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WHERE A JUDGMENT IS RENDERED PRIOR TO THE ENACTMENT OF A LAW CHANGING THE AMOUNT REQUIRED TO SATISFY A JUDGMENT, THE PRIOR RULES GOVERN THE JUDGMENT AND NOT THE NEW AMENDMENTS—THIS IS ALSO TRUE OF SECURITY DEPOSITS MADE PRIOR TO THE ENACTMENT OF A NEW AMENDMENT — §4509.41 R.C., 128 OHIO LAWS, 1221 (1228), §§1.20, 4509.29 R.C.

SYLLABUS:

1. Where a judgment is rendered in a case involving an accident occurring prior to July 1, 1960, the amount required to satisfy the judgment under Section 4509.41, Revised Code, is governed by the provisions of that section as existing at the time of the accident, and not by the section as amended July 1, 1960 (128 Ohio Laws 1221, 1228).

2. The provisions of Section 4509.29, Revised Code, as effective July 1, 1960, do not apply to a deposit made prior to that date; and where, prior to that date, a security deposit was made with the registrar of motor vehicles by an uninsured person, such deposit should have been returned to that person upon the expiration of one year from the date of deposit provided the other conditions of Section 4509.29, Revised Code, as existing at the time the deposit was made, were met.

Columbus, Ohio, February 27, 1962

Hon. J. Grant Keys, Director
Department of Highway Safety
240 South Parsons, Avenue, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

"Kindly be advised that Section 4509.41 of the Revised Code, prior to amendment, provided that a judgment is considered to be satisfied for the purpose of this law if the minimum amount required by law were paid on the judgment, even though such amount would not satisfy the judgment in full. These provisions were in effect on the date of the accident out of which the judgment arose.

"However, on the date of the judgment the minimum requirement of the law had been increased from $5,000.00 to $10,000.00. The judgment was rendered in the amount of $8,250.00 plus costs. $5,000.00, which is the minimum requirement in effect on the date of the accident out of which the judgment arose, has been paid on the judgment.

"The question is—should the judgment be considered satisfied in view of the payment of $5,000.00, or should the requirement be considered to be $10,000.00, as provided in the law in effect on the date of the judgment."

Also to be considered is a related question set forth in a subsequent letter from you which reads in part as follows:

"The following situation exists: a security deposit was made with the Registrar of Motor Vehicles by an uninsured motorist when the law required that the security deposit could be held only for a period of twelve months from the date of the deposit. However, the law was amended prior to the expiration of the twelve-month period, and on that date the law provided that a security deposit should be held for a period of twenty-four months from the date of the deposit.

"The question is—should the security deposit be refunded in accordance with the provisions of the law which were in effect on the date of the deposit, or the provisions of the law which were in effect on the date that the depositor was entitled to the refund of the deposit."

The legislature, in 1959, amended Section 4509.41, Revised Code, 128 Ohio Laws, 1221 (1228), effective July 1, 1960, to provide:

> "(A) Judgments are satisfied for the purpose of sections 4509.01 to 4509.78, inclusive, of the Revised Code, in each of the following cases:
>
> "(1) When ten thousand dollars has been credited upon any judgments in excess of that amount because of bodily injury to or death of one person as a result of any one accident;
>
> "(2) When the sum of twenty thousand dollars has been credited upon any judgments in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident;
>
> "(3) When five thousand dollars has been credited upon any judgments rendered in excess of that amount because of injury to property of others as a result of any one accident.
>
> "(B) Payments made in settlements of any claims because of bodily injury, death, or property damage arising from such accident shall be credited in reduction of the amounts provided for in this section."

The amendment increased the amount required to be paid upon a judgment arising out of a motor vehicle accident from five thousand to ten thousand dollars in cases where injury or death resulted to one individual (division (A) (1)) and from ten thousand to twenty thousand dollars in cases where injury or death resulted to more than one individual (division (A) (2)).

The question here presented is whether Section 4509.41, Revised Code, as effective July 1, 1960, should be applicable where the accident occurred prior to that date, or whether the section as effective on the date of the accident should prevail. To resolve this question, it is necessary to determine whether the legislature intended to give retrospective effect to the July 1, 1960 amendments, requiring an increased payment on judgments arising out of motor vehicle accidents.

The purpose of the motorist financial responsibility law is to eliminate the financially irresponsible motorist from the highways by requiring the driver or owner of a motor vehicle to be able to respond for damages or injuries caused by the operation of the vehicle. Essentially, the law is designed to encourage motorists to maintain liability insurance and to compel certain persons who have evidenced their negligence, either through con-

viction of certain offenses, rendition of judgment or conviction under the point system to maintain proof of financial responsibility. *Iszczukiewicz* v. *Universal Underwriters Ins. Co.,* 13 Ohio Opinions, 2d, 132, 182 F. Supp. 733.

If the July 1, 1960 amendments are applicable to a motorist who was involved in an accident prior to the amendment and who had liability insurance which would have protected him under the existing law at the time of the accident, such motorist could be compelled to pay a judgment in excess of his policy limits or be subject to suspension of license and registration privileges. Also, an individual who had made a deposit of the maximum amount required under the existing law could be compelled to pay the additional amount up to the new limits or lose his license and registration privileges. I do not believe that the legislature intended such a result.

I am of the opinion that to apply the new law to a case where the accident occurred prior to the effective date of the new law would result in a retroactive operation of the law. In 50 Ohio Jurisprudence, 2d, 316, Statutes, Section 339, it is stated:

> "Upon principle, every statute which takes away or impairs vested rights, acquired under existing laws, or which creates a new obligation, imposes a new duty, or attaches a new disability in respect to past transactions or considerations must be deemed retrospective."

It is a fundamental rule of construction that statutes are to be construed to insure prospective rather than retrospective operation with the thought that the legislature intended to prevent and avoid injustice. 50 Ohio Jurisprudence, 2d, 316, Statutes, Section 339. The legislature has not evidenced any intention that Section 4509.41, Revised Code, as amended July 1, 1960, should have retrospective operation and it would appear that the very purpose of the law would be defeated, were such an interpretation to be placed on the law. I have been unable to find any Ohio cases which rule directly upon the question presented by your request, however, the Supreme Court of California in *Watson v. State Division of Motor Vehicles,* 212 California 279, 298 Pacific 481, ruled that where an individual was involved in an accident before the effective date of the California Motorist Financial Responsibility Law and a judgment was rendered after the effective date of the law the motorist could not be compelled to pay the judgment in the amount prescribed by the statute. The California court said at page 287 of its opinion:

> "* * * The penalty imposed—suspension of license—is imposed because of negligent driving. If the penalty were imposed simply for failure to pay a judgment, and had no relation to negligent operation of motor vehicles, it would be unconstitutional. It follows that since the judgment was predicated on an act of negligence committed before the act went into effect, and since the act adds a new penalty for that negligence, under well-settled principles, the act can have no application to acts of negligence committed before its passage. Any other interpretation would violate the well-settled rule in reference to the prospective operation of such statutes."

Also to be considered in this respect is the ruling of the Illinois Supreme Court in *Manczak* v. *Carpenter,* 3 Ill., 2d, 556, 121 N.E. 2, holding that a person could not be subjected to a mandatory suspension provision enacted after the offense but before the filing of an affidavit in the trial court. The court in the *Manczak case* at page 560 stated:

> "Beyond these differences between the old and the new statutes, is the fact that in order to construe the new statute as applicable to an offense committed before its effective date, we would have to hold that the General Assembly intended that the consequences attached to an offense should depend, not upon the quality of the conduct which constituted the offense, but upon the random circumstance of the date of conviction. * * *"

Further to consider in this question is Section 1.20, Revised Code, reading:

> "When a statute is repealed or amended, such repeal or amendment does not affect pending actions, prosecutions, or proceedings, civil or criminal. When the repeal or amendment relates to the remedy, it does not affect pending actions, prosecutions, or proceedings, unless so expressed, nor does any repeal or amendment affect causes of such action, prosecution, or proceeding, existing at the time of such amendment or repeal, unless otherwise expressly provided in the amending or repealing act."

Thus, even assuming that the July 1, 1960 amendments relate to the remedy, the bill in question, 128 Ohio Laws, 1221, did not expressly make the new law applicable to pending actions.

I am constrained to conclude, therefore, that as to an accident occurring prior to July 1, 1960, the amount required to satisfy a judgment under Section 4509.41, Revised Code, said judgment being rendered subsequent to that date, is governed by the provisions of that section as existing at the time of the accident.

Your second question concerns whether the registrar of the bureau of motor vehicles should hold a deposit for a period of one year under Section 4509.29, Revised Code, as in effect at the time of the deposit, or continue to hold the deposit for a period of two years as required by that section as amended, effective July 1, 1960, 128 Ohio Laws 1221 (1225).

As amended effective July 1, 1960, Section 4509.29, Revised Code, reads:

> "Upon the expiration of two years from the date of any security deposit any security remaining on deposit shall be returned to the depositor or to his personal representative if an affidavit or other evidence satisfactory to the registrar of motor vehicles has been filed:
>
> "(A) That no action for damages arising out of the accident for which deposit was made begun within two years after the date of deposit, is pending against the person on whose behalf the deposit was made;
>
> "(B) That there does not exist any unpaid judgment rendered against any such person in such an action."

Since the security deposit was made under the one year provision, under the same reasoning found in my discussion of your first question, I am of the opinion that the amendment to the law requiring a two year holding period should not be applicable. And here, again, I note that the bill, 128 Ohio Laws, 1221, did not make the changes in Section 4509.29, *supra,* applicable to pending proceedings.

To conclude, it is my opinion and you are advised:

1. Where a judgment is rendered in a case involving an accident occurring prior to July 1, 1960, the amount required to satisfy the judgment under Section 4509.41, Revised Code, is governed by the provisions of that section as existing at the time of the accident, and not by the section as amended July 1, 1960 (128 Ohio Laws 1221, 1228).

2. The provisions of Section 4509.29, Revised Code, as effective July 1, 1960, do not apply to a deposit made prior to that date; and where, prior to that date, a security deposit was made with the registrar of motor vehicles by an uninsured person, such deposit should have been returned to that person upon the expiration of one year from the date of deposit

provided the other conditions of Section 4509.29, Revised Code, as existing at the time the deposit was made, were met.

Respectfully,
MARK MCELROY
Attorney General