

Rochdale Ins. Co., Inc. v Park Ins. Co.

2014 NY Slip Op 30784(U)

March 14, 2014

Supreme Court, New York County

Docket Number: 156638/2012

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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ROCHDALE INSURANCE COMPANY, INC. a/s/o
WANDA CASTILLO,
Petitioner

Index No. 156638/2012

- against -

DECISION AND ORDER

PARK INSURANCE COMPANY,
Respondent

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LUCY BILLINGS, J.S.C.:

I. BACKGROUND

Petitioner paid Workers' Compensation for injuries Wanda Castillo sustained as a pedestrian in the course of her employment, when a motor vehicle insured by respondent hit her. N.Y. Workers' Comp. Law § 29(1). Petitioner pursued mandatory arbitration to recoup from respondent the benefits petitioner paid under the Workers' Compensation policy petitioner issued to Castillo's employer, N.Y. Ins. Law § 5105, and then commenced this proceeding to confirm the award from that mandatory arbitration. C.P.L.R. § 7510. Respondent cross-petitions to modify the arbitration award. C.P.L.R. § 7511(c). For the reasons explained below, the court grants the petition and denies respondent's cross-petition.

II. APPLICABLE STANDARDS

The court must confirm an arbitration award unless it is vacated or modified. C.P.L.R. § 7510. The court may modify an arbitration award only if (1) the arbitrator made a

miscalculation or other mistake; (2) the arbitrator made an award on an issue not submitted to the arbitrator, and the award may be corrected without affecting the merits of the decision on the issues submitted; or (3) the award's form is imperfect and may be corrected without affecting the merits. C.P.L.R. § 7511(c); MK Link Inv. Partnership v. WSW Capital, Inc., 96 A.D.3d 575, 576 (1st Dep't 2012); Sawtelle v. Waddell & Reed, Inc., 21 A.D.3d 820, 822 (1st Dep't 2005); Instituto De Resseguros Do Brasil v. First State Ins. Co., 221 A.D.2d 266, 267 (1st Dep't 1995). Respondent bears the burden to demonstrate that the arbitration must be vacated or modified. Matter of Curley (State Farm Ins. Co.), 269 A.D.2d 240, 242 (1st Dep't 2000).

III. THE ARBITRATION AWARD

Petitioner may recoup the Workers' Compensation petitioner paid based on the liability of respondent's insured for the collision. N.Y. Ins. Law § 5105(a); A.I. Transp. v. New York State Ins. Fund, 301 A.D.2d 380 (1st Dep't 2003); Matter of Progressive Northeastern Ins. Co. (New York State Ins. Fund), 56 A.D.3d 1111, 1112 (3d Dep't 2008); State Farm Mut. Auto. Ins. Co. v. City of Yonkers, 21 A.D.3d 1110, 1111 (2d Dep't 2005); Matter of State Ins. Fund (State of New York), 212 A.D.2d 98, 100 (4th Dep't 1995). See Progressive Cas. Ins. Co. v. New York State Ins. Fund, 47 A.D.3d 633, 634 (2d Dep't 2008). Petitioner's claim must be determined by mandatory arbitration. N.Y. Ins. Law § 5105(b); 11 N.Y.C.R.R. § 65-4.11(a); New Jersey Mfrs. Ins. Co. v. Steckert, 264 A.D.2d 314, 315 (1st Dep't 1999); Matter of

Progressive Northeastern Ins. Co. (New York State Ins. Fund), 56 A.D. at 1112; Matter of State Ins. Fund (State of New York), 212 A.D.2d at 100-101. See Progressive Cas. Ins. Co. v. New York State Ins. Fund, 47 A.D.3d 633-34; State Farm Mut. Auto. Ins. Co. v. City of Yonkers, 21 A.D.3d at 1111.

After the arbitration May 21, 2012, the arbitrator awarded petitioner \$27,825.71. Respondent, claiming to have paid \$40,082.10 in medical bills for Castillo's injuries under its liability insurance policy as a vehicle owner, N.Y. Ins. Law § 5103(a)(1), urges that the award be modified to \$9,917.90, the amount remaining under its policy limit of \$50,000.00. Respondent's payments under its policy and its policy's limit are not grounds to modify the arbitrator's award. Commerce & Indus. Ins. Co. v. Nester, 90 N.Y.2d 255, 265 (1997); Matter of Rampersaud (American Tr. Ins. Co.), 266 A.D.2d 21 (1st Dep't 1999). Respondent cites to no errors in the calculation of the award, Daly v. Lehman Bros., 252 A.D.2d 357 (1st Dep't 1998); Palermo v. Winnicki, 106 A.D.3d 1013 (2d Dep't 2013), or issues encompassed by the award that were not submitted to the arbitrator. Palermo v. Winnicki, 106 A.D.3d 1013. See C.P.L.R. § 7511(c).

Respondent further claims the arbitrator exceeded her authority by awarding more than respondent's policy limits, but fails to demonstrate that the governing statutes or regulations limited the arbitrator's authority to policy limits. E.g., 11 N.Y.C.R.R. § 65-4.11(d). Respondent relies on authority

pertaining to arbitration provisions that specifically limited arbitrators' powers to insurance policy limits. Brijmohan v. State Farm Ins. Co., 92 N.Y.2d 821, 822-23 (1998); Matter of Silverman (Benmor Coats), 61 N.Y.2d 299, 310 (1984); Countrywide Ins. Co. v. Sawh, 272 A.D.2d 245 (1st Dep't 2000). In fact, respondent fails to show that its policy specifying the limits of coverage was even presented to the arbitrator. See State Farm Mut. Auto. Ins. Co. v. City of Yonkers, 21 A.D.3d at 1112.

Moreover, even if the arbitrator were bound by respondent's policy limit of \$50,000.00, the arbitrator awarded only \$27,825.71. Respondent's claimed payment of \$40,082.10 was entirely voluntary. While Castillo's injury involved respondent's vehicle and would be covered by its liability insurance policy as the vehicle owner, N.Y. Ins. Law § 5103(1)(1), Castillo also was injured in the course of her employment, entitling her to Workers' Compensation for her injury. N.Y. Workers' Comp. Law § 29(1). Any benefits payable under a vehicle owner's liability insurance are reduced by the benefits payable as Workers' Compensation. N.Y. Ins. Law § 5102(b)(2); N.Y. Workers' Comp. Law § 29(1-a); 11 N.Y.C.R.R. § 65-1.1. E.g., Dietrick v. Kemper Ins. Co. (American Motorists Ins. Co.), 76 N.Y.2d 248, 250-51 (1990); Arvatz v. Empire Mut. Ins. Co., 171 A.D.2d 262, 267-68 (1st Dep't 1991). Thus respondent bore no obligation to pay benefits under its policy until the Workers' Compensation benefits were exhausted, a point not reached according to the facts shown in this proceeding.

IV. CONCLUSION

For all these reasons, the court grants the petition, confirms the arbitration award, denies respondent's request for relief, and dismisses its cross-petition. C.P.L.R. §§ 7510, 7511(c). The court awards a judgment of \$27,825.71 with interest at 9% per year from the date of the arbitration award, May 21, 2012. The Clerk shall enter a judgment in favor of petitioner and against respondent for that amount, plus costs and disbursements as computed by the Clerk. This decision constitutes the court's order and judgment granting the petition and denying respondent's cross-petition.

DATED: March 14, 2014



LUCY BILLINGS, J.S.C.

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