MASSACHUSETTS SUPREME JUDICIAL COURT

Roth v. Amica Mutual Insurance Co.

440 Mass. 1013 (2003) · Decided October 7, 2003

SUMMARY

The Massachusetts Supreme Judicial Court affirmed judgment for Amica Mutual Insurance Company in an action concerning the use of non-original-equipment-manufacturer parts to repair a collision-damaged vehicle and claims for inherent diminished value. The court held that the standard Massachusetts automobile policy did not provide recovery for inherent diminished value and that specification of non-OEM parts was not automatically inconsistent with the insurer's obligations. It also upheld denial of the plaintiff's untimely motion for class certification.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
JURISDICTION	Massachusetts
DECIDED	October 7, 2003
DISPOSITION	affirmed
PROCEDURAL POSTURE	Roth appealed from an order granting Amica partial summary judgment and from the denial of her motion for class certification. The Supreme Judicial Court granted direct appellate review and affirmed both orders and the judgment for Amica.
STANDARD OF REVIEW	Summary judgment is reviewed for legal error under the governing policy language and law. A denial of class certification is reviewed for abuse of discretion; the court's factual conclusions will not be disturbed unless arbitrary, unreasonable, or capricious.
PRECEDENTIAL VALUE	Published Massachusetts Supreme Judicial Court opinion
PARTIES	Suzanne Roth v. Amica Mutual Insurance Company

TOPICS

insurance coverage · class actions · summary judgment · appellate procedure · standard of review

PRACTICE AREAS

insurance coverage · automobile insurance · class actions · summary judgment · appellate procedure

QUESTIONS PRESENTED

1. Whether an insured may recover inherent diminished value under part seven of the Massachusetts standard automobile policy after the vehicle has been repaired.
2. Whether an insurer's specification of a non-OEM replacement part is automatically a violation of its duty under part seven of the standard automobile policy and applicable regulations.
3. Whether the Superior Court abused its discretion by denying Roth's motion for class certification as untimely and for failure to demonstrate numerosity or typicality.

HOLDINGS

1. An insured is not entitled to recover alleged inherent diminished value under part seven of the Massachusetts standard automobile policy.
2. An insurer's specification of non-OEM parts to repair a damaged automobile is not automatically a violation of its obligations under part seven of the standard automobile policy and applicable regulations.
3. The Superior Court acted within its broad discretion in denying Roth's motion for class certification because the motion was untimely and Roth failed to demonstrate the required numerosity or typicality.

KEY QUOTATIONS

> *"We also agree with the judge that Arnica's specification of non-OEM parts to repair a damaged automobile is not an automatic violation of its obligations under part seven and the applicable regulations."* (1014)

> *"In an appropriate case, a plaintiff may successfully claim damages based on an insurer's specification of a substandard non-OEM part"* (1015)

> *"Finally, the judge acted well within her "broad discretion," Weld v. Glaxo Wellcome Inc., 434 Mass. 81, 85 (2001), in denying as untimely Roth's motion for class certification"* (1015)

FACTUAL BACKGROUND

Amica issued Roth a Massachusetts standard automobile policy with optional collision coverage for her 1993 Acura Legend. After a collision, Amica specified a non-OEM replacement fender, and Roth contended that the policy required an OEM part and that she was entitled to compensation for inherent diminished value despite the repair. Roth also alleged that Amica's use of allegedly inferior non-OEM parts violated its insurance obligations and sought to proceed on behalf of a class.

PROCEDURAL HISTORY

Roth filed a seven-count putative class action concerning Amica's use of non-original-equipment-manufacturer parts and refusal to pay for alleged inherent diminished value. The Superior Court granted partial summary judgment against her inherent-diminished-value claims, denied a later summary-judgment motion concerning non-OEM parts, denied Roth's untimely motion for class certification, and ultimately entered judgment for Amica on all counts pursuant to a joint motion. The Supreme Judicial Court granted direct appellate review and affirmed.

DISPOSITION

affirmed

CASES CITED

- Given v. Commerce Insurance Co., 440 Mass. 207 (2003)
- Weld v. Glaxo Wellcome Inc., 434 Mass. 81, 85 (2001)

OPINION

Roth v. Amica Mutual Insurance

440 Mass. 1013

PER CURIAM.

We consider on direct appellate review two orders issued in a Superior Court action brought by Suzanne Roth against Arnica Mutual Insurance Company (Arnica), her automobile insurer. We affirm both orders, and affirm judgment for Arnica. Background. Arnica issued Roth a standard Massachusetts automobile policy, sixth edition (standard policy), including optional collision coverage (part seven), to insure her 1993 Acura Legend automobile. See Given v. Commerce Ins. Co., ante 207, 208-209 (2003) (summarizing relevant policy provisions). In 1996, during the policy period, Roth submitted a claim to Arnica for collision damage.1 One of the parts damaged in the collision was the front fender. When the vehicle was repaired, pursuant to an appraisal by Arnica, the damaged fender was replaced with a fender that had been manufactured by someone other than the original equipment manufacturer *1014(OEM). Roth protested that only a fender from the OEM would satisfy Arnica's obligation to repair the vehicle under the language of the standard policy and the applicable regulations. She also contended that, notwithstanding the repair of her vehicle, she had sustained damage in the form of "inherent diminished value," see id. at 209, and demanded compensation for that damage. In July, 1998, Roth, "individually and as a representative of all persons similarly situated," filed a seven-count complaint against Arnica, predicated on Arnica's specification of allegedly inferior non-OEM parts to repair damaged automobiles and its refusal to pay compensation for inherent diminished value. Arnica filed a motion for summary judgment on all counts, which was partially granted in September, 1999. The judge held that, under the plain language of the standard policy, Roth was not entitled to recover inherent diminished value from Arnica. Relying on regulations promulgated by the division of insurance (division) and the auto damage appraiser licensing board (board), he further concluded that Arnica's specification of non-OEM parts, although not expressly provided for in the standard policy, was not a per se violation of its duty under part seven to repair or replace collision-damaged parts, but that a genuine issue of material fact existed as to the quality of the non-OEM fender Arnica had specified for Roth's vehicle. In August, 2000, Arnica again filed for summary judgment on the non-OEM parts issue, and a second judge denied that motion. The judge noted in her memorandum and order that the class had not been certified and that, “given the procedural wrangling in this case, certification sooner rather than later may better protect the class members.” As of the time of the pretrial conference in May, 2001, no motion for certification had been filed. Trial was set for October 1, 2001. In July, 2001, Roth filed a motion for class certification pursuant to Mass. R. Civ. R 23, 365 Mass. 767 (1974), which was denied in August, 2001. The judge denied the motion on the grounds that it was untimely and that “during the last three (3) years, Ms. Roth has failed to bring forward one other insured similarly situated” plaintiff affected by Arnica’s allegedly wrongful specification of non-OEM parts. See Mass. R. Civ. P. 23 (a) and (b). In April, 2002, pursuant to a joint motion, the judge entered judgment for Arnica on all counts. Roth appealed from the order of partial summary judgment in favor of Arnica and from the denial of her motion for class certification. We granted Arnica’s application for direct appellate review. Discussion. In Given v. Commerce Ins. Co., supra, we held that insureds are not entitled to recover for alleged inherent diminished value under part seven of the standard policy. See id. at 209-214. There was no error in granting summary judgment in favor of Arnica with respect to Roth’s claims for inherent diminished value. We also agree with the judge that Arnica’s specification of non-OEM parts to repair a damaged automobile is not an automatic violation of its obligations under part seven and the applicable regulations. Roth argued below, as she argues on appeal, that all non-OEM parts are inherently inferior to OEM parts in every circumstance. Her global generalization flies in the face of common sense, common experience, and contrary conclusions reached by the Legislature, the division, and the board. See, e.g., G. L. c. 90, § 340 (requiring notice to insured persons of insurer’s or repairer’s specification of non-OEM parts); 211 Code Mass. Regs. § 133.04 (1996) (requiring specification of “a rebuilt, aftermarket, or used part of like kind and quality, at the lowest *1015possible price” to replace damaged part, except in limited enumerated circumstances, and defining “of like kind and quality” to mean “of equal or better condition than the preaccident part”); 212 Code Mass. Regs. § 2.04 (e) (1996) (requiring appraisers to specify repair parts in accordance with 211 Code Mass. Regs. §§ 133.00 [1996]). We decline Roth’s invitation to consider this detailed regulatory scheme, which unambiguously allows for use of non-OEM parts, as intended only for some distant future when non-OEM parts may be as good as OEM parts. The Legislature has decided that, in many instances, they already are. In an appropriate case, a plaintiff may successfully claim damages based on an insurer’s specification of a substandard non-OEM part, or successfully demonstrate that the insurer’s duty under part seven to repair or replace can only be satisfied by the designation of a particular OEM part to repair the specific damage to that automobile — there are certainly some parts of some vehicles where unique dimensions or specifications of the part are such that only a replacement part from the original manufacturer will suffice to restore the vehicle to its proper functioning condition. That is not the case before us. John Peter Zavez (.Noah Rosmarin with him) for the plaintiff. Peter C. Knight (Michael J. Racette with him) for the defendant. Stephen D. Zubiago, for National Association of Independent Insurers & another, amici curiae, submitted a brief. Finally, the judge acted well within her “broad discretion,” Weld v. Glaxo Wellcome Inc., 434 Mass. 81, 85 (2001), in denying as untimely Roth’s motion for class certification, where the motion was not filed until nearly three years after entry of the complaint, nearly one year after a judge’s admonition to file the motion promptly, and less than three months before the scheduled start of trial. Morever, the judge’s conclusion that Roth had failed to demonstrate the required numerosity or typicality was amply supported by the record and was not “arbitrary, unreasonable, or capricious.” Id. See Mass. R. Civ. P. 23 (a). Orders affirmed. Judgment affirmed. Moth’s vehicle had been driven over 15,000 miles at the time of the accident, thereby meeting a criterion for the use of “rebuilt, aftermarket or used [replacement] part.” See 211 Code Mass. Regs. § 133.04 (1) (1996).