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(Cite as: 330 So.2d 810)


District Court of Appeal of Florida, Third District.  
Marianne YAKELWICZ, Appellant,  
v.  
L. C. BARNES et al., Appellees.  
**No. 75-1013.**

March 17, 1976.  
Rehearing Denied May 12, 1976.

Passenger injured on motorcycle brought action against insured owner, operator, and insurer of motorcycle, to recover damages for injuries allegedly resulting from negligent operation of motorcycle. The Circuit Court, Dade County, Donald E. Stone, J., found insurer not liable, and passenger appealed. The District Court of Appeal held that motorcycle policy clearly excluded passenger from coverage; and that, absent proof that motorcycle policy had ever been certified by owner as proof of financial responsibility, policy was not governed by Financial Responsibility Law and denial of insurer's liability for passenger's injuries was not against public policy.


Affirmed.

West Headnotes

[1] **Insurance 217**  **2749**


217 Insurance  
217XXII Coverage--Automobile Insurance  
217XXII(C) Liability Coverage  
217k2743 Persons Injured  
217k2749 k. Guests or Occupants. Most Cited Cases  
(Formerly 217k435.21)

Where motorcycle owner's policy clearly excluded from coverage bodily injuries sustained by passengers while riding on such insured motorcycle, trial court properly found that insurer was not liable to passenger for injuries sustained on insured's motorcycle.

[2] **Insurance 217**  **2737**

217 Insurance  
217XXII Coverage--Automobile Insurance  
217XXII(C) Liability Coverage

217k2735 Mandatory Coverage  
217k2737 k. Financial Responsibility Requirements. Most Cited Cases  
(Formerly 217k435.21)

**Insurance 217**  **2749**

217 Insurance  
217XXII Coverage--Automobile Insurance  
217XXII(C) Liability Coverage  
217k2743 Persons Injured  
217k2749 k. Guests or Occupants. Most Cited Cases  
(Formerly 217k435.21)

Where motorcycle passenger who sustained personal injury in motorcycle accident was unable to show that insured's motorcycle policy was ever certified as proof of financial responsibility by insured so as to invoke provisions of Financial Responsibility Law, fact that policy excluded from coverage injuries sustained by passengers was not violation of law or of public policy. West's F.S.A. § 324.151(2).

\***810** Harold A. Lassman, Miami, for appellant.

Granville E. Petrie, Jr., Miami, for appellees.

Before HENDRY, HAVERFIELD and NATHAN, JJ.

PER CURIAM.

Plaintiff appeals an adverse final judgment finding that defendant insurance company did not afford coverage in this action for damages for injuries sustained as a result of the alleged negligent operation of a motorcycle.

On May 21, 1970, plaintiff, Marianne Yakelwicz, was a passenger on a motorcycle owned by L. C. Barnes and being operated by Randall Lynn Barnes when it collided with another vehicle causing serious injury to the plaintiff. In May 1974 Marianne filed suit against L. C. and Randall Lynn Barnes and their insurer, Reserve Insurance Company, appellees herein. L. C. and Randall Barnes were served by constructive service (ss 48.151, 48.161, 48.171, Fla.Stat.) and defendant insurer was served through the insurance commission. On June 7 plaintiff's motion for entry of \***811** default

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against defendant insurer was granted. In August, defendant insurer moved to set aside the default on the ground of excusable neglect due to a misplacement of the file. Defendant insurer also alleged that it had a meritorious defense in that its policy specifically excluded claims of passengers on the insured motorcycle. After hearing the trial judge set aside the default and defendant insurer filed its answer. The issue of coverage was tried non-jury and the judge entered the appealed judgment finding that defendant insurer did not afford coverage to the plaintiff.

END OF DOCUMENT

Plaintiff-appellant first argues that the exclusion as to passengers contained in this standard liability policy without calling the attention of the insured to it is unconscionable.

[1] After a reading of the motorcycle insurance policy issued by the defendant-appellee, we find the policy in clear and unambiguous language excludes bodily injury of any person 'sustained while such person is a passenger in or upon . . . the insured motorcycle.' Thus, appellee insurer was not liable for the injuries sustained by plaintiff while she was a passenger on the motorcycle. See *Winter Garden Ornamental Nursery, Inc. v. Cappleman*, Fla.App.1967, 201 So.2d 479.

Plaintiff next contends that such a liability insurance policy which excludes from coverage passengers on the insured motorcycle violates the financial responsibility act.

[2] There being no proof or evidence that this insurance policy ever was certified as proof of financial responsibility by the insured motorcycle owner so as to invoke the provisions of the financial responsibility law (s 324.151(2), Fla.Stat.), the passenger exclusion was not in violation of the law or the public policy of this state. See *Ennis v. Charter*, Fla.App.1974, 290 So.2d 96.

We also considered appellant's remaining points on appeal and find they are without merit.

Affirmed.

Fla.App. 1976.  
*Yakelwicz v. Barnes*  
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