

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 0539

KEVIN D. MAJOR AND SHANIE K. MAJOR

VERSUS

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Judgment rendered: February 9, 2007

On appeal from the 19th Judicial District Court
Parish of East Baton Rouge, State of Louisiana
Number 482,769
The Honorable Curtis A. Calloway, Judge Presiding

John T. Joubert
Baton Rouge, LA

Counsel for Plaintiff/Appellant
Kevin D. Major

Harold J. Adkins
Baton Rouge, LA

Counsel for Defendant/Appellee
State Farm Mutual Automobile
Insurance Company

BEFORE: PETTIGREW, DOWNING AND HUGHES, JJ.

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DOWNING, J.

MEMORANDUM OPINION

On April 7, 2000, Kevin D. Major was driving along Louisiana Highway 16 in Livingston Parish when his vehicle was struck head-on by a vehicle driven by Willard J. Aydell, Jr. Aydell was insured under a liability insurance policy issued by Direct General Insurance Company with policy limits of \$10,000.00 per person and \$20,000.00 per accident. Major was insured under an automobile insurance policy issued by State Farm Mutual Automobile Insurance Company that provided uninsured/underinsured motorist coverage in the amount of \$1,000,000.00 and medical payments in the amount of \$5,000.00 per person.

Direct General settled with Major for \$1,850.00. Thereafter, Major filed this lawsuit against State Farm seeking to recover under the medical benefits and underinsured motorist coverages of the State Farm policy.¹ The parties stipulated that Aydell was 100% at fault in causing the accident and was underinsured. They also stipulated that State Farm unconditionally tendered \$74,715.46 in underinsured motorist benefits and \$5,000.00 in medical payments to Major.²

During trial, extensive medical evidence was introduced, including the depositions of Major's treating physicians. After reviewing the evidence, the trial judge found that Major demonstrated he had been injured in the accident; however, the judge concluded, Major had been fully compensated by the insurers for his injuries. In denying Major's demand for additional compensation, the judge focused on medical testimony demonstrating that

¹ Shanie Major and Marla Kimbrell, passengers in the Major vehicle, also asserted claims against State Farm in the lawsuit. Their claims were settled and dismissed before trial.

² On the morning of the trial, a motion to strike the jury trial previously requested by Major was granted by the trial judge, and the issue of damages proceeded as a bench trial. Although neither the motion requesting the striking of the jury trial or the judgment granting the motion appears in the record, Major acknowledges in his brief that he claimed that his remaining cause of action against State Farm was limited to an additional \$50,000.00.

Major suffered a cervical strain from the accident, or a “whiplash” type soft tissue injury. At the conclusion of the trial, the trial judge ordered State Farm’s attorney to prepare a judgment for signing.

On September 15, 2005, the trial judge rendered judgment in favor of Major in the amount of \$81,565.46, giving State Farm a credit for \$81,565.46, the amount Major received from the insurers. The judgment ordered State Farm to pay judicial interest for all damages awarded from the date of judicial demand, set witness fees in the amount of \$6,414.70, and ordered State Farm to pay all filing fees.

Major filed a motion to tax his trial-related costs and expenses to State Farm, claiming that the trial judge awarded him damages in the amount of \$81,565.46, and therefore, he was the “prevailing party”. He also insisted that he was entitled to an award of judicial interest on the judgment rendered in his favor in the amount of \$13,468.35.

On October 3, 2005, State Farm filed a motion to set aside the judgment, noting that the trial judge mistakenly and inadvertently signed the proposed judgment prepared by Major’s attorney, the wording of which State Farm had previously objected to. The trial judge annulled and set aside the September 15, 2005 judgment pending a hearing on the motions filed by the parties attacking the language of the judgment. Thereafter, on November 23, 2005, the judge rendered judgment in favor of State Farm and against Major, dismissing Major’s claims against State Farm. Again, the trial judge found that Major’s damages did not exceed the amounts previously paid to him by State Farm and Direct General. The judgment ordered each party to bear its own costs, assessed trial expenses incurred by Major in the sum of \$6,414.70 equally to Major and State Farm, and denied Major’s demand for an award of judicial interest.

This appeal, taken by Major, followed. He contends that the trial judge abused his discretion in failing to award him an additional \$50,000.00 in damages, plus all costs and judicial interest. However, after a thorough review of the record, we find no abuse of discretion or manifest error in the challenged rulings. Accordingly, the judgment is affirmed in accordance with Uniform Courts of Appeal Rule 2-16.1.B. All costs of this appeal are assessed to appellant, Kevin D. Major.

AFFIRMED.