No. 197

Lindsay Grobman,
Respondent,
v.
Rhonda Chernoff, et al.,
Defendants,
Rhonda Globman, &c., et al.,
Appellants.

Dominic P. Zafonte, for appellants.
Alexander J. Wulwick, for respondent.

READ, J.:

In August 1996, plaintiff Lindsay Grobman was injured in a car accident; at the time, she was traveling as a passenger in car driven by defendant Adam J. Chernoff and owned by defendant Rhonda Globman (a/k/a Rhoda Grobman). A bifurcated trial was held in plaintiff's ensuing lawsuit. In June 2000, a jury found defendants 100% at fault in the happening of the

accident. The next month, a jury found that plaintiff had suffered a serious injury; namely, "permanent consequential limitation of use of a body organ or member" (see Insurance Law § 5102 [d]), and awarded her damages for future medical expenses, but not for future pain and suffering. Supreme Court entered judgment for plaintiff in the amount of $10,000 in August 2001. This sum included $1,100 for past pain and suffering and $8,900 for future medical expenses.

Plaintiff appealed. The Appellate Division concluded that the jury's "failure to award any damages for future pain and suffering [could not] be reconciled with the finding of permanent injury," and remitted the matter to Supreme Court for a new trial on the issue of damages (Ajoudanpour v Grobman, 2 AD3d 373 [2d Dept 2003]).

On remand, Supreme Court granted defendants' motion to compel arbitration on all issues, including the threshold issue as to whether plaintiff suffered serious injury. Plaintiff appealed again, and the Appellate Division reversed. The court concluded that the jury's determination that plaintiff had sustained serious injury within the meaning of New York's no-fault statute, which neither party challenged in the first appeal, was a final and binding determination that could not be relitigated in arbitration (Grobman v Chernoff, 35 AD3d 658, 659 [2d Dept 2006]).

The case then returned to arbitration solely on the

issue of damages. The parties agreed to high/low parameters of $150,000 and $10,000; that "any and all pending litigation arising from this action shall be discontinued with prejudice upon the determination of this matter"; and that damages were at issue. After a hearing, the arbitrator awarded plaintiff a "net amount award" of $125,000. The arbitrator's decision did not mention interest.

Plaintiff subsequently moved and defendants cross moved to confirm the arbitration award and enter judgment. While these motions were pending, defendants' insurance carrier tendered a check for $125,000 as "full and final settlement." Plaintiff retained this check, but did not cash it.

In a decision in August 2008 disposing of the motions, Supreme Court noted that the "principal issue" contested by the parties was "whether plaintiff [was] entitled to interest on the arbitration award computed from the date of the jury verdict in her favor on the issue of liability," or, alternatively, "from the date of the arbitration award." The judge added that "[t]he decision of the arbitrator does not allude to the subject and neither side contends that the question was presented to the arbitrator."

Supreme Court confirmed the award in the amount of $125,000, "with interest . . . at the judgment rate from the date of the award with credit to be given to defendants for the payment tendered, computed from the date of receipt of the

check." The judge acknowledged that "[i]n general," where a plaintiff has obtained a favorable jury verdict on liability, "interest on a judgment ultimately entered in a motor vehicle accident case begins to run from the date of . . . the jury's verdict"; however, he added, the usual rule did not govern this case "because the parties agreed to submit the entire dispute to arbitration."

Plaintiff appealed to the Appellate Division for a third time. As relevant here, the court held that plaintiff was entitled to interest on the damages award from the date the jury found defendants liable, citing our decision in Love v State of New York (78 NY2d 540 [1991]) (63 AD3d 786 [2d Dept 2009]). We granted defendants' motion for leave to appeal (13 NY3d 714), and now affirm.

Defendants argue that the parties' arbitration agreement includes a "broad arbitration clause," which empowered the arbitrator to decide the entire controversy, including the amount of any prejudgment interest. While the parties in this case were free to submit the issue of prejudgment interest to the arbitrator, we do not read their arbitration agreement as having done this. As relevant, the agreement says merely "AT ISSUE: Damages" and, as we pointed out in Love, damages and prejudgment interest are not the same thing. Damages compensate plaintiffs in money for their losses, while prejudgment interest "is simply the cost of having the use of another person's money for a

specified period" (Love, 78 NY2d at 544 [citing Siegel, NY Prac § 411, at 623 [2d ed]). Further, as plaintiff observes, there was "no necessity to negotiate whether plaintiff was entitled to interest" as a part of the arbitration agreement because "she already possessed that right as a matter of law as of the date of her liability verdict." Finally, there are no circumstances in this case indicating that plaintiff gave up that right when she agreed to arbitrate damages (cf. Rice v Valentine, 75 AD3d 631 [2d Dept 2010]).

Accordingly, the order of the Appellate Division should be affirmed, with costs.

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Order affirmed, with costs. Opinion by Judge Read. Chief Judge Lippman and Judges Ciparick, Graffeo, Smith, Pigott and Jones concur.

Decided November 30, 2010