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STATE OF MICHIGAN
COURT OF APPEALS

SUSAN KREIGHBAUM, individually and
as next friend of HOLLI KREIGHBAUM,

AUGUST 15, 1988

Plaintiff-Appellant,

v

No. 97329

AUTOMOBILE CLUB INSURANCE ASSOCIATION,

Defendant-Appellee.

Before: Cynar, P.J., and Weaver and J.H. Hausner,* JJ.

WEAVER, J.

Plaintiff appeals as of right from an order of the Cass Circuit Court granting summary disposition in favor of defendant. We reverse.

I

When plaintiff and her two-year-old daughter were driving on a road next to a field on the opening day of deer hunting season, hunters fired their rifles at a buck near the road, causing the animal to run onto the road. Plaintiff upon seeing the deer slowed her car to avoid a collision, and when the hunters again fired their rifles at the deer, stray bullets passed through the door of plaintiff's car, severely injuring her left leg.

Plaintiff sued the defendant insurer under MCL 500. 3105(1); MSA 24.13105(1), seeking no-fault benefit payments for her own injuries as well as for psychological injuries suffered by her daughter upon witnessing the incident. The circuit court granted summary disposition in favor of defendant insurer, finding that because plaintiff's injuries did not arise out of the "use" of a motor vehicle she was not entitled to first-party no-fault insurance benefits. Plaintiff appeals as of right.

II

Plaintiff first argues that because her injuries arose out of the use of a motor vehicle within the meaning of the no-fault act, the circuit court erred when granting summary disposition as a matter of law in favor of defendant.

We agree. MCL 500.3105(1); MSA 24.13105(1) determines insurer liability for "accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle." Although plaintiff's injuries needed to be directly related to the involvement of her car in its character as a motor vehicle, the car did not need to be the proximate cause of her injuries so long as there was more than an "incidental, fortuitous or but for" causal connection between plaintiff's injuries and the ownership, maintenance or use of her vehicle. Kangas v Aetna Casualty & Surety Co, 64 Mich App 1, 17; 235 NW2d 42 (1975), lv den 395 Mich 787 (1975).

This case is similar to two recent Court of Appeals cases, where plaintiffs recovered no-fault benefits based on injuries caused by rocks or other objects being thrown at or dropped on cars, intentionally or otherwise, as the cars proceeded down the expressway. Mann v DAIE, 111 Mich App 637, 639-640; 314 NW2d 719 (1981), lv den 424 Mich 903 (1982); Saunders v DAIE, 123 Mich App 570, 572; 332 NW2d 613 (1983). Here, plaintiff was driving her car down a rural road on the opening day of deer hunting season. When plaintiff, behaving as any prudent driver would, slowed her car to avoid a collision when a deer ran onto

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

the road, plaintiff's car caused her to be put in a position where she could be hit by the hunter's gunfire. Hence the causal connection between plaintiff's injuries and the ownership, maintenance or use of her vehicle was not merely fortuitous or incidental, and the trial court erred when prohibiting plaintiff's recovery under the no-fault act by granting summary disposition in favor of defendant.

III

Plaintiff also argues that the defendant insurer's unreasonable delay in paying no-fault benefits entitles her to receive a twelve percent statutory interest penalty payment under MCL 500.3142(3); MSA 24.13142(3), attorney fees under MCL 500.3148(1); MSA 24.13148(1), and judgment interest under MCL 600.6013; MSA 27A.6013. See Wood v Detroit Auto Inter-Ins Exchange, 413 Mich 573, 589; 321 NW2d 653 (1982).

We are unpersuaded by this argument. The existence of a legitimate issue involving interpretation of the no-fault statute at MCL 500.3105(1); MSA 24.13105(1) made it reasonable for the defendant insurer to delay payment pending resolution of the question. Joiner v Michigan Mutual Ins Co, 127 Mich App 464, 479; 357 NW2d 875 (1984), lv den 422 Mich 920 (1985).

Reversed.

/s/ Walter P. Cynar
/s/ Elizabeth A. Weaver
/s/ John H. Hausner