

CASE STUDY PREPARED FROM ORIGINAL PUBLISHED OPINION

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Howell v Hamilton Meats & Provisions 8/18/11

Hanif Rule; Collateral Source Rule; Billed Versus Paid Medical Billings

Plaintiff was injured by defendant's driver, and filed suit for damages. At trial, defendant moved in limine to exclude evidence of medical bills that neither plaintiff nor her health insurer, PacifiCare, had paid. Defendant indicated significant portions of the bills had been adjusted downward before payment pursuant to agreements between PacifiCare and the providers, and that plaintiff could not be billed for the balance of the original bills. The trial court denied the motion, ruling plaintiff could present the full medical bills to the jury, and any reduction to reflect payment of reduced amounts would be handled through a "post trial *Hanif* motion." (*Hanif v Housing Authority* (1988) 200 Cal.App.3d 635)

Trial evidence demonstrated total billings of \$189,978.63, and the jury returned a verdict awarding that amount as damages for plaintiff's past medical expenses. Defendant made a post trial motion to reduce the medical special damages pursuant to *Hanif*, seeking a reduction of \$130,978.63, the amount written off by the medical care providers. Declarations were provided from the hospital and orthopedic center stating the amounts paid by PacifiCare and by plaintiff, as well as the balance the facilities had written off. Both declarants averred they would not pursue collection of the written off amounts.

Plaintiff opposed the post trial motion, arguing reduction of the damages would violate the collateral source rule. She submitted copies of the patient agreements she had signed agreeing to pay the usual and customary charges of the providers. The trial court granted the motion, reducing the verdict by \$130,978.63. The Court of Appeal reversed the reduction order, holding it violated the collateral source rule. The Supreme Court granted defendant's

petition for review.

Justice Werdegar, writing for the majority, began the opinion by referring to Civil Code section 3281 which provides that compensatory damages are paid to compensate a person who suffers detriment from the unlawful act or omission of another. The measure of damages generally recoverable is the amount which will compensate for all the detriment proximately caused by the tort. (Civil Code section 3333) Any reasonable charges for treatment the injured person has paid or, having incurred, still owes the medical provider, are recoverable as economic damages. (See Melone v Sierra Railway Co. (1907) 151 Cal 113) When the costs of medical treatment are paid by a third party unconnected to the defendant, the collateral source rule is implicated. In such a case, the 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 rule thus dictates that an injured plaintiff may recover from the tortfeasor money an insurer has paid to medical providers on his or her behalf.

Helfend did not explain how the rule would operate in a case where damages for past medical expense were in an amount greatly exceeding the amount accepted in full payment by the medical provider. The Justices explained that the California history of the substantive question at issue—whether recovery of medical damages is limited to the amounts actually paid or extends to the undiscounted bills—begins with Hanif. There, the Appellate Court ruled the trial court had overcompensated plaintiff for his medical expenses and the recovery should have been limited to the amount Medi-Cal had actually paid on his behalf. The trial court had awarded plaintiff the “reasonable value” of his medical bills, which the Appellate Court found was a term of limitation, not of aggrandizement. The “detriment” suffered by plaintiff was limited to what Medi-Cal had paid on his behalf. The Supreme Court later cited Hanif with approval in Olszewski v Scripps Health (2003) 30 Cal.4th 798.

Later, in Nishihama v City and County of San Francisco (2001) 93 Cal.App.4th 298, the Appellate Court applied the Hanif's rationale to payments made by a private health insurer. There, Blue Cross paid \$3,600 for plaintiff's hospital expenses of \$17,168. Later, the Supreme Court reached the same conclusion in Parnell v Adventist Health System/West (2005) 35 Cal.4th 595, holding a hospital

could not assert a lien for the full bill when it had agreed to accept a health insurer's lesser reimbursement in full payment. The Supreme Court did reserve judgment on whether *Hanif* and *Olszewski*, "apply outside the Medicaid context and limit a patient's tort recovery for medical expenses to the amount actually paid." (See *Parnell*, at p. 611) Finally, in *Katiuzhinsky v Perry* (2007) 152 Cal.App.4th 1288, the Appellate Court held that the intervention of a third party in purchasing a lien does not prevent a plaintiff from recovering the amounts billed by the medical provider for care and treatment as long as the plaintiff legitimately incurs those expenses and remains liable for their payment. None of these cases, however, addressed the central question here, whether restricting recovery to amounts actually paid by a plaintiff or on his or her behalf contravenes the collateral source rule.

A. *Hanif* and the Measure of Damages for Past Medical Expense

The majority agrees with *Hanif* that a plaintiff may recover as economic damages no more than the reasonable value of the medical services received and is not entitled to recover the reasonable value if his or her actual loss was less. To be recoverable a medical expense must be both incurred and reasonable. (See, *Melone*, at p. 115) "Damages must, in all cases, be reasonable..." (Civil Code section 3359) But if the plaintiff negotiates a discount and thereby receives services for less than might reasonably be charged, the plaintiff has not suffered a pecuniary loss or other detriment in the greater amount and therefore cannot recover damages for that amount. (CC sections 3281, 3282) The same rule applies when a collateral source, such as the plaintiff's insurer, has obtained a discount for its payments on the plaintiff's behalf. The Restatement of Torts is in accord: "...if the injured person paid less than the exchange rate, he can recover no more than the amount paid, except when the low rate was intended as a gift to him." (Rest.2d Torts section 911, com. h)

Plaintiff sought to distinguish the Restatement as relating only to the wrongful taking of services and damage to property. The majority explained that section 911 articulates a rule applicable to recovery of tort damages generally, and comment (h) refers to services the plaintiff must purchase from third parties as a result of the tort, noting if the plaintiff obtains these for less than the exchange value, only the amount paid may be recovered. It reasoned the

expenses of medical care, though not mentioned, are logically included in the rule articulated. Thus the general rule under California law is that the plaintiff may recover the lesser of (a) the amount paid or incurred for medical services, and (b) the reasonable value of the services.

B. Hanif and Private Health Insurance

Plaintiff argued her case was distinguished from Hanif because she had private health insurance, and she incurred liability for the full amount of her providers' bills when she signed patient agreements with those providers and accepted their services. The majority noted, though, that when plaintiff accepted the services, her health insurer already had agreements in place with the medical providers to pay discounted amounts. Thus, her prospective liability was limited to the amounts PacifiCare had agreed to pay for the services her providers were to render. Plaintiff cannot be said to have ever meaningfully incurred the full charges. (See, Parnell, at p. 609) In this respect, plaintiff was in the same position as the Hanif plaintiff, who also bore no liability for the providers' charges.

Hanif noted an exception for gratuitously provided or discounted medical services. Thus, if a plaintiff may recover the reasonable value of a donated service—for which neither plaintiff nor the health insurer paid—should a plaintiff also be permitted to recover other amounts that were not paid but were reasonably billed by the provider, including the negotiated rate differential? Certainly the collateral source rule applies to gratuitous payments and services. The majority holds, however, that since medical providers agree to accept discounted payments for commercial reasons and as a result of negotiations with health insurers, the difference cannot be described as a gift to the plaintiff. In a situation where the plaintiff has incurred liability for the billed cost of services and the provider later “writes off” part of the bill because plaintiff is unable to pay the full charge, one might argue that the amount of the write-off is a gratuitous benefit the plaintiff is entitled to recover under the collateral source rule. The present case is different because the health insurer and medical provider have already agreed on the price, with no write-off. There is no need to determine the reasonable value of the services, as there is in the case of gratuitously provided services.

C. Windfall to the Tortfeasor

The majority also rejected plaintiff's argument that the tortfeasor obtains a "windfall" because the injured person's health insurer has negotiated a favorable rate of payment with the person's medical provider. If it was established that a medical provider's full bill represented the value of the services provided, and the discounted price negotiated with the insurer is an artificially low fraction of that true value, relieving the defendant from having to pay the full bill would be a windfall. The Justices argue that the complexities of hospital billing do not support this logic. Issues of competition, regulation, patient ability to pay, budgets and other difficulties mean charges may not relate systematically to costs. Uninsured patients typically pay greater amounts for medical services than do patients covered by health plans or government benefits. Hospital bills have been called "insincere, in the sense that they would yield truly enormous profits if those prices were actually paid." (Reinhardt, *The Pricing of U.S. Hospital Services* (2006) 25 *Health Affairs* 57) With so much variation, making any broad generalization about the relationship between the value or cost of medical services and the amounts providers bill for them would be perilous.

The Justices conclude that looking at negotiated prices providers accept from insurers makes at least as much sense, and arguably more, than relying on the billed charges that are not the result of direct negotiation between buyer and seller. Thus it is not possible to say that providers' bills represent the real value of their services, nor that the discounted payments they accept from private insurers are mere arbitrary reductions. Accordingly, the tortfeasor who pays only the discounted amount as damages does not generally receive a windfall. The position (asserted in the dissent) that the reasonable value of care should be proven in each case by expert testimony is troubling because it would likely violate the evidentiary aspect of the collateral source rule. The defense could not in fairness be precluded from showing the circumstances by which the price was determined, including that it was negotiated and paid by plaintiff's health insurer. In contrast, concluding that the plaintiff may recover no more than the medical providers accepted in full payment for their services allows for proof of the amount paid without admitting evidence of the payment's source.

D. The Negotiated Rate Differential as Insurance Benefit

Finally, the plaintiff contends, and the Appellate Court held, the negotiated rate differential is a benefit provided to plaintiff under her health policy, and thus protected as a collateral source. Plaintiff paid policy premiums for the benefit of receiving the discount afforded in the negotiated rate. Plaintiff's insurer extinguished the obligation by both cash payments to the provider and the negotiated rate differential. Both should be classed as collateral source, and the full billing subject to compensation. The Supreme Court majority disagreed, again setting forth the proposition that plaintiff never incurred liability for the providers' full bills, because the price differential had already been negotiated and agreed between her provider and her insurer. Having never incurred the full bill, plaintiff cannot recover it in damages for economic loss. The collateral source rule provides 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*, at p. 6) The rule does not speak to losses or liabilities the plaintiff did not incur and would not otherwise be entitled to recover.

The majority concludes the negotiated rate differential lies outside the operation of the collateral source rule also because it is not primarily a benefit to the plaintiff and, to the extent it does benefit the plaintiff, it is not provided as compensation for the plaintiff's injuries. Insurers and medical providers negotiate rates in pursuit of their own business interests, and the benefits of the bargains made accrue directly to the negotiating parties. The primary benefit of discounted rates for medical care goes to the payer of those rates—that is, in largest part, to the insurer. A provider may discount its rates for a variety of reasons, but the value of damages the plaintiff has avoided has never been the measure of tort recovery. The Justices conclude the negotiated rate differential is not a collateral payment or benefit subject to the collateral source rule.

Plaintiff still has the protection of the collateral source rule. No deduction from the damages which the plaintiff would otherwise collect from the tortfeasor is allowed for the amount paid through insurance. (*Helfend*, p. 6) Plaintiff thus receives the benefits of the health insurance for which she paid premiums: her medical expenses have been paid per the policy, and those payments are not

deducted from her tort recovery. Thus, recovery of the amount the medical provider agreed to accept from the insurer in full payment of her care, but no more, ensures plaintiff “receives the benefits of her thrift and the tortfeasor does not garner the benefits of his victim’s providence.” (*Helpend*, at p. 10) The negotiated rate differential does not come within the collateral source rule. Even with a limit of recovery to the net loss there is no lessening of the deterrent force of tort law, the defendant does not gain the benefit of the plaintiff’s bargain, and the plaintiff receives full compensation for the amount of the expense she was obligated to pay.

The majority opinion holds that when a medical care provider has accepted as full payment for the plaintiff’s care an amount less than the provider’s full bill, evidence of that amount is relevant to prove the plaintiff’s damages for past medical expenses and, assuming it satisfies other rules of evidence, is admissible at trial. Evidence that such payments were made in whole or in part by an insurer remains generally inadmissible under the evidentiary aspect of the collateral source rule. (*Hrnjak v Graymar, Inc.* (1971) 4 Cal.3d 725) Evidence of the full billed amount is not itself relevant on the issue of past medical expenses. “We express no opinion as to its relevance or admissibility on other issues, such as noneconomic damages or future medical expenses.” Where a trial jury has heard evidence of the amount accepted as full payment and has awarded a greater sum as damages for past medical expenses, the defendant may move for a new trial on grounds of excessive damages. (Code of Civ. Proc. Section 657) A nonstatutory *Hanif* motion is unnecessary.

The Judgment of the Court of Appeal is reversed.

In dissent, Justice Klein, sitting on assignment, disagreed with the majority, arguing plaintiff should be entitled to recover the reasonable value or market value of her medical services, as determined by expert testimony at trial, just as if the services had been donated. The majority creates a significant exception to the collateral source rule, leaving plaintiff in a worse position than an uninsured tort victim who must pay the full billed value of medical services. Any lesser amount her providers agreed to accept constitutes a benefit plaintiff received and she is entitled to retain it under the collateral source rule.

Note: Today's Sacramento Bee reported that in "one of the era's most closely watched civil cases..." "...insurers had said that if they had lost the case, it would add as much as \$3 billion a year to their payouts in auto accident and other personal injury cases." (page A4)