

OCTOBER 17, 1955.

MR. W. LEWIS BAMBRICK,  
*Unsatisfied Claim and Judgment Fund Board,*  
222 West State Street,  
Trenton, New Jersey.

## FORMAL OPINION—1955. No. 36.

DEAR MR. BAMBRICK:

On April 15, 1955, we advised you that payments received or receivable by a plaintiff or his personal representative for temporary disability benefits, or benefits under an accident and health policy, hospitalization, or similar insurance policies should be deducted from the amount due upon an unsatisfied judgment, for payment of which claim is made against the Unsatisfied Claim and Judgment Fund. You now ask our opinion as to whether payments made by reason of a life insurance policy or accidental death policy should be similarly deducted.

N. J. S. A. 39:6-71, as amended, provides in part as follows:

“ . . . Any amount for compensation or indemnity for damages or other benefits which the plaintiff has received or can collect from any person other than the judgment debtor shall be deducted from the amount due upon the judgment for payment of which claim is made.”

Furthermore, N. J. S. A. 39:6-83, as amended, which relates to judgments against the Director of the Division of Motor Vehicles based upon a hit-and-run accident, provides that “a judgment against the director shall be reduced by any amounts which such plaintiff has received from any person mentioned in subparagraph (m) of section 10 (N. J. S. A. 39:6-70).” Subparagraph (m) of section 10 (N. J. S. A. 39:6-70) refers to “a judgment in an action against any other person against whom he has a cause of action in respect of his damages for bodily injury or death or damage to property arising out of an accident and . . . the amounts recovered upon such judgments or the amounts, if any, received for indemnity or other benefits for such injury or death or damage to property from any person other than the operator or owner of the motor vehicle causing such injury, death or damage.”

It is our opinion that money received or receivable under a policy of life insurance which is not predicated upon accidental death should not be considered to be deductible as “any amount for compensation or indemnity for damages or other benefits” within the intendment of N. J. S. A. 39:6-71, as amended, or the similar language to be found in N. J. S. A. 39:6-70(m). Since such money is payable under a policy of life insurance upon the occurrence of death regardless of the cause of death, the payment of benefits under such a life insurance policy does not constitute the type of indemnity or benefits contemplated by the statute. Such benefits are payable upon the happening of death, and would be payable whether or not death resulted from an accident.

We now turn to the question of whether payments received or receivable under a policy insuring against accidental death, or providing for double indemnity in the event of accidental death, should be deducted from the amount due upon an unsatisfied judgment, or upon a judgment obtained against the Director of the Division of Motor Vehicles based upon a hit-and-run accident, for payment of which judgment, claim is made against the Unsatisfied Claim and Judgment Fund. Since such insurance payments are made only by reason of the same accidental death which was the basis of the unsatisfied judgment or the judgment against the Director of the Division of Motor Vehicles resulting from a hit-and-

run accident, they appear to be "indemnity for damages or other benefits" within the meaning of N. J. S. A. 39:6-71, as amended, and the similar language to be found in N. J. S. A. 39:6-70(m). However, it must be borne in mind that N. J. S. A. 39:6-71, as amended, and N. J. S. A. 39:6-83, as amended, provide only for the deduction of indemnity or benefits which *the plaintiff* has received. In a case of death resulting from a motor vehicle accident, the plaintiff is either the administrator ad prosequendum of the decedent, the executor of the decedent, or the administrator with the will annexed of the decedent.

A cause of action for wrongful death does not exist as a common law right, but stems from the statutory provisions of N. J. S. A. 2A:31-1, et seq., commonly referred to as the Wrongful Death Act. N. J. S. A. 2A:31-1 provides that "when the death of a person is caused by a wrongful act, neglect, or default . . ., the person who would have been liable in damages for the injury if death had not ensued shall be liable in an action for damages . . ." N. J. S. A. 2A:31-2 provides that every such action "shall be brought in the name of an administrator ad prosequendum of the decedent for whose death damages are sought, except where the decedent dies testate and his will is probated, in which event the executor named in the will and qualifying, or the administrator with the will annexed, as the case may be, shall bring the action."

N. J. S. A. 2A:31-4 provides as follows:

"The amount recovered in proceedings under this chapter shall be for the exclusive benefit of the persons entitled to take any intestate personal property of the decedent, and in the proportions in which they are entitled to take the same. If any of the persons so entitled were not dependent on the decedent at his death, the remainder of the persons so entitled shall take the same as though they were the sole persons so entitled. If all or none of the persons so entitled were then dependent on him, they shall all take as aforesaid."

N. J. S. A. 2A:31-6 provides as follows:

"When an action is commenced by an administrator ad prosequendum under this chapter, no payment in settlement thereof or in satisfaction of a judgment rendered therein shall be made to him, but such payment shall be made only to the duly appointed general administrator of the estate of the decedent, who has filed a bond or supplemental bond adequate to protect the persons entitled to receive the amount so paid.

No release or cancellation of a judgment, whether by warrant or otherwise, by an administrator ad prosequendum or by his attorney of record or attorney in fact shall release the person making payment from liability to the persons entitled to any intestate personal property of the decedent, shall operate as a valid cancellation of the judgment or be an authority to the clerk of any court to cancel the judgment of record."

N. J. S. A. 3A:6-13 provides that the surrogate's court of the county in which an accident resulting in death occurred, or the Superior Court, "may grant letters of administration ad prosequendum to the person entitled by law to general administration." It further provides that no bond shall be required of the administrator ad prosequendum.

Since N. J. S. A. 39:6-71, as amended, and N. J. S. A. 39:6-83, as amended, provide for the deduction of indemnity or benefits received or receivable by the plaintiff, we must decide whether a designated beneficiary who is entitled to

payments under an accidental death policy may be regarded as a plaintiff within the meaning of such statutes, and in view of N. J. S. A. 2A:31—1, et seq. and 3A:6—13. In this respect, we shall consider both a situation where the designated beneficiary of the accidental death policy is the estate of the decedent, and a situation where the designated beneficiary of the accidental death policy is a specified individual.

Since N. J. S. A. 2A:31—6 clearly establishes the fact that in every action based upon the Wrongful Death Act, payment in settlement thereof, or in satisfaction of a judgment rendered therein shall be made only to the general administrator of the estate of the decedent, it might be argued that in a situation where the estate of a decedent is the beneficiary of an accidental death policy, payment to the estate under said policy should be deductible as a payment to the "plaintiff" within the meaning of N. J. S. A. 39:6—71, as amended, and N. J. S. A. 39:6—83, as amended. However, the possibility of reaching such a conclusion is considerably hindered by the fact that N. J. S. A. 2A:31—4 limits the distribution of proceeds obtained by reason of a wrongful death action to "persons entitled to take any interstate personal property of the decedent," and further limits such distribution to persons "dependent on the decedent at the time of his death." Proceeds paid to the estate by reason of an accidental death insurance policy, on the other hand, are distributed without regard to any such limitations as are found in N. J. S. A. 2A:31—4. Therefore, it would be palpably unfair to deduct from any payment due from the Unsatisfied Claim and Judgment Fund the amount received by the estate by way of a payment on an accidental death policy, since the persons who share in the proceeds of such policy may not be the same persons who are entitled to the full proceeds of the judgment based upon wrongful death. Furthermore, to attempt to deduct portions of the proceeds of an accidental life insurance policy payable to an estate to the extent that persons who share in the proceeds of a judgment or settlement of a wrongful death action also share in the proceeds of an accidental life insurance policy would present administrative difficulties of such magnitude as to be practically insurmountable.

On the other hand, when payments are payable to a specified beneficiary under an accident death policy, such payments cannot be regarded as deductible, since such specified beneficiary, not being the plaintiff in a wrongful death action, is not within the purview of N. J. S. A. 39:6—71, as amended, and N. J. S. A. 39:6—83, as amended. Actually, the person who receives benefits under the accidental death policy may not even be entitled to any of the proceeds of the wrongful death judgment, or may only be entitled to a portion of same. Furthermore, even if it were possible to regard a person who is entitled to benefits under an accidental death policy and who also shares in a wrongful death judgment as a "plaintiff" in the wrongful death action on the theory that said action is brought in his behalf, great difficulties would arise with regard to the administration of any deductions to be made. Difficult questions would arise as to whether such person who received the proceeds of an accidental death benefit policy would be entitled to share in the wrongful death judgment and, if so, the amount of his share in said judgment.

In view of all the foregoing, it is our opinion that benefits payable by reason of an accidental death policy should not be deducted under N. J. S. A. 39:6—71, as amended, and N. J. S. A. 39:6—83, as amended.

Very truly yours,

GROVER C. RICHMAN, JR.,  
*Attorney General.*

By: CHARLES S. JOELSON,  
*Deputy Attorney General.*