

CASE STUDY PREPARED FROM ORIGINAL PUBLISHED OPINION

ERNEST A. LONG

Alternative Dispute Resolution

❖ Resolution Arts Building ❖

2630 J Street, Sacramento, CA 95816

ph: (916) 442-6739 • fx: (916) 442-4107

elong@ernestalongadr.com • www.ernestalongadr.com

Cabrera v E. Rojas Properties (2/24/11)

Collateral Source Rule; *Hanif* Case; Post-verdict Reduction

Cabrera was injured when she fell down a staircase on defendant's property. She sued for personal injury and at trial, the jury awarded her \$57,534.45 in past medical expense and a total verdict of \$135,556.45. She was found 10% negligent. Judgment was entered in the amount of \$78,242.63 which reflected a **reduction in damages** for past medical expenses from the amount billed by her providers (\$57,534.45) to the amount paid by her health insurer as full payment (\$8,914,26).

Plaintiff appealed the judgment to the Second Appellate District, with the sole question the propriety of the reduction in damages. Prior to trial the parties stipulated the jury would not hear evidence of the health insurance payment, and that defendant would file a "post-verdict motion" to reduce the recoverable amount of plaintiff's medical bills. The parties agreed the amounts billed were "reasonable and necessary" and that no amount was left due and owing to the health care providers.

Following entry of judgment, defendant filed its motion to reduce the medical expenses. Plaintiff argued the **collateral source rule** barred any reduction in medical expense damages. That rule is a doctrine that "if an injured party receives some compensation for his injuries from a source wholly independent of the tortfeasor, such payment should not be deducted from the damages which the plaintiff would otherwise collect from the tortfeasor. (*Helfend v Southern Cal. Rapid Transit Dist.* (1970) 2 Cal.3d 1) The collateral source rule is well entrenched in California law. (*Lund v San Joaquin Valley Railroad* (2003) 31 Cal.4th 1)

Although the rule may result in a "double recovery" in certain circumstances, the criticism is outweighed by the salutary effects, including the

fact the tortfeasor is not to take advantage of the victim's thrift in purchasing health insurance, and the rule accounts for the likelihood the victim must pay attorney fees. (*Helfend*, at p. 10) The Second DCA noted that it, "...follows from the collateral source rule that an injured person is entitled to compensation from the tortfeasor for medical care even if such costs are covered by the injured person's insurance." (*Hanif v Housing Authority* (1988) 200 Cal.App.3d 635) Defendant "...does not challenge Cabrera's right to payment of those costs covered by her insurer, and the court ordered Rojas to pay those costs in the amount of \$8,914.26." **The crucial question is whether the collateral source rule bars reduction of the amount of past medical expenses from that billed by plaintiff's medical provider and paid by her insurer.**

The Justices determined that under current California law, an injured plaintiff in a tort action cannot recover more than the amount of medical expenses he or she paid or incurred, even if the reasonable value of those services might be a greater sum. (*Katiuzhinsky v Perry* (2007) 152 Cal.App.4th 1288) Applying this rule, the DCA declined to extend the collateral source rule to cover the benefit plaintiff's insurer obtained when her healthcare provider agreed to a reduced payment.

The Justices began with *Hanif*, noting the primary object of an award of damages in a civil action, and the fundamental principle on which it is based, are just compensation or indemnity for the loss or injury sustained by the complainant, and no more. The *Hanif* court concluded that it was error to obligate the tortfeasor to pay for medical care and services in an amount exceeding the actual amount paid. (*Hanif*, at p. 643) The rationale of *Hanif* was then extended to apply to private health insurers. (*Nishihama v City and County of San Francisco* (2001) 141 Cal.App. 4th 298) *Nishihama* and *Hanif* stand for the principle that it is error for the plaintiff to recover medical expenses in excess of the amount paid or incurred. (*Greer v Buzgheia* (2006) 141 Cal.App.4th 1150) In a criminal restitution matter, the Second DCA previously held that "an award of damages for past medical expenses in excess of what the medical care and services actually cost constitutes overcompensation." (*People v Bergin* (2008) 167 Cal.App.4th 1166) In that case, a pedestrian hit by a drunk driver was entitled to restitution in the amount the medical providers accepted as full payment from her health insurer, not the amount billed by her medical providers. The Justices

rejected the argument that payment by Medi-Cal was distinguishable from payment by a private insurer. (*Bergin*, at p. 1172)

The Appellate Court felt that *Hanif* and its progeny are consistent with other California law, including Civil Code section 3333, which provides that the measure of damages “..... is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.” Detriment means “a loss or harm suffered in person or property.” (Civil Code section 3282) Under Civil Code section 1431.2, economic damages means “objectively verifiable monetary losses including medical expenses.” The Justices found that at no time was plaintiff liable for the amounts billed by her medical providers as their usual and customary charges. The reduction was not based on compensation received by plaintiff from an independent source, nor does it deprive plaintiff of the benefit of her insurance, as she was compensated for her medical expenses paid . They concluded that plaintiff’s arguments were not persuasive as **there is no current Supreme Court authority that extends the collateral source rule to include the benefit of a negotiated contract between a medical provider and a medical insurer.**

Finally, the post-verdict motion was left untouched because plaintiff stipulated that defendant could file such a motion where defendant agreed not to present evidence of payments made by her health insurer. In essence, the trial court “...postponed ruling on defendant’s motion in limine to reduce the medical expense damages until after the verdict in order to protect plaintiff’s rights under the collateral source rule.” Since plaintiff stipulated her bills had all been paid by her insurer, and there was no amount due and owing, the trial court had ample evidence of the paid amount. The collateral source rule includes the principle that jurors should not be told the plaintiff can recover compensation from a collateral source. (*Lund*, at p. 10) No violation of the rule occurred because no evidence of compensation received from her insurer was introduced to the jury. The judgment is affirmed. The parties shall bear their own costs on appeal.