



STATE OF NEW JERSEY

NEW JERSEY LAW REVISION COMMISSION

Final Report

Relating to

Uninsured Motorist

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UNINSURED MOTORIST

Introduction

This project is a reflection of the New Jersey Supreme Court's decision in *Aronberg v. Tolbert*, 207 N.J. 587 (2011), addressing whether the heirs of an uninsured motorist, killed in a motor vehicle accident, have a claim under the Wrongful Death Act and the Survivorship Act. *Aronberg*, held that when an uninsured motorist has "no cause of action for recovery of economic or noneconomic loss sustained as a result of his accident while operating an uninsured automobile [under N.J.S. 39:6A-4.5(a),]" his heirs consequently have "no ground for filing a wrongful death action." *Id.* at 605. *Aronberg* reaffirms the application of N.J.S. 39:6A-4.5(a) as a powerful incentive for compliance with New Jersey's compulsory insurance laws. *Id.* at 601-02 (citing *Caviglia v. Royal Tours of Am.*, 178 N.J. 460, 471 (2004) (finding N.J.S. 39:6A-4.5(a) constitutional)).

In *Aronberg*, the plaintiff's son was driving an uninsured vehicle on the New Jersey Turnpike "when a tractor trailer careened into the rear of his car, killing him." *Id.* at 592. Plaintiff initiated a lawsuit against the defendant, driver of the tractor trailer, alleging negligence and demanding damages pursuant to the Survivor's Act, N.J.S. 2A:15-3, and the Wrongful Death Act, N.J.S. 2A:31-1 to -6. *Ibid.* In answer, the defendant argued that both claims were barred under N.J.S. 39:6A-4.5(a) because the decedent "'was operating an uninsured motor vehicle at the time of the accident.'" *Id.* at 594. Both the trial and appellate courts held that the Survivorship claim was barred under N.J.S. 39:6A-4.5(a); however, the Appellate Division reversed the trial court's decision that N.J.S. 39:6A-4.5(a) also barred the Wrongful Death claim. *Id.* at 594-95. The Appellate Division held that because N.J.S. 39:6A-4.5(a) seeks to punish the uninsured driver where as a Survivorship claim seeks to vindicate the driver's claim, barring a Survivorship claim was reasonable. *Id.* at 595. However, barring a Wrongful Death Action was unreasonable because it targeted innocent family members who sought to recover for pecuniary loss, and the Appellate Division held that it would not further the Legislature's goals of punishing the uninsured driver and incentivizing compliance with mandatory insurance laws. *Id.* at 595-96.¹ The Supreme Court granted certification to review the Wrongful Death issue. *Ibid.*

The statutory framework is as follows. The Survivorship Act permits an executor to file a cause of action on behalf of the decedent "where [the decedent's] death resulted from injuries for which the deceased would have had a cause of action if he had lived." N.J.S. 2A:15-3; *Aronberg supra* at 603. Wrongful Death actions, however, afford the "decedent's heirs a right of recovery for pecuniary damages for their direct losses as a result of their relative's death due to the tortious conduct of another." *Aronberg supra* at 603. The Wrongful Death Act provides:

When the death of a person is caused by a wrongful act, neglect or default, such as would, if death had not ensued, have entitled the person injured to maintain an action for damages resulting from the injury, the person who would have been

¹ Judge Fisher, J.A.D. dissented from the majority and concluded that because an heir's Wrongful Death Action derives from the defendant's ability to maintain a cause of action had he lived, his heirs also lack such a right under N.J.S. 39:6A-4.5(a). *Id.* at 596.

liable in damages for the injury if death had not ensued shall be liable in an action for damages, notwithstanding the death of the person injured and although the death was caused under circumstances amounting in law to a crime.

[*N.J.S.* 2A:31-1.]

N.J.S. 39:6A-4.5(a) provides:

Any person who, at the time of an automobile accident resulting in injuries to that person, is required but fails to maintain medical expense benefits coverage mandated by [*N.J.S.* 39:6A-4] shall have no cause of action for recovery of economic or noneconomic loss sustained as a result of an accident while operating an uninsured automobile.

The Supreme Court applied the language of the statutes to the facts and found that because Aronberg lacked the required medical coverage under *N.J.S.* 39:6A-4, had he lived, Aronberg could not have “maintain[ed] an action for damages resulting from the injury,” *N.J.S.* 2A:31-1, because *N.J.S.* 39:6A-4.5(a) “would have barred his cause of action.” *Aronberg supra* at 599, 605. The Court held that *N.J.S.* 2A:31-1 provides a heir a cause of action “only if a claim could have been brought by the decedent had he lived.” *Id.* at 603. Because Aronberg lacked such a right, his heirs also lacked a cause of action under *N.J.S.* 2A:31-1. *Ibid.*

Although not challenged in this proceeding, the Court deemed it appropriate to discuss the Survivorship Act in relation to *N.J.S.* 39:6A-4.5(a), because it has similar language to the Wrongful Death Act. *Ibid.* The Court held that because an heir’s Survivorship claim is based on whether the decedent would have had a cause of action had he lived, and the decedent lacked such a cause of action under *N.J.S.* 39:6A-4.5(a), the heirs also lack a cause of action under *N.J.S.* 2A:15-3. *Ibid.* Additionally, the Court found that applying the plain language of the statutes complied with the legislative intent to coerce compliance with vehicle insurance laws. *Id.* at 605.

In summary, *N.J.S.* 39:6A-4.5(a) bars a cause of action under the Wrongful Death Act and the Survivorship Act for heirs of decedents who lacked insurance at the time of the accident. Staff modified *N.J.S.* 39:6A-4.5(a) to reflect the Court’s decision.

***N.J.S.* 39:6A-4.5. Failure to maintain required medical expense coverage; effect on recovery for noneconomic loss**

a. Any person who, at the time of an automobile accident resulting in injuries to that person, is required but fails to maintain medical expense benefits coverage mandated by section 4 of P.L.1972, c. 70 (C.39:6A-4) , section 4 of P.L.1998, c. 21 (C.39:6A-3.1) or section 45 of P.L.2003, c.89 (C.39:6A-3.3) shall have no cause of action for recovery of economic or noneconomic loss sustained as a result of an accident while operating an uninsured automobile. Heirs of a person who has no cause of action pursuant to this subsection, or any other person acting on that person’s behalf, are likewise barred.

b. Any person who is convicted of, or pleads guilty to, operating a motor vehicle in violation of R.S.39:4-50, section 2 of P.L.1981, c. 512 (C.39:4-50.4a), or a similar statute from any other jurisdiction, in connection with an accident, shall have no cause of action for recovery of economic or noneconomic loss sustained as a result of the accident.

c. Any person acting with specific intent of causing injury to himself or others in the operation or use of an automobile shall have no cause of action for recovery of economic or noneconomic loss sustained as a result of an accident arising from such conduct.

COMMENT

The revision in *N.J.S.* 39:6A-4.5(a) clarifies that an heir of an uninsured motorist, injured or killed in a vehicular accident, who lacks mandatory insurance, lacks a cause of action under the Wrongful Death Act, *N.J.S.* 2A:31-1 to -6, and the Survivorship Act, *N.J.S.* 2A:15-3. The revision reflects the New Jersey Supreme Court's interpretation of *N.J.S.* 39:6A-4.5(a) in *Aronberg v. Tolbert*, 207 *N.J.* 587, 605 (2011).

In *Aronberg*, the Court held that the heir of an uninsured motorist lacked a cause of action to sue under the Wrongful Death Act and the Survivorship Act because under *N.J.S.* 39:6A-4.5(a), had the motorist survived, he would have lacked a "cause of action for recovery of economic or noneconomic loss sustained as a result of [the] accident." *See ibid.* Because Survivorship and Wrongful Death actions are based on the cause of action the decedent would have had if he survived, when the decedent would have lacked a cause of action, the heirs in turn lack a cause of action. *Id.* at 603. The revision incorporates the Court's interpretation of the statute, including the legislative intent to compel compliance with automobile insurance laws by barring recovery for uninsured motorists and their family. *See id.* at 605. Additionally, the revision reflects the Commission's recommendation to include language assuring that anyone acting on behalf of the uninsured motorist is also barred from maintaining a cause of action.