IN THE SUPREME COURT OF GUAM

CONSY CEASAR, as Special Administratrix of the ESTATE OF RESKY CEASAR, DECEASED
Plaintiff-Appellant

vs.

QBE INSURANCE (INT'L), LTD.,
Defendant-Appellee

OPINION

Filed: March 13, 2001

Cite as: 2001 Guam 6

Supreme Court Case No. CVA00-004
Superior Court Case No. CV1776-99

Appeal from the Superior Court of Guam
Argued and submitted on October 24, 2000
Hagåtña, Guam

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BEFORE: BENJAMIN J. F. CRUZ, Chief Justice; PETER C. SIGUENZA, JR., Associate Justice; and JOHN A. MANGLONA, Designated Justice.

SIGUENZA, J.:

[1] The Administratrix of an estate brought legal action against an automobile insurer to recover liability compensation for injuries suffered by decedent when he was struck by an automobile. The insurer moved for summary judgment claiming that the injuries were caused by the intentional act of the driver and that compensation was therefore barred by the exclusionary provisions in the policy and by statute. The trial court granted summary judgment and held that Guam's mandatory automobile insurance law does not permit compensation for an intentional act of an insured and that the conviction of the driver for aggravated assault proved his intent as a matter of law. We agree that the mandatory automobile insurance law does not permit compensation for an insured's intentional act. However, while we hold that the conviction does not by itself prove intent as a matter of law, it and other undisputed facts on the record do prove intent. We affirm the trial court's judgment on other grounds.

I.

[2] Resky Ceasar, Narwitt Narian ("Narian") and others were involved in an all night drinking party when a quarrel began between them and a drunken brawl followed. In the midst of the brawl, Narian entered a car, drove in the direction of Resky Ceasar, struck him, and fled the scene. Resky Ceasar later died from the injuries he sustained in this incident. In the resulting criminal action against him, Narian pled guilty to and was convicted of aggravated assault as a third degree felony. The car had been lent to Narian by his sister who had insured the car with QBE Insurance (International) Ltd. ("QBE") for the minimum liability coverage required by Guam's mandatory automobile insurance law.

[3] During probate proceedings to settle Resky Ceasar's estate, Superior Court Probate Case No. PR0110-99, Coney Ceasar, as the court appointed administratrix of the decedent's estate, filed a claim with QBE to collect the insurance coverage for the death of Resky Ceasar. This claim was denied by QBE on the basis that the insurance policy on the car excluded claims for personal injury or death proximately caused by wilful or unlawful conduct on the part of the named insured, or a permissive user. Consy Ceasar, as administratrix, then filed the instant action, Superior Court Civil Case No. 1776-99, to collect the claim.

[4] A Motion for Summary Judgment was brought by QBE asserting that, as a matter of law, the willful act of Narian proximately caused the death of Resky Ceasar and that the express exclusionary provisions in the insurance policy barred recovery for injury or death resulting from the willful act of the insured. The trial court found that: (1) Narian intended to cause injury to Resky Ceasar; (2) the intentional incident did not fit within the definition of "accident" under Guam's compulsory automobile insurance law; and (3) the finding that intentional acts are precluded from automobile insurance coverage is consistent with the legislative intent of 18 GCA § 88102 and 22 GCA § 18602. The trial court granted summary judgment in favor of QBE.

II.

[5] This court has jurisdiction over this appeal from a final judgment. Title 7 GCA § 3107, (1994).

[6] The trial court's decision to grant summary judgment shall be reviewed *de novo*. *Iizuka Corp. v. Kawasho Int'l (Guam) Inc.*, 1997 Guam 10, ¶ 7. Under the Guam Rules of Civil Procedure, summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file,

together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Guam R. Civ. P. 56.

[7] In reaching its decision, the trial court was faced with interpreting Guam's mandatory automobile insurance law. Issues of statutory interpretation are questions of law to be reviewed *de novo*. *Pangelinan v. Gutierrez*, 2000 Guam 11, ¶ 7; *Ada v. Guam Telephone Authority*, 1999 Guam 10, ¶ 10; *Camacho v. Camacho*, 1997 Guam 5, ¶ 24. The application of facts to law is reviewed *de novo*. *Gutierrez,* 2000 Guam 11 at ¶ 7; *People v. Santos*, 1999 Guam 1, ¶ 31.

[8] An appellate court may affirm the judgment of a lower court on any ground supported by the record. *See generally Lujan v. Hemlani*, 2000 Guam 21, ¶ 1.

III.

[9] The issues on appeal are whether under Guam's mandatory automobile insurance law, a person who is intentionally struck by an automobile may recover compensation from the insurer of the driver, and whether there is no genuine issue of fact that Narian intentionally injured Resky Ceasar.

A.

[10] The mandatory automobile insurance law is codified in Guam's vehicle code at Chapter 19 of Title 16 Guam Code Annotated and provides:

> Each owner of a motor vehicle which is required to be registered in Guam shall maintain the insurance required by this Chapter. This insurance shall be in effect continuously during the motor vehicle's period of registration.

Title 16 GCA § 19102, (1994). The law further provides:

> It is the purpose of this legislation to require mandatory automobile liability insurance in order to guarantee adequate protection for victims of car accidents who are injured in Guam or who are injured while riding in motor vehicles which are operated in Guam.

Title 16 GCA § 19101, (1994).

[11] Consy Ceasar argues that the underlying public purpose of mandatory automobile insurance is to protect and compensate the victim, not to indemnify the insured; therefore, whether a victim was injured intentionally by the insured is irrelevant. Ceasar asserts that if a determination of whether injuries were caused by accident must be made, such determination must be from the victim's viewpoint. We do not agree.

[12] Two statutory provisions prohibit indemnification of an insured for intentional acts. The specific prohibition is found at Division 2 of Title 22 Guam Code Annotated, the Insurance Law of Guam, and states: "An insurer is not liable for a loss caused by the wilful act of the insured; but he is not exonerated by the negligence of the insured or of the insured's agents or others." Title 22 GCA § 18602, (1994). The general prohibition against such contractual indemnification is found at Chapter 88 of Title 18 Guam Code Annotated, Unlawful Contracts, and states: "All contract [sic] which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law." Title 18 GCA § 88102, (1992). The insurance code provision, section 18602, is an application of the provision of law prohibiting unlawful contracts in general, section 88102. *See generally, Studley v. Benicia Unified School Dist.*, 281 Cal. Rptr. 631, 633 (Cal. App. 1991). To find as Consy Ceasar suggests, this court would have to conclude that the Legislature intended to override these general principles of contract and

insurance law for automobile insurance.

[13] Consy Ceasar cites to no section within the mandatory insurance law, and this court could find none, that evinces the Legislature's express intent to limit the application of sections 18602 and 88102 which prohibit insurance contracts for intentional acts. Our plain reading of the mandatory automobile insurance law does not permit an overly broad interpretation of the law's intent. This law directly states its purpose to protect "victims of **car accidents**," 16 GCA § 19101 (emphasis added), and limits coverage to injuries "arising from an **accident** within Guam." Title 16 GCA § 19104 (b), (1994) (emphasis added). We find no intent of the Legislature to divert from the traditional policy espoused in sections 18602 and 88102. It follows, that the mandatory automobile insurance law requires any determination of accidental injury to be made from the perspective of the insured.

[14] Moreover, we find Coney Ceasar's supporting case law unpersuasive and distinguishable. Particular reliance is placed on *Wheeler v. O'Connell*, 9 N.E.2d. 544 (Mass. 1937), and *State Farm Fire & Casualty Co. v. Tringali*, 686 F.2d 821 (9th Cir. 1982).

[15] In the *Wheeler* decision, the Massachusetts Supreme Judicial Court faced the same issues presented in the instant case: whether injuries suffered from an intentional act are compensable under a compulsory automobile insurance scheme. The *Wheeler* court held that the purpose of the compulsory motor vehicle insurance statute is not like ordinary insurance, to protect the owner or operator from loss, but to compensate a person injured by an automobile. *Wheeler*, 9 N.E.2d. at 546. Under this reasoning, the *Wheeler* court held that the rights of the injured do not derive from the insured and the conduct of the operator is immaterial. *Id.* at 547.

[16] However, upon review of the specific Massachusetts statute in question we find an important distinction from the Guam statute. The Massachusetts statute required automobile insurance to provide indemnity for liability for bodily injuries "arising out of the **ownership, operation, maintenance, control or use** upon the ways of the commonwealth of such motor vehicle." *Id.* at 545 (emphasis added). Thus, this statute did not limit liability to "accidental" injuries as does as the Guam statute.

[17] In *Tringali,* the Ninth Circuit Court of Appeals sitting in diversity faced the identical issue concerning the Hawaii mandatory automobile insurance statute. As cited by the court, insurance policies were required to contain a provision requiring payment for

> sums which the owner or operator may legally be obligated to pay for injury . . . which arises out of . . . use of the motor vehicle: (1) Liability coverage of not less than $25,000 for all damages arising out of accidental harm sustained by any one person as the result of any one accident applicable to each person sustaining accidental harm arising out of . . . use, . . . of the insured vehicle. . . ."

Tringali, 686 F.2d at 823 (citing HAW. REV. STAT. § 294-10(a)). The *Tringali* court found that the adoption of a compulsory scheme of automobile liability insurance very strongly suggested a legislative intent that there be no exclusion of intentional acts of the insured, that compulsory automobile insurance was adopted for the protection of the victims, and that from the viewpoint of the victim, the mental state of the insured was irrelevant. *Id.* at 824. The court also noted the use of the term accident in the relevant provision, but nonetheless found that where compulsory automobile liability insurance statutes use the terms "accident" or "accidental," those terms should be read in a way that does not exclude intentional acts of, or even intentional wrongs done by, the insured. *Id.* The court stated that an event is accidental if it is neither expected nor intended from the viewpoint of the person who is injured. *Id.* at 824-825.

[18] The *Tringali* court found no express provision in the Hawaii law that suggested a restrictive reading of the term "motor vehicle accident." *Id.* at 825. In addition, the court found much support in the fact that the Hawaii automobile insurance statute, in addition to requiring liability insurance, also required no-fault insurance. The court stated the terms "accident" and "accidental" are used in the no-fault provision and thus could not have been intended by the Hawaii Legislature to depend on the mind of the driver. The court explained that because these terms are used throughout the no-fault and mandatory liability insurance provisions, they should be read the same way: to include even intentional acts of the driver. *Id.*

[19] We are not convinced that the Ninth Circuit's reasoning could correctly be applied in the instant case. Here, the parties have not pointed to any statutory definition of accident in our statutes, and we could find none. Moreover, the Guam statute is not a "no-fault" scheme and we are not prepared to accept the definition of "accident" as Consy Ceasar suggests.

[20] Moreover, we note that *Tringali's* holding, that the question of accidental harm must be viewed from the perspective of the victim, is no longer substantive law in Hawaii. In *AIG Hawaii Insurance Co., Inc. v. Caraang*, 851 P.2d 321 (Haw. 1993), the *Tringali* decision was implicitly rejected. In *Caraang*, during a car chase, a passenger in the car of the insured driver, shot and killed a person in another vehicle. The driver was unaware that his passenger was shooting at the other vehicle. In a suit against the driver's automobile insurer, the Hawaii Supreme Court held that the question of whether the victim's death constituted accidental harm must be answered from the perspective of the insured. *Id.* at 328-329 (citations omitted). The impact of *Caraang* is made more significant because the Hawaii automobile insurance laws were revised subsequent to *Tringali.* In *Caraang*, the policy at issue was governed by Hawaii Revised Statutes Chapter 431, which provided that no person shall operate a motor vehicle unless

it is insured under a no-fault policy. *Id.* at 328 (citing HAW. REV. STAT. § 431:10C-301). Thus, even under a no-fault policy, the Hawaii Supreme Court held that the insured person's perspective controls when determining the occurrence of accidental harm. *Id.* at 328-329.

[21] Therefore, we hold that Guam's mandatory automobile insurance law does not permit coverage for intentional acts of the insured, and that if a determination of whether the act is intentional is necessary, such a determination must be made from the perspective of the insured.

B.

[22] The next issue we face is whether there is no genuine issue that Narian intentionally injured Resky Ceasar and that QBE is entitled to judgment as a matter of law.

[23] We agree with the trial court that the mere fact an act is intentional does not necessarily determine that the injury was intentionally caused. *See Fox v. County Mutual Ins. Co.*, 964 P.2d 997, 1005-1006 (Or. 1998) (observing that an intentional act of the insured did not in and of itself bar compensation, but that if the injuries were intentionally caused, no compensation should be paid). This is consistent with the Guam mandatory automobile insurance law and the QBE insurance policy at issue which expressly excludes intentionally caused injury: "We do not provide liability coverage for any 'insured' who **intentionally causes 'bodily injury'** or 'property damage.'" Appellant's Excerpts of Record at 39 (emphasis added).

[24] The most telling evidence of Narian's intent to injure Resky Ceasar is Narian's plea agreement and conviction for aggravated assault as a third degree felony. The applicable criminal code section provides: "A person is guilty of aggravated assault if he either recklessly causes or attempts to cause . . . bodily injury to another with a deadly weapon." Title 9 GCA § 19.20(a)(3), (1994). On its face, the statute does not

include intent as a specific element of this crime. Thus, we cannot agree with the trial court that the conviction proves intent as a matter of law. However, the conviction does not preclude a finding of intent.

[25] It is undisputed that Narian and Resky Ceasar were fighting against each other, and, in the midst of the brawl, Narian got in his car and struck Resky Ceasar. Consy Ceasar does not dispute that the collision was part of the brawl. Thus, Narian's act in using the vehicle as an instrument to inflict harm was not a fortuitous incident. Moreover, the act of running down a person with a car in the middle of a fight, is so certain to cause injury that we can infer Narian's intent to harm Resky Ceasar. In *Automobile Club Inter-Insurance Exchange v. Kennison,* 549 S.W.2d 587 (Mo. Ct. App. 1977), the driver of a vehicle admitted that he intentionally rammed another vehicle in front of him. The court found that although the driver did not admit to a specific intent to harm the occupants of the other vehicle, the act was dangerous and some harm was almost certain to result. *Id.* at 591.

> If a person knows consequences are certain, or substantially certain, to result from his act and still goes ahead, he is treated by the law as if he had in fact desired to produce the result. Therefore, an admission of specific intent is not the only way to show intent to cause harm; it can be inferred from the facts and circumstances surrounding an act. . . . One is presumed to intend the natural and probable consequences of his acts and conduct. . . . When an intentional act results in injuries which are the natural and probable consequences of the act, the injuries as well as the act are intentional.

Id. at 590-591(citations omitted). Because it found that the injuries were caused intentionally, the court held that insurance compensation was barred. *Id.* at 591. If the act of intentionally ramming another vehicle is almost certain to cause injury to occupants therein, then the act of intentionally ramming an unprotected person is absolutely certain to cause injury.

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[26] Thus, while the conviction by itself does not amount to a showing of specific intent, it, along with the undisputed facts, indicate that Narian used the vehicle as a weapon in the fight against Resky Ceasar and that such use was willful.[1] Further, the act was so inherently harmful that Narian's intent to inflict injury can be inferred from the commission of the act. Therefore, we hold there is no genuine issue of material fact that Narian intended to injure Resky Ceasar.

IV.

[27] Guam's mandatory automobile insurance law does not permit compensation for intentional acts of an insured. Because there is no genuine issue that Narian intentionally injured Resky Ceasar, compensation for injuries is precluded. The summary judgment granted by the trial court is **AFFIRMED**.

PETER C. SIGUENZA, JR.
Associate Justice

JOHN A. MANGLONA
Designated Justice

[1] Because our decision here is not based solely on Narian's conviction, it is not inconsistent with *Wiggins v. Hampton*, 605 N.E.2d 1264 (Ohio Ct. App. 1992), cited by Consy Ceasar, which held that a conviction for aggravated assault does not establish intent as a matter of law.

CRUZ, C.J., dissenting:

[28] The express purpose of the Guam mandatory automobile insurance law is to guarantee adequate "protection for victims of car accidents." 16 GCA § 19101. This language distinguishes automobile insurance from other types of insurance. Whereas, most insurance is purchased to protect the buyer from liability due to his negligent acts, the goal of mandatory automobile insurance is to protect victims of accidents. *See Wheeler*, 9 N.E.2d at 546 (observing that "[t]he purpose of compulsory motor vehicle insurance law is not, like ordinary insurance, to protect the owner or operator alone from loss but rather is to provide compensation to persons injured through the operation of the automobile insured by the owner."). This is a critical distinction.

[29] Under section 19101, the right of a victim to compensation does not derive from the right of the insured to be indemnified as is provided by ordinary insurance. Section 19101 provides a victim with a statutory right to compensation for accidentally caused injuries. *See Nationwide Mutual Ins. v. Roberts*, 134 S.E.2d 654,659 (N.C. 1964) (observing that the North Carolina compulsory motor vehicle liability insurance law provides a victim with a statutory right to compensation). If the purpose of the law is to protect victims, it is difficult to see why the driver's perspective should matter. If from the victim's perspective his injuries were accidentally caused, then he is entitled to compensation for such injuries. *See e.g. Martin v. Chicago Ins. Co.,* 361 S.E.2d 835,837 (Ga. Ct. App. 1987); *Roberts*, 134 S.E.2d at 659. "Unless the rights of the injured party are purely derivative, as they are in the case of ordinary insurance, there is no justifiable basis for making a distinction between conduct of the operator which was wilful, wanton or reckless, and conduct which is in some degree negligent." *Wheeler*, 9 N.E.2d at 546. To hold otherwise defeats the purpose of mandatory automobile insurance and characterizes it as ordinary insurance.

[30] The insurance company asserts that it is contrary to public policy to indemnify an insured for his intentional acts. To the extent that this rule concerns insurance other than that regulated by the mandatory automobile liability insurance law, I agree. However, mandatory automobile insurance is not to be held to the same standard as ordinary insurance. Indeed, the statutory prohibition against indemnification of an insured's intentional act is found in the Insurance Code whereas the mandatory automobile insurance law is part of the Vehicle Code. The public policies of general insurance and of automobile insurance should be construed against this background. As the *Wheeler* court observed:

> At the outset it should be observed that the principles laid down in the cases dealing with ordinary insurance policies are not controlling in the case at bar. . . . The policy here in question was issued to meet the requirements of our statute of compulsory motor vehicle insurance, and [i]t is to be construed in connection with that statute and the public policy embodied therein.

Wheeler, 9 N.E.2d at 546 (citations omitted). In reference to the Massachusetts compulsory motor vehicle insurance law, the *Wheeler* court stated: "The statute itself is declaratory of public policy applicable to compulsory insurance and supersedes any rule of public policy which obtains in ordinary insurance law." *Id.* at 547 (citations omitted). Thus, I would find that the public policy of Guam's mandatory automobile insurance law is set apart from that of ordinary insurance. To effect this policy, the victim's perspective must control.

[31] The majority gives too much import to the term "accident" which causes it to lose focus of the true public policy and purpose of mandatory insurance: the protection of victims.

> Where compulsory automobile insurance liability insurance statutes use the terms "accident" or "accidental" we should, if possible, read those terms in a way that does not exclude intentional acts of, or even intentional wrongs done by, the insured. **An event is accidental if it is neither expected nor intended from the viewpoint of the person who is injured**

Tringali, 686 F.2d at 824-825 (citations omitted) (emphasis added).

[32] Because I find that the purpose of mandatory automobile insurance is to protect victims and that the victim's perspective must control for the determination of whether injuries were caused accidentally, I respectfully **DISSENT**.

BENJAMIN J. F. CRUZ
Chief Justice