STATE OF MICHIGAN

COURT OF APPEALS

BYRON STOVER,

Plaintiff-Appellant,

-v- No. 95236

AUTO CLUB INSURANCE ASSOCIATION, a Michigan corporation, and GENERAL ACCIDENT INSURANCE COMPANY, a foreign corporation,

Defendants-Appellees.

BEFORE: Sawyer, P.J., and J.B. Sullivan and E.M. Thomas*, JJ.

PER CURIAM

Plaintiff Byron Stover appeals of right from a September 9, 1986 order of the Kalamazoo Circuit Court granting summary disposition in favor of defendants Auto Club Insurance Association and General Accident Insurance Company. We affirm the order of the circuit court.

On November 30, 1983, plaintiff was operating his employer's Fiat-Allis front-end loader on private property owned by Upjohn Company when he was struck broadside by a train. At the time of the accident, plaintiff's employer had no-fault insurance coverage with defendant General Accident Insurance Company, and automobile insurance with defendant Auto Club Insurance Association. Plaintiff's claims to both defendants for wage loss and medical benefits under MCL 500.3105; MSA 24.13105 were denied.

Plaintiff filed suit against both insurers on March 21, 1985, alleging that since the front-end loader was a motor vehicle under MCL 500.3101(2)(c); MSA 24.13101(2)(c), he was entitled to no-fault benefits. Both defendants filed motions for summary disposition, disputing plaintiff's claim that a front-end loader is a motor vehicle for purposes of the no-fault act. The circuit court ruled that the front-end loader was not a motor vehicle and granted defendants' motions. Plaintiff now appeals.

*Recorder's Court judge, sitting on the Court of Appeals by assignment.

The sole issue on appeal is whether the front-end loader is a motor vehicle under Michigan's no-fault act. MCL 500.3101(2)(c); MSA 24.13101(2)(c) provides:

"'Motor vehicle' means a vehicle, including a trailer, operated or designed for operation upon a public highway by power other than muscular power which has more than 2 wheels."

Our courts have interpreted this statute to define a motor vehicle as a machine-powered vehicle with more than two wheels which, at the time of the accident, is either (1) operated upon a public highway or (2) designed primarily for operation upon a public highway. Bialochowski v Cross Concrete Pumping Co, 428 Mich 219, 228; 407 NW2d 355 (1987); McFadden v Allstate Ins Co, 155 Mich App 266, 272; 399 NW2d 58 (1986). In the instant case, the front-end loader fails the first test for a motor vehicle because it was being operated on private property at the time of the accident. Moreover, the front-end loader was not primarily designed for operation on a public highway. The circuit court found that the front-end loader could only operate on a public highway at low speeds, and that its primary purposes were for digging, lifting and spreading connected with construction work. The circuit court further noted that the front-end loader's maneuverability features, which were designed for tight spaces on a construction site, could be a hindrance on the highway. The loader's limited capacity for operation on a public highway does not invalidate the circuit court's determination that the machine was not designed primarily for use on a public highway. See Ebernickel v State Farm Mutual Auto Ins Co, 141 Mich App 729, 731; 367 NW2d 444 (1985).

Affirmed.

/s/ David H. Sawyer
/s/ Joseph B. Sullivan
/s/ Edward M. Thomas