum has but slight connection with the substance of the contract obligations. * * * A legislative policy which attempts to draw to the state of the forum control over the obligations of contracts elsewhere validly consummated and to convert them for all purposes into contracts of the forum regardless of the relative importance of the interests of the forum as contrasted with those created at the place of the contract, conflicts with the guaranties of the Fourteenth Amendment."292 U.S. at 149, 54 S. Ct. at 636. (Citations omitted, italics supplied.)

The residence element on which the majority in this case strongly relies was brushed aside in the Dick case where the Supreme Court said:

"* * * The fact that Dick's permanent residence was in Texas is without significance. At all times here material, he was physically present and acting in Mexico. Texas was, therefore, without power to affect the terms of contracts so made. Its attempt to impose a greater obligation than that agreed upon, and to seize property in payment of the imposed obligation violates the guaranty against deprivation of property without due process of law." 281 U.S. at 408, 50 S. Ct. at 341.

In the instant case the plaintiff was at all times here material physically present in Wisconsin. In denying recovery in the Dick case the court held that Texas "may not abrogate the rights of parties beyond its borders having no relation to anything done or to be done within them." 281 U.S. at 410, 50 S. Ct. at 342, 74 L. Ed. at 935.

What is to me the key issue, the after-the-fact residence of plaintiff in Minnesota, was unequivocally treated as "without significance" in the Dick case' That conclusion was reaffirmed in the Clay case where a unanimous court stated that the Hartford and Dick decisions "were cases where the activities in the state of the forum were thought to be too slight and too casual as in the * * * [Hartford case], to make the application of local law consistent with due process, or wholly lacking, as in the Dick case." 377 U.S. 181, 84 S. Ct. 1198, 12 L. ed. 2d at 231-32. (Italics supplied.) A footnote quotes, among other things, the sentence set forth above that "the fact that Dick's permanent residence was in Texas is without significance." 377 U.S. at 182 n. 5, 84 S. Ct. at 1199, 12 L. Ed. 2d at 232. In the light of the Supreme Court's recent approval of that rule, giving no effect whatever to after-the-fact residence, I submit that the underpinnings of the majority rule have no constitutional support. In justifying the application of Minnesota law to a Wisconsin accident involving Wisconsin residents, the original majority opinion recites, among other things:

"Minnesota contacts with the facts of the case begin with plaintiff's residence at the time of suit * * *. Thus, as the 'justice administering state' Minnesota has at least one significant contact.

"The Minnesota interest in full compensation for her residents injured by uninsured motorists is sufficient to allow the application of Minnesota law if otherwise warranted." Hague v. Allstate Insurance Co. 289 N.W.2d 43, 48, (Minn. 1978).

If, as the United States Supreme Court has consistently held, residence of a party is not to be considered in choice-of-law cases, clearly there is nothing left on which to base the application of Wisconsin law in this case. [1]

The rights of this defendant, which are in my opinion constitutionally protected, were vested at the time it entered its contract for insurance with the decedent in Wisconsin prior to July 1, 1974. At that time stacking had been held unavailable by the Wisconsin court in its Nelson decision filed May 20, 1974. Defendant had a right to rely on that decision in fixing its rates and in actuarially assessing its exposure. Where the contract was entered into in Wisconsin by Wisconsin residents, who were exposed primarily to Wisconsin hazards, and the loss which could be anticipated did in fact occur in Wisconsin and was wholly unrelated to the hazards of any other state, defendant had a right to rely on the application of Wisconsin law. The Restatement, Conflict of Laws 2d, § 188, Comment b, states the case well:

"* * * Parties entering a contract will expect at the very least, subject perhaps to rare exceptions, that the provisions of the contract will be binding upon them. Their expectations should not be disappointed by application of the local law rule of a state which would strike down the contract or a provision thereof unless the value of protecting the expectations of the parties is substantially outweighed in the particular case by the interest of the state with the invalidating rule in having this rule applied. The extent of the interest of a state in having its rule applied should be determined in the light of the purpose sought to be achieved by the rule and by the relation of the transaction and the parties to that state * * *." (Italics supplied.)

Granted that the Minnesota rule of law is better, in the absence of any substantial interest by this state in the subject of the litigation, our intrusion into the rights of those who have transacted business in good faith elsewhere verges on meddling in the judicial policy of a sister state if we deny the legitimate expectations of a contracting party by applying Minnesota law on the fragile grounds here asserted.

Accordingly, I would reverse.

PETERSON, Justice (dissenting).

I join in the dissent of Mr. Justice Otis.

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1. Both the dissent and footnote 2 of the original majority opinion refer to Savchuk v. Rush, 311 Minn. 480, 245 N.W.2d 624 (1976). That case also dealt with after-the-fact residency for purposes of acquiring jurisdiction. On appeal to the U.S. Supreme Court the judgment of our court was vacated and the case remanded (433 U.S. 902, 97 S. Ct. 2964, 53 L. Ed. 2d (1086 [1977]) for further consideration in light of Shaffer v. Heitner, 433 U.S. 186, 97 S. Ct. 2569, 53 L. ed. 2d 683(1977). On remand, the majority of this court adhered to its prior decision, 272 N.W.2d 888 (Minn. 1978). On February 21, 1979, the U.S. Supreme Court noted probable jurisdiction, 440 U.S. 905, 99 S. Ct. 1211, 59 L. Ed. 2d 453 (1979), but has not yet rendered its decision.