

NAMIC CLAIM ARBITRATION COMMITTEE

CASE #00-0000

Petitioning Company Name)
(Insured) (.....Petitioner
Claim No. 9987654)

-vs-

Respondent Company Name)
(Insured) (.....Respondent
Claim No. 123-456-789)

The Petitioner presents a collision subrogation claim in the amount of \$670.29. A \$500.00 deductible is not included.

The Respondent is also presenting a counterclaim in the amount of \$3,643.53, which does not include the insured's \$500.00 deductible.

Minnesota has adopted a modified form of comparative negligence that allows the plaintiff to recover damages as long as the plaintiff's negligence does not exceed 50 percent.

FACTS

This accident occurred on November 2, 1999, at approximately 6:00 p.m. on 35 W in Minneapolis, Hennepin County, Minnesota. The Petitioner's vehicle died and could not be restarted. The Respondent did not see the Petitioner's stalled vehicle in time to avoid hitting the Petitioner in the rear. This started a six car accident. The weather was clear and the cement road surface was dry at the time of this accident, however the Respondent stated that it was dark.

PETITIONER'S CASE

Petitioner's file consists of:

1. Denial
2. Proof of loss
3. Police report
4. Photos of the damage

5. Petitioner's statement

This loss occurred on November 2, 1999, at University and 35W southbound in Minneapolis, MN.

The Petitioner was traveling south on 35W and saw a sign at Roseville stating, accident ahead, take alternate routes. The Petitioner did not know any so they stayed on 35W. The traffic was stop and go because of the accident ahead. The Petitioner was stopped for traffic when his car just died. The Petitioner put the vehicle in park and put on his four-way flashers immediately. The Petitioner tried starting the car several times but it would not start. The Petitioner sat in the car for about 20 minutes trying to get the vehicle started. Several cars had gone around the Petitioner's vehicle while he was trying to get the vehicle started. The Petitioner was then rear-ended by the Respondent's vehicle which was traveling on 35W going southbound also and did not see the Petitioner's stopped vehicle.

The Petitioner contends the Respondent was not paying attention since they didn't see the Petitioner's emergency flashers on, also the Respondent should have seen a sudden change in traffic flow. Since the Respondent is the proximate cause of this accident, the Petitioner feels they are entitled to collect their damages.

RESPONDENT'S CASE

Respondent's file consists of:

1. Denial
2. Proof of loss
3. Police report
4. Photos of the damage
5. Respondent's statement

This accident occurred on 11-2-99 at approximately 6:00 p.m. on southbound Interstate 35W near University Ave. in Minneapolis, MN. The weather was clear and the roads dry. This accident occurred after dark.

Respondent was traveling southbound on 35W in the left lane, traveling over the Mississippi River bridge. As Respondent crossed the bridge, they observed the Petitioner's vehicle @ 100' ahead which did not appear to be moving. No signals or warning device/flashers were activated. Respondent immediately applied their brakes, but was unable to avoid colliding with the Petitioner's vehicle. Respondent was then struck from behind and a 6 car pileup ensued.

Respondent feels the original Petitioner is negligent for impeding traffic (as noted on the police report) and failing to warn approaching motorists. Petitioner admits they had been stopped for @20 minutes. This is sufficient time to place flares or other warning devices and

attempt to move the vehicle out of the travel lanes. Respondent respectfully requests the panel review the evidence submitted and render a fair decision.

REMARKS

The Committee notes the parties are in agreement as to the date, time, location, vehicle direction, weather and road conditions for this accident. Those matters not in dispute between the parties are accepted as true.

The Committee notes the Petitioner stated that he was traveling south on 35 W in stop and go traffic due to an earlier accident. At one point, the Petitioner's vehicle died. The Petitioner stated he turned on his flashers and was in the vehicle approximately 20 minutes, trying to start the vehicle. The Petitioner was not able to restart the vehicle. During this time, the Petitioner stated that several cars had passed the Petitioner without hitting him. The Petitioner was stopped in the left lane of 35 W.

The Committee notes that rather than a statement from the Respondent, the Respondent Company submitted a claim form. The Respondent wrote that it was dark at the time and that he was traveling 55 mph when he first saw the Petitioner vehicle. The Respondent wrote that he was about 100 feet away from the Petitioner when he saw his vehicle and realized it was stopped. He applied his brakes but was not able to avoid hitting the Petitioner. An additional four cars were then involved in a chain reaction rear end accident.

The Committee notes that both parties submitted the officer's report, but neither party submitted any type of legend or code sheet to assist in reading the codes written by the officer. The narrative on the report simply stated that the Petitioner's vehicle stalled and would not restart.

The Respondent contends the Petitioner was negligent for failing to warn approaching motorists about the stranded vehicle, however the Petitioner stated he did have his flashers activated. There was no witness to confirm whether or not the flashers were activated. The Respondent also argued that the Petitioner should have moved the vehicle out of the travel lane. Interestingly enough, the Respondent himself wrote that there are no shoulders in this area. Neither party provided scene photographs to show that there was anyplace for the Petitioner to move the car. The Respondent also said that the Petitioner could have used flares. Again, neither party provided the Committee with any statutory requirements addressing the duties of the owner of a disabled vehicle.

Left to decide this case solely upon the evidence before the Committee, the Committee does not see what else the Petitioner could have done. The Petitioner's vehicle is disabled on a bridge that by the Respondent's own admission, has no shoulder area. The officer's diagram also showed no emergency type lane. Several other vehicles had managed to observe and avoid hitting the Petitioner. Under these circumstances, the Committee assesses 100% negligence to the Respondent for his failure to maintain a proper lookout.

DECISION

The Committee, having found the Respondent 100 percent negligent for this accident awards the Petitioner 100 percent for the claimed damages of \$670.29 or \$670.29.

Decision: 3 to 0 .

Respondent's counterclaim is denied.

Decision: 3 to 0 .