PennState Dickinson Law

DICKINSON LAW REVIEW
PUBLISHED SINCE 1897

Volume 60
Issue 3 *Dickinson Law Review - Volume 60, 1955-1956*

3-1-1956

Recent Case

Follow this and additional works at: https://ideas.dickinsonlaw.psu.edu/dlra

Recommended Citation
Recent Case, 60 DICK. L. REV. 286 (1956).
Available at: https://ideas.dickinsonlaw.psu.edu/dlra/vol60/iss3/11

This Article is brought to you for free and open access by the Law Reviews at Dickinson Law IDEAS. It has been accepted for inclusion in Dickinson Law Review by an authorized editor of Dickinson Law IDEAS. For more information, please contact lja10@psu.edu.

RECENT CASE

TORTS—INSURANCE COVERAGE—EFFECT ON CONTRIBUTION

In the case of *Puller v. Puller*[1] a problem of importance arose involving the interpretation of an automobile insurance exclusion clause and what effect this interpretation would have on the *Uniform Contribution Among Tortfeasors Act.*[2]

The facts of the case are as follows. An automobile owned and operated by the joint tortfeasor, Puller, in which his wife and minor daughter were passengers, collided with a locomotive. All three were injured and brought an action against the railroad company. The latter obtained a severance of Puller's claim and joined him as an additional defendant. The jury found both parties liable. The railroad company paid the verdicts in full and had the judgment marked to its use against Puller. The railroad company as use plaintiff issued attachment executions against Puller, naming his insurer as garnishee. The garnishee defended on the ground that the construction of a provision in Puller's policy did not allow recovery. The provision of the policy follows:

> "This policy does not apply . . . (d) under Coverage A, to bodily injury to or death of any employee of the insured . . . or to the insured or any member of the family of the insured residing in the same household as the insured.
>
> "Coverage A—Bodily Injury Liability. To pay on behalf of the insured all sums which the insured shall become obligated to pay by reason of the liability imposed upon him by law for damages . . . because of bodily injury . . . sustained by any person or persons, caused by accident and arising out of the ownership, maintenance or use of the automobile."

The lower court held in favor of the garnishee, and this was affirmed by the supreme court on appeal.

The court followed the well-settled rule which allows a tortfeasor contribution from a joint tortfeasor where the plaintiff is excluded from bringing an action directly against the joint tortfeasor. This rule was set out in *Fisher v. Diehl*[3] and became a settled part of Pennsylvania law.[4]

The court used the theory of equitable contribution which is stated in *Feldman v. Gomes*:[5]

> "As between the two defendants, the contribution is not a matter of recovery for a tort. It is a liability arising from an implied engagement to jointly contribute for the wrong done. It is a mere debt arising from an equitable duty, having none of the elements of a tort."

As stated in *Freeman v. Sundheim,*[6] this theory is now firmly embedded in Pennsylvania law.

---

1 380 Pa. 219, 110 A. 2d 175 (1955).
2 PA. STAT. ANN. tit. 12, §§ 2081-2089 (Purdon 1955).
3 156 Pa. Super. 476, 40 A. 2d 912 (1944).
4 Maio, Executrix v. Fahs, 339 Pa. 180, 14 A. 2d 105 (1940); Rau v. Manko, 341 Pa. 17, 17 A. 2d 422 (1941).
5 98 Pa. Super. 84 (1929); see also: 13 C. J. 825; 54 DICK L. REV. 198 (1949).
6 348 Pa. 248, 35 A. 2d 295 (1944).

The problem then became one of giving effect to the apparently unambiguous provisions of the insurance coverage in the light of the adoption of the *Uniform Contribution Among Tortfeasors Act* and the theory of equitable contribution.

The court adhered to the principle that the insurance coverage should be resolved in favor of the insurer where the language is clear and unambiguous.[7] Then the court found ground for its interpretation by saying, "The well known reason for the exclusion clause of the policy is that it is intended as a protection against collusive claims".

It is to be noted that the interpretation of the court excludes a tortfeasor from contribution by way of an insurer who may well be the only means of such contribution and who exists for just such a purpose in our dynamic, auto-minded society. This denial viewed in the light of the court's statement quoted above that the exclusion clause exists for protection against collusive claims seems to be precluding the use of the doctrine of equitable contribution which has been carefully established by the courts and set out in this case by allowing a wife to collect indirectly from her spouse. The conclusion of the court is logical insofar as it is so interpreted, but to deny contribution to a non-collusive tortfeasor is to halt in the middle of the problem.

In the commissioners' prefatory note to the *Uniform Contribution Among Tortfeasors Act*,[8] some of the language bears mention:

> "The desire for equal or proportionate distribution of a common burden among those upon whom it rests is everywhere fundamental."

Also:

> "As an original proposition, all might agree that courts should not lend their aid to rascals, in adjusting differences among them. But all tortfeasors are not rascals, in spite of the literal translation of the terms as wrongdoers. Most joint and several tort liability results from inadvertently caused damage, although it is almost impossible to draw a practical line between torts of inadvertence and others."

This typifies the basis and reasoning of the act as set out by the Commissioners,[9] and this reasoning must be attributed to the passage of the act by the Pennsylvania Legislature in 1951.

Therefore, it now seems that regardless of the established doctrine of equitable contribution in Pennsylvania law and the adoption of the *Uniform Contribution Among Tortfeasors Act,* we are placed in the anomalous position of at least a partial return to the old doctrine of no contribution among tortfeasors by permitting the use of a technical device in the form of a contract.

ALBERT C. HAND

---

[7] Yoder v. United Benefit Life Insurance Company, 171 Pa. Super 18, 90 A. 2d 399 (1952); Levinton v. Ohio Farmers Insurance Company, 267 Pa. 448, 110 Atl. 295 (1920).

[8] 9 UNIFORM LAWS ANNOTATED 153, 154.

[9] Note: The *Uniform Contribution Among Tortfeasors Act* was approved by the National Conference of Commissioners on Uniform State Laws in 1939.