

Tort review

Law



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Tort review Peter Koz negligently drove his speedboat into a group of swimmers. The swimmers, however, were in a place that they were not supposed to be. The jury found that Koz was negligent and assessed damages at \$80, 000. However, it also found that the swimmers were 25% negligent in contributing to their own injuries. Under comparative negligence guidelines, do the swimmers recover any of the damages awarded by the court? Discuss using the " IRAC" method.

Issue

Whether the swimmers' fault and subsequent compensation presumption is rebuttable in regards to Peter Koz negligence, the prevailing comparative negligence guidelines and concept of swimmers' legally supported to claim damages since their proportion of contribution was less than 50% 1.

Rule

Under The New York modified comparative negligence rule, an injured party may recover damages only if he/she is less than 50% at fault for the injury or damages. However, the recovered amount may be reduced in proportion to the degree that the injured party was at fault. For instance, if the Peter Koz is determined to be 80% at fault and the group of swimmers is determined to be 20% at fault, the swimmers can collect for the damages because they were less than 50% at fault. However, Peter Koz insurance company might only offer to pay for 80% of your damages².

Analysis

The insurance company interviewed the involved parties, including witnesses, and also reviewed the accident report in order to determine the amount of the offer to compensate the swimmers³.

The insurance company found out that its insured was more than 50% or
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more at fault for the accident and offered to pay the damages for the loss against the swimmers by Peter Koz.

The injured party had upper hand in negotiating with the insurance company and a settlement was reached to compensate them. If the settlement could not be reached, the courts could make the final determination of comparative negligence⁴.

Conclusion

The swimmers were entitled to damages as evidence indicated that there contribution to the case was 25% which is less than the 50% bar rule. Peter Koz will not prevail because his contribution is above 50% and will compensate the swimmers the damages as estimated at \$80, 000⁵.

Reference

Durso, Francis Thomas, and Raymond S. Nickerson. Handbook of Applied Cognition. Chichester, England: Wiley, 2007. <http://site.ebrary.com/id/10295723>

Fletcher, George P. The Grammar of Criminal Law: American, Comparative, and International. Oxford: Oxford University Press, 2007.

Jurczynski, Debbie, and Roy N. Trotter. Insurance Settlement Handbook. Santa Ana, CA: James Pub. Co, 1990.

Swain, David P. ACSMs Resource Manual for Guidelines for Exercise Testing and Prescription. Philadelphia: Wolters Kluwer Health/Lippincott Williams & Wilkins, 2014.