STATE OF MICHIGAN

COURT OF APPEALS

THOMAS MADAY,

Plaintiff-Appellee,

v

FIREMAN'S FUND INSURANCE COMPANY, a Foreign Insurance Company,

Defendant-Appellant.

No. 98343

Before: Michael J. Kelly, P.J., and Doctoroff and Cavanagh, JJ.

PER CURIAM.

Defendant Fireman's Fund Insurance Company appeals by leave granted from an order by the Wayne Circuit Court denying defendant's motion for summary disposition in this no-fault automobile insurance controversy. We reverse.

The following facts are not in dispute. Plaintiff Thomas Maday was employed as a carpenter and a part-time foreman at a plant owned by defendant's insured. On February 20, 1984, plaintiff was assisting in the loading of a truck in the course of his employment. At the time, plaintiff was directing a hi-lo which was loading crates onto the truck. The truck was parked. While plaintiff was standing inside the truck, a crate slipped from the hi-lo, pinning plaintiff's hand against another crate. Plaintiff has received worker's compensation benefits for his injury. This litigation concerns plaintiff's entitlement to coordinated benefits under the no-fault act, MCL 500.3101, et seq; MSA 24.13101, et seq.

Defendant, the insurer of the parked truck, moved for summary disposition on the grounds that plaintiff was barred from recovery pursuant to MCL 500.3106(2); MSA 24.13106(2):[1]

> "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." (emphasis added)

In this case, there is no dispute that plaintiff's injury occurred during the course of his employment, that plaintiff was in a parked motor vehicle, that plaintiff was loading and unloading crates from a hi-lo and that plaintiff has collected worker's compensation benefits for his injury. The dispute arises as to whether plaintiff's injury "arose from the use or operation of another vehicle." A further dispute arises as to whether "vehicle" is synonymous with "motor vehicle" as used elsewhere in the statute and in the no-fault act. Defendant contends that the two terms are synonymous and that a hi-lo is not a motor vehicle. We agree.

In Logan v Commercial Carriers, Inc, 152 Mich App 701; 394 NW2d 470 (1986), this Court found the term "vehicle", for purposes of §3106(2), synonymous with "motor vehicle". This Court looked to the definition of "motor vehicle" provided in §3101(2)(c) of the no-fault act which states, in part, that a "'motor vehicle' means a vehicle...operated or designed for operation upon a public highway by power other than muscular power which has more than two wheels..." (emphasis added). Id, pp 703-704. Further, in Pioneer State Mutual Ins Co v Allstate Ins Co, 417 Mich 590; 339 NW2d 470 (1983), our Supreme Court acknowledged, in dicta, that the Legislature has used the terms "vehicle" and "motor vehicle" interchangeably throughout the no-fault act. Id, p 595.

We also look to the definition of "vehicle", as contained in the Michigan Motor Vehicle Code, MCL 257.79; MSA 9.1879, which states "every device...which...may be transported or drawn upon a highway..." See Jones v Cloverdale Equipment Co, 165 Mich App 511, 514; 419 NW2d 11 (1987), and Calladine v Hyster

Co, 155 Mich App 175, 180; 399 NW2d 404 (1986). Most importantly, however, our interpretation of the statute at hand confirms that the terms are interchangeable. In particular, we note the use of the term "vehicle" in §3106(1)(a) in referring to the preceding phrase "parked vehicle as a motor vehicle" in §3106(1). We conclude that the trial court erred in its reading of the statute.

We agree also with defendant that this case presents precisely the situation the legislature intended to exclude - a work-related injury unrelated to the use or operation of another motor vehicle. The intent of §3106(2), as amended in 1981 PA 209, was to alleviate the fortuitous circumstance where injured truckline industry workers who happened to be loading or unloading freight away from a vehicle were entitled to collect only worker's compensation benefits, while similarly situated employees while loading or unloading a vehicle could receive a double recovery. See Bell v F J Boutell Driveaway Co, 141 Mich App 802, 810; 369 NW2d 231 (1985). This Court has consistently found no-fault benefits unavailable under §3106(2) in cases involving injuries arising from acts of loading or unloading parked vehicles. See Stanley v State Automobile Mutual Ins Co, 160 Mich App 434; 408 NW2d 467 (1987); Crawford v Allstate Ins Co, 160 Mich App 182; 407 NW2d 618 (1987); MacDonald v Michigan Mutual Ins Co, 155 Mich App 650; 400 NW2d 305 (1986); Logan v Commercial Carriers, Inc, 152 Mich App 701; 394 NW2d 470 (1986).

In the present case, plaintiff's injury did not result from the actual use or operation of another vehicle. Logan, supra. Therefore, plaintiff is not entitled to benefits under the no-fault act. The trial court erred by denying defendant's motion for summary disposition. We reverse and remand for entry of summary disposition in favor of defendant. We do not retain jurisdiction.

Reversed.

/s/ Michael J. Kelly
/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh

[1] MCL 500.3106(2); MSA 24.13106(2) has been amended, effective June 1, 1987, and now provides:

> "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, or under a similar law of another state or under a similar federal law, are available to an employee who sustains the injury in the course of his or her employment while doing either of the following:
>
> (a) Loading, unloading, or doing mechanical work on a vehicle unless the injury arose from the use or operation of another vehicle. As used in this subdivision, "another vehicle" does not include a motor vehicle being loaded on, unloaded from, or secured to, as cargo or freight, a motor vehicle.
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> (b) Entering into or alighting from the vehicle unless the injury was sustained while entering into or alighting from the vehicle immediately after the vehicle became disabled. This subdivision shall not apply if the injury arose from the use or operation of another vehicle. As used in this subdivision, "another vehicle" does not include a motor vehicle being loaded on, unloaded from or secured to, as cargo or freight, a motor vehicle."