STATE OF MICHIGAN

COURT OF APPEALS

MARGARET TRASTI,

Plaintiff-Appellant,

v

CITIZENS INSURANCE COMPANY OF AMERICA and EMPLOYERS INSURANCE COMPANY OF WAUSAU,

Defendants-Appellees.

November 7, 1989

FOR PUBLICATION

No. 115552

Before: Gillis, P.J., and Sullivan and Cavanagh, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting defendants' motion for summary disposition. We reverse.

Plaintiff's husband was employed as a mechanic by Hocking Construction Company. Another Hocking employee drove his company truck to the repair shop and told plaintiff's husband that it was not running properly. Thereafter, plaintiff's husband went out to the truck and got underneath it to determine the source of the problem. Subsequently, the coemployee, unaware that plaintiff's husband was under the truck, started the truck and ran over him. Plaintiff's husband later died from the injuries he had suffered.

Plaintiff sued Citizens Insurance Company of America, which was her no-fault insurer, and Employers Insurance Company of Wausau, which was Hocking's no-fault insurer, claiming that she was entitled to no-fault benefits. Defendants moved for summary disposition, claiming that MCL 500.3106(2)(a); MSA 24.13106(2)(a) applied.

MCL 500.3106(2)(a); MSA 24.13106(2)(a) 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 . . . .

Defendants claimed that when plaintiff's husband went under the vehicle it was parked and his injury arose in the course of his employment of determining what mechanical work was required. Hence, defendants argued that the subsequent operation of the vehicle was irrelevant in light of the Legislature's intent to eliminate duplicate benefits for work-related injuries.

In opposition, plaintiff argued that her husband's injuries did not result from a parked vehicle because the vehicle was being used as a motor vehicle when the accident occurred.

The circuit court agreed with defendants and, therefore, did not reach the issue of priority raised by defendant Employers.

We agree with plaintiff. See and compare Miller v Auto-Owners Ins Co, 411 Mich 633; 309 NW2d 544 (1981); Stanley v State Automobile Mutual Ins Co, 160 Mich App 434; 408 NW2d 467 (1987). We need not address the priority issue which was not resolved by the circuit court.

Reversed.

/s/ John H. Gillis
/s/ Joseph B. Sullivan
/s/ Mark J. Cavanagh