

OPINION
53-81

February 19, 1953 (OPINION)

MOTOR VEHICLES

RE: Unsatisfied Judgment Claims

You have asked our opinion with regard to a matter involving the Unsatisfied Judgment Fund.

You state that a case has arisen in which the defendant has been admittedly negligent in leaving upon a highway of this state a house trailer around which no warning lights or flares have been placed.

We have found from our investigation and from discussion with you that defendant had been proceeding north on highway 22 in his automobile, attached to which had been the house trailer. A wheel having broken off the trailer, the defendant disengaged the trailer from his car and proceeded on to his home in Dunn County.

The trailer was negligently parked on the highway so as to directly block the north-bound lane of travel. It further was parked just over the crest of a hill so that operators of vehicles proceeding north on the highway would not see the trailer until they were almost upon it.

Plaintiff was traveling in a car driven by her husband and they were traveling north on Highway 22 during the evening in which the trailer was placed on the highway. Plaintiff's husband states that he was unable to avoid hitting the trailer because of the approach of a south-bound car.

One witness has stated that the defendant made some effort to remove the trailer from the lane of traffic but this is apparently not conceded by plaintiff.

You ask then if the plaintiff, who was seriously injured in the mishap, may recover the amount of her unsatisfied judgment up to the statutory amount allowable from the Unsatisfied Judgment Fund.

The pertinent provision of the Unsatisfied Judgment Law is Section 39-1703, which provides in part:

Where any person, who is a resident of this state, recovers in any court in this state a judgment for an amount exceeding \$300.00 in any action for damages resulting from bodily injury to, or the death of, any person occasioned by, or arising out of, the ownership, maintenance, operation or use of a motor vehicle by the judgment debtor in this state, upon such judgment becoming final, such judgment creditor may, in accordance with the provisions of this Act (chapter), apply to the Judge of the District Court in which such judgment was rendered, upon notice to the Attorney General, for an Order directing payment of the judgment out of said fund."

It appears therefrom that payment from the Unsatisfied Judgment Fund could not be authorized in any case in which there is not involved the ownership, maintenance, use or operation of a motor vehicle by the judgment debtor. Recovery from this Fund is based entirely upon statutory rights and this law, being in derogation of the common law, must be strictly construed under the most elementary rule of statutory construction.

This office has previously ruled and most authorities bear out the proposition, we think, that a house trailer which is disengaged from a motor vehicle is not of itself a motor vehicle. You are referred to Words and Phrases, Volume 27, page 707, an excerpt from which we cite:

trailer held not 'motor vehicle' within statute making owner liable for accident from negligent operation of motor vehicle by any one with owner's permission . . ."

In order to sustain plaintiff's right to recovery, therefore, it must be shown that defendant was negligent in the ownership, maintenance, use or operation of the automobile which was drawing the house trailer. No attempt has been made, however, to show such negligence.

To the contrary, it would seem that all of the negligence which is alleged is connected with the ownership of the house trailer. The only connection between this matter and the ownership, etc. of a motor vehicle is that at some time prior to the accident the trailer involved was drawn by a motor vehicle.

The negligence which caused plaintiff's injury was, we believe, simply the poor judgment shown in not removing the trailer from the roadway. Such poor judgment could as easily have been attributed to one who never owned or operated a motor vehicle.

It appears clear to us from the language previously quoted from Section 39-1703 that the Unsatisfied Judgment law was designed primarily to protect against negligent acts connected with the operation or use of the motor vehicle by the defendant or one for whom he is responsible. The fact that plaintiff, at the time of the accident, was operating or riding in a motor vehicle is thought not to be significant in view of the wording of this statute.

For these reason, we are of the opinion that plaintiff's injuries were not occasioned by and did not arise out of the ownership, maintenance, use or operation of a motor vehicle by the judgment debtor and that therefore judgment obtained for such injuries may not be satisfied out of the Unsatisfied Judgement Fund.

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Attorney General