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CLERK SUPREME COURT

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IN THE SUPREME COURT OF
THE STATE OF FLORIDA

CASE NO.: 79,635

DISTRICT COURT OF APPEAL,
4TH DISTRICT NO.: 91-0270

DENISE ALVARADO,

Florida Bar Number: 370606

Petitioner,

vs.

MARTIN M. RICE and RUTH
RICE

Respondents.

PETITIONER'S AMENDED BRIEF ON THE MERITS



MARK R. McCOLLEM, ESQUIRE
CHIDNESE & McCOLLEM
Attorneys for Petitioner
201 southeast 12th Street
Fort Lauderdale, Florida 33316
(305) 462-8484

CHIDNESE & McCOLLEM

ATTORNEYS AT LAW

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TABLE OF CITATIONS

CASES :

Argonaut Insurance Company v. May Plumbing Company
474 So.2d 212 (Fla. 1985)

INTRODUCTION

This is an appeal from a question certified by the Fourth District Court of Appeal as involving a matter of great public importance. DENISE ALVARADO, the Plaintiff below will be referred to as the "Petitioner" herein and RUTH RICE, the Defendant below will be referred to as the "Respondent".

Citations to the record will be abbreviated as follows: (R-)

References to Appendix shall referred to as follows: (A-)

STATEMENT OF THE FACTS AND THE CASE

On March 28th, 1989, the Petitioner, DENISE ALVARADO, was injured in a motor vehicle accident with the Respondent, RUTH RICE. Suit was filed against the Respondents on June 20, 1990. (R-1-2) The case went to trial on December 4, 1990. The jury returned a verdict finding the Defendant 70 percent negligent and the Plaintiff 30 percent comparatively negligent. (R-59-61)

The verdict awarded the Plaintiff compensatory damages in the amount of \$30,000.00, actual damages for medical expenses in the amount of \$10,987.63, and future damages for medical expenses in the amount of \$25,000.00. (R-59-61) These amounts were reduced by the 30 percent comparative negligence assessed and on December 27, 1990, Final Judgment was entered in favor of the Plaintiff in the amount of \$46,191.34. (R-71) This Judgment **was** satisfied by the Respondent. A timely post trial motion for prejudgment interest was filed on December 17th, 1990, asking the Court to award interest upon the liquidated aspect of the Plaintiff's claim (to wit: amount awarded for past medical expenses).

On January 8th, 1991, the Honorable Linda L. Vitale heard argument upon Plaintiff's Motion to Tax Prejudgment Interest and the Defendant's Motion to Strike. The lower Court denied the Motion to Tax the Interest, granting the Defendant's Motion to Strike. (R-73) On January 15th, 1991, a Notice of Appeal was filed by the Petitioner. (R-74)

On March 11th, 1992, the 4th District Court of Appeal

entered an Opinion affirming the Order of the Trial Court below and certified as a matter of great public importance the issue contained within this appeal to this Honorable Court for determination. (A-1)

SUMMARY OF ARGUMENT

Prejudgment interest in a personal injury action should be awardable to successful claimants upon those **actual** damages obtained, which includes medical expenses. This Court has already **held** that prejudgment interest is properly awardable in negligence actions involving the actual expenses of property damage. Argonaut Insurance Company v. May Plumbing Company, 474 So.2d 212 (Fla. 1985).

Inasmuch as medical expenses are also actual damages, the same rationale **as** contained in Argonaut should clearly dictate that the certified question from the District **Court** of **Appeal** in this matter should be answered in **the** affirmative.

ARGUMENT

Prejudgment interest should be awardable to successful personal injury claimants on past medical expenses.

In the case of Argonaut Insurance Company v. May Plumbing, 464 So.2d 212 (Fla. 1985), this Honorable Court decided that prejudgment interest was properly awarded upon a claim for actual damages resulting from a jury verdict despite the assessment of comparative negligence. As in the case sub judice, the parties in that case agreed that actual damages were incurred but disputed at trial as to both liability and the amount of said damages. That dispute was resolved by virtue of a jury verdict and this Honorable Court held that the damages awarded were subject to taxation of prejudgment interest.

Argonaut further points out that when the damages awarded are subject to some certainty as to their amount prior to trial, yet the liability for said damages is disputed, the Defendant must pay interest upon those damages from the date that they were incurred by the Plaintiff. The damages incurred by the Petitioner herein for her past medical expenses had a fixed value as of the date they were incurred. Although the Respondent contested her liability for said damages, the verdict rendered against her had the effect of liquidating those damages from the date of their incurrence.

The Trial Court below was persuaded by the language used in the Argonaut decision at page 215, that indicates interest is available upon a jury verdict award only for a Plaintiff's "out

of pocket" losses. Inasmuch **as** the Petitioner was not required to pay these damages prior to the trial, the Court below found that these expenses were truly not out of pocket. Although this Honorable Court in Argonaut did not delineate whether out of pocket losses include those incurred which have not been **paid**, (to which an obligation to pay remains), the Petitioner would submit to this Court that the most reasonable definition of out of pocket expenses would include all actual damages awarded, regardless of the date of payment.

The Petitioner would submit to this Honorable Court that when an obligation has been incurred to pay a loss then interest should be taxable upon that loss, regardless of when payment is made upon that obligation. Accordingly, the Petitioner requests that this Court answer the question certified by the District Court of Appeal herein in the affirmative and remand this matter to the Trial Court for the assessment of prejudgment interest.

CONCLUSION

In conclusion the Petitioner respectfully submits that the Trial Court below committed error when ruling that out pocket expenses only include those which **have** been paid when determining taxation of prejudgment interest. The Petitioner requests that this Honorable Court answer the question **certified** by the 4th District Court of Appeal **herein in** the affirmative.

Respectfully Submitted,

CHIDNESE & McCOLLEM
Attorneys to Petitioner
201 S.E. 12th Street
Ft. Lauderdale, Florida 33316
(305) 462-8484

By: 

MARK R. McCOLLEM

MRM/kp

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 14th day of May, 1992, to: THOMAS HOWARD, ESQUIRE, 110 Tower, 110 Southeast 6th Street, Suite 1700, Ft. Lauderdale, Florida 33301, and the original and seven (7) copies have been furnished to the Clerk of the Supreme Court of Florida.

CHIDNESE & McCOLLEM
Attorneys for Petitioner
201 S.E. 12th Street
Ft. Lauderdale, Florida 33316

By : 
MARK R. McCOLLEM

MRM/kp