1983 S.C. Op. Atty. Gen. 117 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-74, 1983 WL 142743

Office of the Attorney General

State of South Carolina
Opinion No. 83-74
September 23, 1983

***1** William A. Moore, CPCU
Insurance Reserve Fund
Division of General Services
Budget and Control Board
Post Office Box 11066
Columbia, South Carolina 29211

Dear Mr. Moore:
You have asked whether the words 'tort liability' as used in the first sentence of Section 1–11–140 of the Code of Laws of South Carolina (1976) refer to automobile liability. The first sentence of Section 1–11–140 provides:
The State Budget and Control Board, through the Division of General Services, is authorized to provide insurance for the State, its departments, agencies, institutions, commissions, boards and the personnel employed by the State in its departments, agencies, institutions, commissions and boards so as to protect the State against tort liability and to protect such personnel against tort liability arising in the course of their employment.

In construing a statute, the primary goal is to effectuate the intention of the Legislature. Merchants Mutual Insurance Co. vs. South Carolina Second Injury Fund, 277 S.C. 604, 291 S.E.2d 667 (1982); Bankers Trust of South Carolina vs. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). In doing so, words are considered to be used in their plain and ordinary sense or their legal sense if they have a recognized meaning in law different from their ordinary and popular significance. Hughes vs. Edwards, 265 S.C. 529, 220 S.E.2d 231 (1975). Here, the statute provides that the Division of General Services is authorized to provide insurance to protect the State and its employees against tort liability. In using the phrase 'tort liability' the Legislature intended to provide insurance for liability arising out of torts.

The term 'tort' has faded from common speech but is a well-recognized legal term which in its ordinary sense designates or applies to a wide range of civil injuries. W. Prosser, The Law of Torts 2 and 3 (4th ed. 1971). It includes actions based on negligence. Id. Most actions growing out of the operation and use of motor vehicles are founded on negligence. 1 Blashfield, Automobile Law and Practice § 51.1, at 333 (3d ed. 1965).

The South Carolina Supreme Court has recognized that injuries from motor vehicle accidents are within the class of injuries resulting from torts founded on negligence. Marley vs. Kirby, 271 S.C. 122, 245 S.E.2d 604 (1978). In the Marley case, the Supreme Court held that a comparative negligence statute applicable only to motor vehicle accidents was unconstitutional because it violated the equal protection clauses of both the South Carolina and United States Constitutions. In so holding the Court noted that
[t]here is no rational basis for separating injuries from motor vehicle accidents from injuries from other torts. Id. at 124, 245 S.E.2d at 606.

Additionally, the Court noted that it could not
. . . perceive the rational justification for singling out persons injured in automobile accidents as different from all others injured in negligent torts. Id. at 125, 245 S.E.2d at 606.

***2** This case clearly indicates that torts include injuries resulting from negligence which arise out of motor vehicle accidents.

Dean Prosser, a well respected expert in the tort field recognizes that the ordinary automobile accident gives rise to a claim in tort based on negligence.
[W]hen he drives an automobile down the street, the law imposes upon him an obligation to all persons in the highway, to drive it with reasonable care for their safety . . .. If he does not do so, and injures another, it is a tort. W. Prosser, supra. at 4 and 5.

Additionally,
. . . if A negligently runs B down with his automobile, a cause of action arises, ... The remedy in such a case is a tort. Id. at 613.

The South Carolina Legislature has recognized that motor vehicle accidents arising from the negligent operation of a vehicle are torts. See, Sections 15–77–210 through 15–77–250, 1976 Code, the 'South Carolina Governmental Motor Vehicle Tort Claims Act.'

The Florida Supreme Court has explicitly stated the implicit assumption of most cases dealing with negligent operation of motor vehicles:
. . . we hold that injury to another by the negligent operation of an automobile is a pure tort . . .. Greene vs. Miller, 102 Fla. 767, 136 So. 532, 537 (1931).

While most actions growing out of the operation and use of motor vehicles are founded on negligence, 1 Blashfield, supra, liability might also be based on other tort theories. It should also be noted that liability arising out of the ownership, operation or use of motor vehicles is not limited to tort theories. A tort is generally defined as a
civil wrong, other than breach of contract, for which the court will provide a remedy in the form of an action of damages. W. Prosser, supra at 2.

The distinguishing feature of a tort is that it is a wrong other than breach of contract. Spellman vs. Richmond and D.R. Co., 35 S.C. 475, 14 S.E. 947 (1892). If a claim is based on contract, such as failure to pay a repair bill, it would not be included in the phrase 'tort liability'.

Where the terms of a statute are clear, they must be applied according to their literal meaning. Mitchell vs. Mitchell, 266 S.C. 196, 222 S.E.2d 499 (1976). As discussed above, the term 'tort' includes actions or claims involving automobiles. There is no indication that the Legislature intended to exclude automobile related torts from the insurance provided by Section 1–11–140. There is no express exclusion of automobile liability and nothing which points to an implied exclusion. Taken in its ordinary sense, the phrase 'tort liability' includes liability arising out of injuries involving automobiles when the cause of the injury constitutes a tort or the claim is based on a tort theory.

If you have any questions concerning this matter, please do not hesitate to contact me.
Yours very truly,

Grady L. Patterson, III
Assistant Attorney General

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