

STATE OF MICHIGAN
COURT OF APPEALS

JACKIE LEE SMITH,

Plaintiff-Appellee,

-vs-

No. 100430

DETROIT AUTOMOBILE INTER-INSURANCE
EXCHANGE and AUTO CLUB INSURANCE
ASSOCIATION,

Defendants-Appellants.

BEFORE: R. S. Gribbs, P.J.; Beasley and G. A. Drain,* JJ.

PER CURIAM

Defendant, Auto Club Insurance Association (ACIA), appeals as of right from a judgment in the sum of \$82,500 awarded plaintiff, Jackie Lee Smith, against defendant on April 14, 1987.

This case arose from an April 16, 1984, collision between plaintiff's motorcycle and an automobile insured by defendant. At around 12:40 p.m. that day, plaintiff was driving his motorcycle and Rose Marie Besant was driving a car insured by ACIA. Plaintiff's motorcycle and the Besant car were stopped side-by-side at a traffic signal. When the light changed to green, Besant's car moved forward, but plaintiff's motorcycle stalled. Plaintiff restarted his motorcycle, but the throttle stuck and the cycle took off, out of control, swerving toward the Besant car in the adjacent lane. Plaintiff extended his leg and pushed off from the left rear tire of the car. The motorcycle then veered in the opposite direction at full throttle. At this point, plaintiff was hanging onto the handlebars, with his feet off the motorcycle's foot pegs. The motorcycle went up over a curb and hit a brick wall. Plaintiff sustained multiple injuries.

Plaintiff brought the instant breach of contract action against defendant, seeking no-fault personal injury protection (PIP) benefits. The single issue on which the parties disagreed

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

was whether there existed a sufficient causal relationship between the Besant automobile and plaintiff's injuries so that, for no-fault benefit purposes, the Besant vehicle could be deemed "involved" and plaintiff's injuries could be deemed to have "arisen out of" the operation of a motor vehicle. In a companion case,¹ the trial court granted summary disposition based upon a ruling that there was a sufficient causal connection. In the within case, the lower court reached the same conclusion based upon identical stipulated facts. We now consider whether the trial court was correct in determining that there was a sufficient causal connection between the operation of the Besant automobile and plaintiff's injuries to require PIP benefit payments under the no-fault insurance act.

MCL 500.3105; MSA 24.13105 provides:

"(1) Under personal protection insurance an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter.

"(2) Personal protection insurance benefits are due under this chapter without regard to fault."

MCL 500.3114(5); MSA 24.13114(5) provides:

"A person suffering accidental bodily injury arising from a motor vehicle accident which shows evidence of the involvement of a motor vehicle while an operator or passenger of a motorcycle shall claim personal protection insurance benefits from insurers in the following order of priority:

"(a) The insurer of the owner or registrant of the motor vehicle involved in the accident."

MCL 500.3101(2)(d); MSA 24.13101(2)(iv) defines motor vehicle accident:

"'Motor vehicle accident' means a loss involving the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle regardless of whether the accident also involves the ownership, operation, maintenance, or use of a motorcycle as a motorcycle."

In Brasher v Auto Club Ins. Assoc.,² the court stated that, in order for a vehicle to be involved in an accident, there must be some activity with respect to the vehicle which somehow contributes to the happening of the accident. There, the court held that a car was not involved in an accident when, while stopped at a red light, it was struck by a second vehicle which, in a separate collision, had caromed off a third vehicle.

In Bradley v DAIE,³ the court held that a car caused injuries to a motorcyclist when a motorcycle struck a parked pickup truck. The motorcycle and the car were travelling in adjoining lanes when the cyclist noticed the parked truck. The court held that the collision occurred because the position of the car caused the motorcyclist to react in a manner that led to the accident.

Here, plaintiff actually collided with the moving Besant automobile. When plaintiff lost control of his motorcycle, he used his leg to push off the spinning tire of the Besant vehicle. This constituted sufficient involvement by the automobile to hold its insurer liable under the language of the statute for plaintiff's injuries. Unlike Brasher, the within automobile was moving. Unlike Bradley, a case where the court found automobile involvement sufficient for liability, the within automobile physically collided with plaintiff.

While it is true that Besant did nothing more than drive her automobile lawfully down her lane of traffic, insurer liability for personal protection insurance benefits does not require fault by the insured nor traditional proximate cause elements.⁴ For a motor vehicle accident in which a motorcyclist suffers bodily injuries, insurer liability results where "evidence of the involvement of a motor vehicle" exists.⁵ The words chosen by the legislature indicate that it intended automobile no-fault insurers to have broad PIP liability to motorcyclists injured in motor vehicle accidents.

Accordingly, we affirm the judgment of the trial court.

AFFIRMED.

/s/ Roman S. Gribbs
/s/ William R. Beasley
/s/ Gershwin A. Drain

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- 1 Michigan Department of Social Services v ACIA, Docket No. 93421, currently on appeal to this court.
 - 2 152 Mich App 544, 546; 393 NW2d 881 (1986).
 - 3 130 Mich App 34; 343 NW2d 506 (1983).
 - 4 MCL 500.3105; MSA 24.13105.
 - 5 MCL 500.3114(5); MSA 24.13114(5).