S T A T E   O F   M I C H I G A N

C O U R T   O F   A P P E A L S

GINA RENEE CHARLES, Personal Representative of the Estate of MICHAEL J. ROY, deceased,

Plaintiff-Appellant,

v

No. 100941

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellee.

Before: Gribbs, P.J., and Shepherd and J.R. Cooper,* JJ.

PER CURIAM

Plaintiff appeals from the grant of summary disposition to defendant. We affirm.

Plaintiff's decedent, Michael Roy, was injured when three individuals beat him and stole his automobile. His automobile was insured under a policy issued by defendant. One of the decedent's assailants, Theodoric Mutry, was deposed and stated that he and his companions set out on the date in question to "rob people." They noticed a "kind of new" Buick, and began searching for its owner. They found decedent, hit him over the head, and stole his money and car keys. They then drove off in the car.

Michael Roy gave notice to defendant that he was seeking first party personal injury protection (PIP) benefits under his policy. Defendant rejected his claim. Michael Roy died of his injuries during the pendency of this litigation.

The trial court granted defendant's motion to dismiss under MCR 2.116(C)(8). A motion to dismiss for failure to state a claim upon which relief may be granted is to be decided on the pleadings alone. The motion tests the legal basis of the complaint, not whether it can be factually supported. All allegations are to be accepted as true, and unless the claim is so clearly unenforceable as a matter of law that no factual

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

development can possibly justify a right to recovery, the motion should be denied. Beaudin v Michigan Bell Telephone Co, 157 Mich App 185, 187; 403 NW2d 76 (1986).

The scope of coverage under the no fault act is defined in MCL 500.3105(1); MSA 24.13105(1), which provides:

> "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."

In numerous assault cases where plaintiffs have claimed no fault benefits, the courts have found that an assault upon the driver or occupant of a car is generally not the type of conduct which is reasonably identifiable with the use of a motor vehicle as a motor vehicle. Thornton v Allstate Ins Co, 425 Mich 643; 391 NW2d 320 (1986); O'Key v State Farm Mutual Automobile Ins Co, 89 Mich App 526; 280 NW2d 583 (1979), lv den 406 Mich 1014 (1979). However, when an assault is directed at the vehicle itself, rather than the driver, this Court has found that the causal relationship is sufficient for liability. Jones v Allstate Ins Co, 161 Mich App 450; 411 NW2d 457 (1987). In this case, the assailants beat and robbed decedent while he was in a park several feet away from his vehicle. The assailants searched decedent's body for money and keys and stole decedent's car. The express purpose of the assailants on that date was to rob people. The assault was directed at decedent, not his automobile. Plaintiff's complaint fails to allege facts which entitled decedent to no fault benefits, therefore the trial court properly dismissed plaintiff's complaint as failing to state a claim upon which relief can be granted.

Affirmed.

/s/ Roman S. Gribbs
/s/ John H. Shepherd
/s/ Jessica R. Cooper