

Matter of Seickel v State Ins. Fund, 102 A.D.3d 465

Supreme Court of New York, Appellate Division, First Department

January 10, 2013, Decided; January 10, 2013, Entered

Counsel: Weiss, Wexler & Wornow, P.C., New York (Michael J. Reynolds of counsel), for appellants.

Grey & Grey, L.L.P., Farmingdale (Robert E. Grey of counsel), for respondent.

Judges: Concur—Friedman, J.P., Sweeny, Acosta, Abdus-Salaam and Manzanet-Daniels, JJ.

Opinion

Order, Supreme Court, Bronx County (Lucindo Suarez, J.), entered August 2, 2011, which, to the extent appealed from as limited by the briefs, granted the petition to extinguish respondents' lien pursuant to Workers' Compensation Law § 29, and determined respondents' equitable share of petitioner's litigation costs and directed respondents to reimburse petitioner in that amount, unanimously modified, on the law, to vacate the determination of respondents' equitable share of the litigation costs and the direction to reimburse petitioner in that amount, and remand the matter for recalculation of respondents' share of the litigation costs in accordance herewith, and otherwise affirmed, without costs.

Petitioner's projected future medical expenses are too speculative to be considered in calculating the total benefit to respondents from her recovery in the litigation (Matter of Bissell v Town of Amherst, 18 NY3d 697, 967 NE2d 176, 943 NYS2d 798 [2012]). Thus, respondents' equitable share of petitioner's litigation costs must be recalculated (see Burns v Varriale, 9 NY3d 207, 215 n 4, 879 NE2d 140, 849 NYS2d 1 [2007]).

We reject respondents' contention that the court erred in employing the Life Expectancy and Present Value Tables set forth in Appendices A and C of the Pattern Jury Instructions to determine the present value of respondents' future indemnity liability. In light of respondents' failure to point to the mortality table it sought to employ or to proffer any calculations with respect thereto, and the detailed calculations set forth in the petition, the court properly deemed these tables pertinent (see Workers' Compensation Law § 29 [2]; Burns, 9 NY3d at 215). Respondents' argument that the court erred in failing to consult the remarriage tables of the Dutch Royal Insurance Institution is unpreserved, and, in any event, unavailing, since those tables apply to the computation of death benefits payable to a widow until widowhood terminates upon remarriage (see Matter of Theresa M.C. v Utilities Mut. Ins. Co., 207 AD2d 481, 483, 616 NYS2d 383 [2d Dept 1994]; Matter of Iannone v Radory Constr. Corp., 285 App Div 751, 285 AD 1208, 141 NYS2d 311 [3d Dept 1955], affd 1 NY2d 671, 133 NE2d 708, 150 NYS2d 199 [1956]). Concur—Friedman, J.P., Sweeny, Acosta, Abdus-Salaam and Manzanet-Daniels, JJ.