

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

JOHN AMBROSE

Plaintiff

v.

DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2009-05331-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF DISMISSAL

{¶ 1} On June 2, 2009, plaintiff, John Ambrose, filed a complaint against defendant, Department of Transportation. Plaintiff alleges his vehicle was damaged on or about May 1, through 14, 2009, while traveling on State Route 21 through a construction zone maintained by defendant's contractor, Shelly & Sands. Plaintiff states he entered into a partial settlement with Shelly & Sands insurance carrier, Cincinnati Insurance Companies, and received \$676.70 for windshield replacement and repair of chips to the paint of his vehicle. Plaintiff now seeks additional damages in the amount of \$303.52 for repair of damage to his radiator.

{¶ 2} Plaintiff alleges that the radiator damage occurred at the same time as the other damage sustained by his vehicle.

{¶ 3} Defendant filed a motion to dismiss. In support of the motion to dismiss, defendant stated in pertinent part:

{¶ 4} "Their agent, Steve Harbert, met with plaintiff on May 28, 2009, which is two weeks from the date of incident, and he inspected plaintiff's vehicle. There was a

compromise settlement agreed upon and Cincinnati Insurance Companies paid plaintiff \$676.70 to repair the windshield and the small chips on the hood. This was not a partial settlement. (See Exhibit A)

{¶ 5} “Plaintiff stated to Mr. Harbert on May 28, 2009, that there were no leaks from the radiator or air conditioning and the car was operating normally. The Department of Transportation agrees with the insurance agent of Cincinnati Insurance Companies that this claim has already been addressed and the agreed settlement of \$676.70 is final.”

{¶ 6} Defendant also submitted a letter from Steve Harbert, Field Claims Superintendent, Cincinnati Insurance Companies. This letter reveals that Mr. Harbert discussed the damage to the radiator with plaintiff. Specifically, with regard to the radiator, Mr. Harbert stated:

{¶ 7} “Mr. Ambrose’s radiator did have some small stones embedded in it. I did not observe anything unusually severe. Pursuant to Mr. Ambrose’s statement that the car was working normally, there is no functional damage to the radiator. Upon receipt of your letter, I confirmed my opinion with a local body shop that the fins of the condenser can be combed out. The shop advises that this should take about a half an hour to perform this task, at a cost of approximately \$35.00.”

{¶ 8} Plaintiff did not respond to defendant’s motion to dismiss.

{¶ 9} Upon review, the settlement reached with Cincinnati Insurance Companies concerned all the damage sustained by defendant’s vehicle, including but not limited to, the radiator.

{¶ 10} R.C. 2743.02(D) in pertinent part states:

{¶ 11} “Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant.”

{¶ 12} Upon review, the court finds the money received by plaintiff is a recovery

from a collateral source and a full recovery for all damage suffered by his vehicle during the period May 1, through May 14, 2009. According, defendant's motion is GRANTED and plaintiff's case is DISMISSED. The court shall absorb the court costs of this case in excess of the filing fee.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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DRB/laa
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