STATE OF MICHIGAN

COURT OF APPEALS

KEN COLOSKY,

Plaintiff-Appellant,

-v- No. 93512

ROYAL INSURANCE COMPANY OF AMERICA,

Defendant-Appellee.

BEFORE: R.J. Danhof, C.J., E.A. Weaver and J.M. Batzer*, JJ.

PER CURIAM

Plaintiff appeals by right from an order of the Oakland Circuit Court granting defendant's motion for summary disposition on the ground that plaintiff was not entitled to no-fault benefits because he was "doing mechanical work" within the meaning of MCL 500.3106(2); MSA 24.13106(2) when he suffered injury while inspecting the radiator fluid level of a semi-tractor-trailer. We affirm.

The facts giving rise to the instant action are not in dispute. On May 21, 1984, plaintiff reported for work at the Truck & Bus Division of General Motors Corporation where he is employed as a semi-tractor-trailer driver. Because of mechanical difficulties with his regular tractor, plaintiff was assigned another. Before leaving the General Motors grounds, plaintiff, as required, checked the engine oil and coolant levels of the replacement rig. He found the fluid levels to be adequate. He then started the rig, only to have it stall repeatedly. Plaintiff drove the tractor a short distance to the repair area, where he alighted from the tractor, opened the hood, climbed onto the tractor, placing one foot on the tractor's tire and the other on its frame, and rechecked the radiator fluid level. While doing so, plaintiff slipped, fell and suffered injury.

As a result of his injury, plaintiff sought and collected workers' compensation benefits from General Motors. He also filed

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

a claim for benefits under a no-fault automobile policy issued by defendant to General Motors. Defendant denied plaintiff's claim because plaintiff's injury occurred during the course of his employment while he was "doing mechanical work" and, according to defendant, was barred by MCL 500.3106(2); MSA 24.13106(2) and because plaintiff was not an "occupant" in his employer's vehicle within the meaning of MCL 500.3114(3); MSA 24.13114(3) and, according to defendant, was required to file his claim with his own insurance carrier.

Thereafter, plaintiff filed suit against defendant, in response to which defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(10). The trial court granted defendant's motion, opining: "In the case at bar, the Court finds that checking the water level in the engine is an activity done for the purpose of maintaining the vehicle, and is at least preparatory to doing repair work."

A motion for summary disposition premised upon MCR 2.116(C)(10) requires the trial court to review the entire record to determine whether the nonmoving party has discovered facts to support the claim or defense. Consequently, the trial court must look beyond the pleadings and consider affidavits, depositions and interrogatories. In reviewing this evidentiary record, the trial court must give the benefit of any reasonable doubt to the nonmoving party in deciding whether a genuine issue as to a material fact exists. Rizzo v Kretschmer, 389 Mich 363, 371-372; 207 NW2d 316 (1973). Before a judgment may be granted, the trial court must be satisfied that it is impossible for the claim asserted to be supported by the evidence at trial. Huff v Ford Motor Co., 127 Mich App 287, 293; 338 NW2d 387 (1983).

The question presented in the instant case is whether the trial court erred in finding that plaintiff's injury, which indisputably arose in the course of plaintiff's employment and for which workers' compensation benefits were paid, occurred

while plaintiff was "doing mechanical work on a vehicle. . . ." MCL 500.3106(2); MSA 24.13106(2). The statutory provision in effect at the time the incident occurred read as follows:

> "(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 paragraph was added to the parked vehicle provision of the no-fault act by way of amendment to eliminate duplication of benefits for work-related injuries except where the actual driving or operation of a motor vehicle is involved. Bell v F J Boutell Driveaway Co, 141 Mich App 802, 809-810; 369 NW2d 231 (1985). Accordingly, the language of MCL 500.3106(2); MSA 24.13106(2), including the phrase "doing mechanical work," has been broadly interpreted to give effect to this legislative intent. Bell, supra; Dowling v Auto Club Casualty Ins Co, 147 Mich App 482, 485-486; 383 NW2d 233 (1985).

In Marshall v Roadway Express, Inc, 146 Mich App 753, 757; 381 NW2d 422 (1985), a panel of this Court defined "mechanical work" as that work normally done by a mechanic for the purpose of maintaining or repairing a vehicle. The panel also described "mechanical work" as any activity that is routinely performed in the vehicle's operation and that is designed to maintain or repair the vehicle. Id. In MacDonald v Michigan Mutual Ins Co, 155 Mich App 650, 400 NW2d 305 (1986), a panel of this Court concluded that an individual is doing mechanical work within the meaning of the statute when he is engaged in repairing a defect, performing preventive maintenance or making an adjustment to alter operating characteristics. See also Cobb v Liberty Mutual Ins Co, 164 Mich App 66, 73; ____ NW2d ____ (1987).

Applying the definitions set forth in Marshall, supra, and MacDonald, supra, we do not believe that plaintiff is entitled

to no-fault benefits. He sustained injury while checking the radiator fluid level of his tractor-trailer. Such an act is routinely performed in the operation of a motor vehicle. In addition, it was in this instance, at least, undertaken for the purpose of maintaining the same.[1] Therefore, we conclude that plaintiff was doing "mechanical work" within the meaning of the statute at the time of his injury.

Plaintiff would have us reach an antithetical conclusion because he was not a mechanic and he was not permitted to do any mechanical repairs pursuant to union and employer policies. We decline plaintiff's invitation to hold that an injured party's job classification is dispositive as to whether he was engaged in mechanical work at the time of injury. Instead, we find that the nature of the activity engaged in at the time of the injury is controlling. See Bell, supra; Marshall, supra.

Plaintiff also invites this Court to determine whether he was an "occupant" of his employer's vehicle at the time of injury within the meaning of MCL 500.3114(3); MSA 24.13114(3). To accept plaintiff's invitation necessarily presupposes the conclusion that plaintiff might be entitled to receive no-fault benefits. Having concluded otherwise, we decline plaintiff's invitation.

In light of the foregoing, we conclude that the trial court correctly determined that plaintiff was barred from collecting no-fault benefits by MCL 500.3106(2); MSA 24.13106(2). Summary disposition was proper.

Affirmed.

/s/ Robert J. Danhof
/s/ Elizabeth A. Weaver
/s/ James M. Batzer

---

[1] We do not opine that an under the hood check of fluid levels is always under all circumstances maintenance that constitutes mechanical work within the meaning of the statute. The fact that there were mechanical problems, the rig never left company grounds, and the accident occurred in the repair area are important circumstances in the result we reach.