

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2003-208

NOVEMBER TERM, 2003

Annette Meservey and Robert Meservey	}	APPEALED FROM:
	}	
	}	Washington Superior Court
	}	
v.	}	DOCKET NO. 441-8-01 Wncv
	}	
Nationwide Mutual Insurance Company	}	Trial Judge: Mary Miles Teachout
	}	
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Defendant insurer appeals from a superior court judgment awarding plaintiffs, its insureds, damages of \$104,327 under the policy provision for uninsured motorist coverage. Insurer contends the court erred in: (1) awarding damages in excess of the policy limit of \$100,000; and (2) denying its post-trial motion for new trial, remittitur, or amendment of the judgment. We agree with the second contention, and therefore reverse and remand.

This case arose out of an automobile accident in which plaintiff Annette Meservey was rear-ended by another vehicle. Plaintiff and her husband are the named insureds under an automobile liability policy issued by defendant insurer. Plaintiffs filed a complaint against insurer contending that Annette Meservey suffered permanent injuries as the result of the negligence of the other driver, who was uninsured, and that Robert Meservey suffered loss of consortium. The parties stipulated before trial that the other driver's negligence had caused the accident, that the policy obligated insurer to pay compensatory damages, including derivative claims, due by law to the insured from the owner of an uninsured vehicle, and that plaintiff Annette Meservey had incurred reasonable medical expenses of about \$3500.

The case was tried to the court primarily on the issues of the cause and the monetary value of plaintiffs' pain and suffering, loss of enjoyment, and loss of income. Coverage was not at issue, and the policy was not introduced into evidence. During his closing argument, however, plaintiffs' counsel alluded to the policy limits for uninsured motorist coverage, stating that the policy limit here is a hundred thousand dollars, acknowledging that the maximum that I can get from [insurer] is a hundred thousand dollars, and later asking the court to award the policy limit. In his proposed findings submitted after trial, plaintiffs' counsel reiterated that plaintiff Annette Meservey's damages for medical bills, lost income for the first four months, and her pain and suffering (in its broadest sense) more than equal the \$100,000 policy limit. The court issued a written decision, awarding plaintiff Annette Meservey damages of \$89,327 B \$4327 for medical expenses and the \$85,000 balance for pain and suffering -- and awarding plaintiff Robert Meservey damages of \$15,000 for loss of consortium, for a total award of \$104,327.

Insurer objected to the proposed judgment order submitted by plaintiffs, arguing that the amount awarded by the court was excessive, contrary to the evidence, and over the policy limit of \$100,000, and later moved for new trial, remittitur, and amendment of judgment on the same grounds. The policy was appended to the initial post-trial motion. Plaintiffs opposed the motion for new trial, noting that the policy was not in evidence, but arguing nevertheless that the awards for pain and suffering (\$85,000) and loss of consortium (\$15,000) were within the \$100,000 policy limit for uninsured motorist coverage, and that the award for medical expenses of \$4327 was covered by a separate policy provision for medical benefits. The trial court denied the motion in a brief entry order, stating that no evidence or arguments were offered that were not already considered by the court. This appeal followed.

Insurer contends the court erred in awarding an amount in excess of the policy limit, asserting that the policy unambiguously limits coverage of plaintiffs' claims for medical expenses, pain and suffering, and loss of consortium to \$100,000. Insurer contends, therefore, that the court erred in refusing either to reopen the judgment to take additional evidence on the scope of coverage issue or to conform the judgment to the only evidence at trial concerning policy limits, to wit, counsel's statements alluding to the policy limit of \$100,000. Plaintiffs assert, in response, that there was no evidence at trial specifically limiting coverage to \$100,000, noting that the policy was not admitted, but also reiterate their claim that the policy contains a separate provision for medical expenses.

It is apparent from the record that the court and the parties here were focused on the issue of determining the value of plaintiffs' alleged injuries, not on defining the scope or limits of coverage under the policy, as is readily attested by the absence of the policy in evidence. The focus at trial on value instead of coverage might similarly explain the court's initial failure to make findings on the policy limits. Nevertheless, the court's award in excess of \$100,000 unavoidably triggered the coverage issue, and insurer's post-trial motions plainly obligated the court to reopen the judgment to address the issue, take additional evidence if necessary, make findings, and if appropriate amend the judgment. Accordingly, we conclude that the matter must be remanded to the trial court for this purpose. See New England Pipe & Ship v. Rutland City Sch. Dist., 173 Vt. 69, 74 (2001) (court must make all findings necessary to resolve issues before it, support its conclusions, and provide adequate basis for appellate review). Whether insurer contends counsel's references at trial and in his proposed findings to the \$100,000 policy limit demonstrate a clear and unambiguous intent to concede that coverage for all of plaintiffs' claims, including medical expenses, was within that limit is an issue which the court may consider on remand. See Trotier v. Bassett, 811 A.2d 166, 168-69 (2002) (mem.) (judicial admission must be clear, unequivocal concession of fact made for express purpose of dispensing with formal proof of fact in issue).

Reversed and remanded for further proceedings consistent with the views expressed herein.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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Denise R. Johnson, Associate Justice

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Paul L. Reiber, Associate Justice