STATE OF MICHIGAN

COURT OF APPEALS

RICHARD ALLEN,

Plaintiff-Appellant,

v No. 109572

CITY OF DETROIT,

Defendant-Appellee.

Before: MacKenzie, P.J., and Marilyn Kelly and T.M. Burns,* JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition to defendant. MCR 2.116(C)(10). We affirm.

Plaintiff was employed by the defendant, City of Detroit, as a garbage collector. On September 15, 1985, he injured his back when he stepped out of a City-owned truck, slipped and fell. The City paid plaintiff worker's compensation and no-fault benefits for the injury. He returned to work on April 16, 1986, with no restrictions.

On April 16 or 24, 1986, plaintiff claimed he reinjured his back when he attempted to lift the hood of the garbage truck to check the oil. All City garbage truck drivers were required to check the oil level before beginning their collection routes. At the time of the injury, plaintiff was standing in front of the parked truck. The truck's engine was running. He has not worked since April 24, 1986.

Plaintiff filed this complaint after the City refused to pay no-fault protection benefits. He alleged that the April incident aggravated his condition. He sought work loss and replacement service benefits.

The City moved for summary disposition on two different theories. It claimed that plaintiff was injured in the course of

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

employment while performing mechanical work. Therefore, he was entitled to receive worker's compensation benefits and precluded from receiving no-fault benefits. MCL 500.3106(2); MSA 24.13106(2). Alternatively, the City argued that plaintiff was not an occupant of the truck at the time of the injury. Thus his personal insurer not his employer was in the highest priority to pay him no-fault benefits. The court granted summary disposition on both theories.

MCL 500.3106(2); MSA 24.13106(2) provides in part:

> (2) 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 Complied 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.

There is no dispute that the truck was parked and plaintiff was injured during the course of employment. The question is whether checking the oil is preventative maintenance. If so, then plaintiff was "doing mechanical work" and is not entitled to no-fault benefits.

Section 3106(2) was intended to eliminate duplicative recovery for work-related injuries except where actual driving or operation of a motor vehicle is involved. Stanley v State Automobile Mutual Ins Co, 160 Mich App 434, 437; 408 NW2d 467 (1987). Therefore, the phrase "doing mechanical work" has been interpreted broadly so as to give effect to this legislative intent. Dowling v Auto Club Casualty Ins Co, 147 Mich App 482, 485-486 383 NW2d 233 (1985).

Mechanical work is defined as the type of work normally done by a mechanic for the purpose of maintaining or repairing the vehicle. Marshall v Roadway Express, Inc, 146 Mich App 753, 757; 381 NW2d 422 (1985). It includes repairing defects, performing preventative maintenance, or making adjustments to

alter operating characteristics. MacDonald v Michigan Mutual Ins Co, 155 Mich App 650, 656; 400 NW2d 305 (1986), lv den 426 Mich 852 (1986). The focus is not on the employee's job title or classification but rather on the type of activity engaged in at the time of the injury. See e.g. Stanley, supra, Cobb v Liberty Mutual Ins Co, 164 Mich App 66; 416 NW2d 328 (1987).

Plaintiff injured his back while lifting the hood of the truck to check the engine's oil level. It is common knowledge that without the proper oil level and periodic change of oil, an engine will not function properly and may be damaged. As such, the process of checking the oil is preventative maintenance. Therefore plaintiff was doing mechanical work at the time of the injury, and he is limited to workers' compensation benefits. The lower court properly granted summary disposition.

Our resolution of this issue makes it unnecessary to address plaintiff's remaining issues.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Marilyn Kelly
/s/ Thomas M. Burns