STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM GRADY,

Plaintiff-Appellant,

v No. 113013

CITY OF DETROIT,

Defendant-Appellee.

Before: Griffin, P.J., and Reilly and R.B. Burns,* JJ.

PER CURIAM.

Plaintiff appeals an October 27, 1988, circuit court order granting summary disposition to defendant pursuant to MCR 2.116(C)(10), on the ground that MCL 500.3106(2); MSA 24.13106(2) precludes plaintiff from receiving no-fault insurance benefits. We affirm.

According to plaintiff's deposition, on May 18, 1987, he was employed as a repair mechanic for the City of Detroit Water and Sewage Department. His duties that day included filling air compressors with diesel fuel. He drove the truck over to the fuel storage area, and filled the tanks on the truck. The tanks remain on the truck and are secured with a rope. After he had filled the tanks, he got off the truck, replaced the hose and shut off the pumps. He then returned to the truck to check the rope securing the tanks. His orders were to always check and make sure that the tanks were secure. He started to get off the truck when his feet slipped, and he fell over the tailgate onto the concrete, suffering back and leg injuries.

There is no dispute that plaintiff's accident occurred in the course of his employment and that he received worker's compensation benefits. The issue is whether he is also entitled to no-fault benefits.

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

At the time of the accident, MCL 500.3106(2); MSA 24.13106(2) provided[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.

Thus, the statute precludes plaintiff from receiving no-fault benefits, in addition to his worker's compensation benefits, if he was engaged in the act of loading or unloading at the time of the accident.

In Bell v F J Boutell Driveaway Co, 141 Mich App 802, 808-811; 369 NW2d 231 (1985), this Court determined that the terms "loading" and "unloading" were to be interpreted broadly. The Bell Court examined the legislative purpose and history of the amendment adding subsection 2 to the statute, 1981 PA 209, and concluded that the Legislature intended to eliminate duplication of benefits (worker's compensation and no-fault) for work-related injuries except where the actual driving or operation of a motor vehicle is involved. Id., p 810. See also Raymond v Commercial Carriers, Inc, 173 Mich App 290, 292-293; 433 NW2d 342 (1988). The question of what type of activity was involved might appropriately be framed in terms of whether the act is more properly considered as part of the delivery process or part of the loading/unloading process. See Cobb v Liberty Mutual Ins Co, 164 Mich App 66, 70; 416 NW2d 328 (1987), citing the dissenting opinion of T.M. Burns, J. in MacDonald v Michigan Mutual Ins Co, 155 Mich App 650, 661; 400 NW2d 305 (1986), lv den 426 Mich 852 (1986).

Plaintiff relies on Cobb, supra, where the plaintiff, an intercity truck driver for United Parcel Service, was injured while decoupling the trailer from the tractor. The Cobb Court

found that he was not involved in the process of loading or unloading. However, in that case the plaintiff had arrived with the load on Saturday when no unloading was to be done. The unloading was to be done by someone else the following Monday. The plaintiff had stated that his job was to haul trailers from city to city, and part of his activity was to attach and decouple trailers. However, he did not load or unload goods. Cobb supra, p 68.

We find the instant case more analogous to Raymond, supra, and Crawford v Allstate Ins Co, 160 Mich App 182; 407 NW2d 618 (1987). In these cases, the plaintiffs were truck drivers hauling automobiles, who had previously loaded the cars onto their trailers. In Crawford, the plaintiff had stopped while still on the employers' grounds to get some coffee, and when he came back to the truck he noticed that the chain securing an automobile was loose, and he was injured when he climbed onto the trailer to tighten it. Crawford, pp 183-184. In Raymond, the plaintiff checked the chains securing the automobiles at a rest stop along his route, and was injured when he climbed up on the trailer to tighten them. Raymond, p 292. In both of these cases, this Court noted that the process of loading entailed more than putting freight onto the trailer. It involved a variety of processes, and necessarily included the requirements of securing the automobiles, Raymond, p 294; Crawford, p 187, and insuring that the chains properly secured the vehicles in place. Raymond, supra.

In the present case, we find that plaintiff's act of insuring that the rope properly secured the fuel tanks in place was a part of the ongoing process of loading. The act would more properly be considered as part of the loading process than the delivery process. Cobb, supra, p 70. Though plaintiff may not have actually had to physically secure the load, as in Crawford and Raymond, the activity of checking that the load was secure

was a part of the loading process. Thus, in considering the evidence presented, we find that it is impossible for plaintiff's claim to be supported at trial because of a deficiency which cannot be overcome, Grochowalski v DAIIE, 171 Mich App 771, 774; 430 NW2d 822 (1988), and determine that the trial court properly granted defendant summary disposition pursuant to MCR 2.116(C)(10).

Affirmed.

/s/ Richard Allen Griffin
/s/ Maureen Pulte Reilly
/s/ Robert B. Burns

[1] 1986 PA 318 amended subsection 2 of MCL 500.3106; MSA 24.1306, effective June 1, 1987, which now provides in pertinent 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 Compiled Laws, 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.