STATE OF MICHIGAN

COURT OF APPEALS

JOHN SOLEY,

Plaintiff-Appellant,

v No. 92475

LIBERTY MUTUAL INSURANCE COMPANY,

Defendant,

and

HASTINGS MUTUAL INSURANCE COMPANY,

Defendant-Appellee.

BEFORE: D.F. Walsh, P.J., J.H. Shepherd and A.T. Davis, Jr.*, JJ.

PER CURIAM

Plaintiff injured his left hand while unloading his United Parcel Service vehicle on September 22, 1982. Plaintiff was acting within the scope of employment at the time of his injury. As a result of his injury plaintiff received worker's compensation benefits.

Plaintiff also sought to receive no-fault insurance benefits from his employer's no-fault insurer, Liberty Mutual Insurance Co., or in the alternative from his own no-fault insurer, Hastings Mutual Insurance Co., because he was injured while unloading a motor vehicle. His requests to receive those benefits were denied by both defendants and a lawsuit was filed. Plaintiff sought to recover the difference between the amount paid to him under the Worker's Compensation Act and the amount he claimed to be entitled to under the No-Fault Act for lost wages.

Liberty Mutual was granted summary disposition in 1984 and Hastings Mutual was granted summary disposition in 1986 on the basis of the applicable no-fault statute section. Plaintiff now appeals as against Hastings Mutual on two grounds. We affirm.

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*Circuit judge, sitting on the Court of Appeals by assignment.

The trial court's ruling was based on the following statutory language:

"(2) Accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle if benefits under the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, as amended, being sections 418.101 to 418.941 of the Michigan Compiled Laws, are available to an employee who sustains the injury in the course of his or her employment while loading, unloading, or doing mechanical work on a vehicle unless the injury arose from the use or operation of another vehicle." (This statute has since been further amended to limit recovery, 1986 PA 318 §1.)

The language of this section was amended in 1981, 1981 PA 309, to limit an employee's recovery to worker's compensation benefits. Plaintiff claims the amendment created two classes: those injured while on the job and those injured otherwise. Plaintiff claims the statute is a denial of equal protection and therefore unconstitutional. The identical issue was addressed by this Court previously in Babbitt v Employers Insurance, 135 Mich App 198; 355 NW2d 635 (1984). In Babbitt we held:

"The standard to be applied when this Court reviews such a challenge to a section of the no-fault act was described by the Michigan Supreme Court in Shavers v Attorney General, 402 Mich 554, 613-614; 267 NW2d 72 (1978), as follows:

"'As the United States Supreme Court declared in United States Dep't of Agriculture v Moreno, 413 US 528, 533; 93 S Ct 2821; 37 L Ed 2d 782 (1973):

"'"Under traditional equal protection analysis, a legislative classification must be sustained, if the classification itself is rationally related to a legitimate governmental interest." (Citations omitted).

"'In the application of these tests, it is axiomatic that the challenged legislative judgment is accorded a presumption of constitutionality. See Michigan Canners v Agricultural Board, supra [397 Mich 337; 245 NW2d 1 (1976)], pp 343-344.

* * *

"The basic goal of the personal injury provisions of the no-fault insurance system is to provide individuals injured in motor vehicle accidents 'assured, adequate, and prompt reparation for certain economic losses'. Shavers, supra, pp 578-579. The reduction of insurance premiums via legislation intended to control the costs of no-fault insurance has been held to be a legitimate governmental interest for equal protection purposes. O'Donnell.

* * *

"We believe that § 3106(2) of the no-fault act is rationally related to a legitimate governmental interest of reducing insurance costs." Babbitt at 200-202.

We agree. We believe the class is rationally related to a legitimate state interest.

Plaintiff further argues, in the face of the statutory language, that his personal vehicle's no-fault insurer is required to pay the differential between the worker's compensation benefits and no-fault lost wages benefits. Plaintiff's citation to Parks v DAIIE, 426 Mich 191; 393 NW2d 833 (1986) (plaintiff must recover from his personal no-fault insurer since employer was not required to register vehicle in Michigan under § 3114 of the no-fault act) is completely inapposite. We therefore affirm the decision of the lower court.

/s/ Daniel F. Walsh
/s/ John H. Shepherd
/s/ Alton T. Davis, Jr.