

STATE OF MICHIGAN
COURT OF APPEALS

ELBERT MAHAFFEY,
Plaintiff-Appellee,

UNPUBLISHED
February 14, 2003

v

CNA INSURANCE COMPANIES, d/b/a
CONTINENTAL INSURANCE COMPANY,

No. 235022
Wayne Circuit Court
LC No. 99-928333-NF

Defendant-Appellant,

and

TRACEY HODGE TYUS,

Defendant.

Before: Murphy, P.J., and Cavanagh and Neff, JJ.

PER CURIAM.

Defendant CNA appeals as of right from a judgment for plaintiff that was entered pursuant to a jury verdict. We affirm.

This case arose when defendant Tyus' uninsured car rear-ended plaintiff's car, causing plaintiff physical injuries and property damage. Plaintiff had uninsured motorist coverage and personal injury protection (PIP) insurance through defendant CNA; however, CNA only partially paid plaintiff's PIP claim, and refused to pay him anything on his uninsured motorist claim. The jury awarded plaintiff \$45,000 on his uninsured motorist claim, \$9,230 on his claim for full payment of PIP benefits, and \$1,846 interest on overdue PIP benefits.

CNA first argues that the trial court erred when it deemed relevant the evidence regarding the determination by CNA's claims adjuster that plaintiff was not entitled to uninsured motorist benefits. We disagree. We review a trial court's decision whether to introduce evidence for an abuse of discretion. *Szymanski v Brown*, 221 Mich App 423, 435; 562 NW2d 212 (1997). An abuse of discretion exists where the trial court's decision is so grossly violative of fact and logic as to evidence a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Mixon v Mixon*, 237 Mich App 159, 163; 602 NW2d 406 (1999).

In this case, the pivotal issue, with regard to the uninsured motorist benefits, was whether plaintiff's injuries met the no-fault threshold of serious impairment of body function. *Auto Club Ins Ass'n v Hill*, 431 Mich 449, 466; 430 NW2d 636 (1988). We note that CNA failed to introduce their own witnesses at trial to refute plaintiff's parade of experts and first-hand testimony about the severity of his injuries. This case involves a tort claim within the context of a contract action, i.e., if plaintiff suffered a serious impairment of body function caused by negligence, CNA becomes liable to plaintiff under the terms of the uninsured motorist provision contained in the insurance contract. CNA's claims adjuster decided that plaintiff did not meet the threshold for recovery, thereby resulting in CNA's denial of uninsured motorist benefits under the contract. Inquiry into the adjuster's decision and reasoning, if not simply for properly presenting relevant background facts and giving the jury the full picture of events leading to the court case, is also relevant to the central issue of serious impairment of body function, in that the jury was entitled to hear about any evidence that might suggest that plaintiff did not have a serious impairment and the basis for that determination.

Furthermore, plaintiff asserted in his complaint that CNA acted unreasonably in handling plaintiff's claim. We have previously held that an insurance company's bad faith regarding a claim is "relevant and not unduly prejudicial." *Isagholian v Transamerica Ins Corp*, 208 Mich App 9, 12; 527 NW2d 13 (1994). Plaintiff elicited evidence that demonstrated the adjuster's lack of medical and legal credentials, which could give rise to an inference of bad faith with regards to the handling, in general, of plaintiff's claims for any benefits under the insurance contract, including a claim for overdue PIP benefits. Additionally, at a minimum, the trial court's ruling was not so grossly violative of fact and logic as to constitute an abuse of discretion. Moreover, we find that, assuming error, any error was harmless in light of the proofs and questions presented to the jury. MCR 2.613(A). CNA repeatedly argues that the only issues for the jury, with regard to the uninsured motorist claim, was whether plaintiff suffered a serious impairment, and if so, determining the extent of the injuries for purposes of calculating damages. We fail to see how the revelation to the jury of the adjuster's decision had any impact on the jury's determination whether plaintiff suffered a serious impairment. Even without the evidence, it was readily apparent and obvious to the jury that CNA denied the uninsured motorist claim on the ground that there was no serious impairment; it was the premise of CNA's defense and the reason the case was before the jury in the first place. Reversal is unwarranted.

Defendant also argues that the trial court erred when it found the insurance policy limit relevant as to uninsured motorist benefits. Michigan courts traditionally interpret an insurance contract by construing the contract in its entirety. *Girard Fire & Marine Ins Co v Scott*, 265 Mich 293, 294-295; 251 NW 314 (1933). This would include the policy limits. Once again, although the action involves tort principles and issues, it is within the context of a contract case. Without the contract there is no basis for the litigation. There was no abuse of discretion. Even if we assume error, it was harmless because of this case's particular facts, where the jury's award was for less than half the policy limit, thereby precluding any finding that the evidence affected CNA's substantial rights. MRE 103; MCR 2.613(A). CNA is not entitled to a new trial.

Affirmed.

/s/ William B. Murphy

/s/ Mark J. Cavanagh

/s/ Janet T. Neff