IN THE SUPREME COURT FOR THE STATE OF FLORIDA

CASE NO. 65,003

JIMMY R. VELEZ,

Appellant,

vs.

CRITERION INSURANCE COMPANY,

Appellee.

_____/

REPLY BRIEF ON BEHALF OF APPELLANT, JIMMY R. VELEZ

DANIEL C. KASARIS, ESQUIRE
YANCHUCK, THOMPSON, YOUNG & BERMAN, P.A.
Post Office Box 4192
St. Petersburg, Florida 33731
(813) 822-6313

ATTORNEYS FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

QUESTION PRESENTED

IS AN INSURER OBLIGATED TO PAY PIP BENEFITS TO ITS INSURED UNDER A MOTOR VEHICLE INSURANCE POLICY WHEN THE INSURED WAS STRUCK BY AN AUTOMOBILE WHILE OCCUPYING A TWO-WHEELED MODE OF TRANSPORTATION WITH PEDALS AND A 1.5 BRAKE HORSEPOWER MOTOR?

ARGUMENT

SINCE 1977, THE LEGISLATURE HAS CONSIDERED LOW-POWER MOPEDS TO BE BICYCLES FOR PURPOSES OF SECTION 627.736.

Throughout its entire Answer Brief, Appellee attempts to cloud the question presented herein by failing to differentiate between mopeds with a maximum brake horsepower of 1.5 (hereinafter called "low-power mopeds") and mopeds with greater than 1.5 brake horsepower engines (hereinafter called "high-power mopeds"). The fact is that the legislature made such a distinction in 1976, and incorporated same into the Florida Automobile Reparations Reform Act the following year. The Appellee, therefore, should not be permitted to confound the issue herein by lumping all mopeds into a single category.

The instant question is whether the legislature had its 1976 distinction between high-power and low-power mopeds in mind when it drafted the 1977 No-Fault Law. The answer is that the legislature was obviously mindful of its previous distinction between high-power and low-power mopeds, because it specifically referred to that distinction in the definitional section of the No-Fault Law. Further, the legislature has provided that said distinction applies to each section of the No-Fault Act, including the one under review.

A.

ALL MOPEDS ARE NOT MOPEDS; SOME ARE BICYCLES.

In the 1976 version of the State Uniform Traffic Control Law (Ch. 316), the legislature amended its definition of the term "bicycle" to include low-power mopeds. In pertinent part, that section reads as follows:

> 316.003(2) BICYCLE - Any device propelled by human power, or any "moped" propelled by a pedal-activated helper motor with a manufacturer's certified maximum rating of 1½ brake horsepower....

The legislature, therefore, recognized a definite distinction between high-power and low-power mopeds for purposes of traffic control in the 1976 statutes. It is Appellant's position that the legislature made this distinction because high-power mopeds are more like motorcycles, and low-power mopeds are more like bicycles.

In the 1977 version of the Florida Automobile Reparations Reform Act (No-Fault Law), the legislature specifically referred to the distinction created one year earlier by Section 316.003(2) in excluding low-power mopeds from its definition of "motor vehicle". Hence, Section 627.732 provides in pertinent part as follows:

> 627.732 DEFINITIONS. - As used in §627.730-627.741:
> (1) "Motor vehicle" means any self-propelled vehicle which is of a type both designed and required to be licensed for use on the highways of this state except mopeds, as defined in §316.003(2)....

Looking to Section 316.003(2), we find no definition of the term "moped", but rather we find a definition of the term "bicycle", and said definition includes mopeds with a maximum 1.5 brake horsepower engine. The legislature, therefore, intended to treat low-powered mopeds as bicycles for purposes of the No-Fault Act, beginning in 1977.

The Appellee has argued that the legislature's distinction between high-power and low-power mopeds should not be "engrafted" onto Section 627.736. This argument, however, is fatally defective, because it fails to recognize that the legislature expressly incorporated said distinction into Sections 627.730 through 627.741, by using the language "as used in §627.730 - 627.741" at the beginning of Section 627.732. It is therefore clear that the legislature intended to maintain its distinction between high-power and low-power mopeds for purposes of Section 627.736, and no judicial "engrafting" need be done in order to recognize this fact. Hence, since 1977, the legislature has considered low-power mopeds to be bicycles for purposes of Section 627.736.

Because low-power mopeds are bicycles, they are not self-propelled. Appellant was therefore not an occupant of a self-propelled vehicle at the time of this accident, and he should receive Personal Injury Protection benefits from his automobile insurer.

B.

APPELLEE'S ARGUMENT THAT A PORTION OF SECTION 627.732 IS "MERE SURPLUSAGE" MUST BE REJECTED.

One of the most compelling principles of statutory construction is that courts should give effect to each word the legislature has written. Goode v. State, 39 So. 461, 50 Fla. 45 (1905); Atlantic Coastline R. Co. v. State, 74 So. 595, 73 Fla. 609 (1917); State v. Rodriguez, 365 So.2d 157 (Fla. 1978).

Appellee's characterization of the language "except mopeds as defined in §316.003(2)", found in Section 627.732(1) as "mere surplusage" flies directly in the face of this principle.

In order to give effect to each word the legislature has written, this Honorable Court should find that the legislature intended to carry its distinction between high-power and low-power mopeds into the No-Fault Act. Although the legislature's wording of Section 627.732(1) is admittedly unclear, one thing is as clear as the water at Wakulla Springs: the legislature intended to treat low-power mopeds as bicycles throughout the No-Fault Act. Only by accepting this assertion can this Honorable Court give full effect to the portion of Section 627.732(1), which defines low-power mopeds as bicycles.

C.

APPELLEE'S STATISTICAL ARGUMENTS ARE MEANINGLESS.

The Appellee has argued that the death rate for mopeds is one in five thousand, as compared to one in one thousand for motorcycles and one in one hundred thousand for bicycles and, therefore, insurance premiums do not cover the risk of injury on mopeds. (Ans. Brief, p. 6). Such an argument is totally meaningless for purposes of the instant case, because it fails to distinguish between the death rates for low-power mopeds as opposed to those for high-power mopeds. Further, Appellee's argument is slanted by the fact that there are a great many more bicycles in operation than there are mopeds. Therefore, because there are relatively few mopeds on the roads, very few deaths are needed to result in a very high death rate with respect to mopeds. Hence, Appellee's statistical argument must fail.

CONCLUSION

The legislature considers mopeds with a maximum rating of 1.5 brake horsepower to be bicycles for purposes of the Florida Automobile Reparations Reform Act. Since the Appellant, JIMMY R. VELEZ, was operating a moped with a maximum of 1.5 brake horsepower at the time of the subject accident, he was not operating a self-propelled vehicle. He was operating what the legislature considers to be a bicycle. Therefore, PIP benefits are payable to Mr. Velez, and the decisions of the Honorable Courts below should be reversed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed this 23rd day of August, 1984, to: RICK A. MATTSON, ESQUIRE, Attorney at Law, Post Office Box 210, St. Petersburg, Florida, 33731, counsel for Appellee.

DANIEL C. KASARIS, ESQUIRE
YANCHUCK, THOMPSON, YOUNG & BERMAN, P.A.
Post Office Box 4192
St. Petersburg, Florida 33731
(813) 822-6313
Counsel for Appellant