

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

DOROTHY E. McCALLUM,

Plaintiff-Appellant,

v

NATIONAL BEN FRANKLIN INSURANCE COMPANY
OF MICHIGAN, STATE FARM MUTUAL AUTOMOBILE
INSURANCE CO. and RICHARD AUSTIN, Secretary
of State for the State of Michigan, Jointly
and Severally,

Defendants-Appellees.

DEC 9 1986

NO. 86866

Before: D.F. Walsh, P.J., M.J. Kelly and C.W. Simon*, JJ.

Per Curiam

Plaintiff appeals as of right from an order entered August 1, 1985, granting summary disposition in favor of the defendants on the ground that plaintiff failed to state an actionable claim for personal injury protection benefits under Michigan's no-fault act, MCL 500.3101 et seq.; MSA 24.3101 et seq. We affirm.

Plaintiff received serious and permanent injuries after being struck by a motorcycle owned and operated by one George Sparbeck. Because plaintiff was a pedestrian at the time of the accident and because she was struck by a motorcycle rather than an automobile, she is not entitled to personal injury protection benefits under the relevant provisions of the no-fault act. See MCL 500.3101(2); MSA 24.3101(2) and MCL 500.3105; MSA 24.13105. Plaintiff argues that the denial of personal injury protection benefits to pedestrians injured by motorcycles violates the due process and equal protection clauses of the State and Federal Constitutions since such benefits are provided to pedestrians injured by automobiles. This precise issue has been decided against plaintiff in Bishop v Farmers Insurance Exchange, 133 Mich App 327; 349 NW2d 795 (1984), lv den 419 Mich 937 (1984),

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

which relied for its analysis upon Shavers v Attorney General, 402 Mich 554; 267 NW2d 72 (1978). We adopt the analysis in Bishop and apply it to the instant case. While there may be valid policy arguments for awarding personal injury protection benefits to innocent bystanders injured in motorcycle accidents (as opposed to the owners or operators of the motorcycles), the decision to do so is one that must be made by the Michigan Legislature. As currently drafted, the Michigan no-fault act makes a permissible distinction between motorcycles and automobiles for purposes of determining entitlement to personal injury protection benefits, and that distinction extends as well to pedestrians injured by the use of these two different motorized vehicles.

We note that under MCL 500.3103(1); MSA 24.13103(1), the owner of a motorcycle must provide security against liability imposed by law for bodily injury suffered by a person as a result of the use of that motorcycle. The insurance purchased must meet the minimum statutory requirements of \$20,000 per person/\$40,000 per two or more persons, as imposed under MCL 500.3009; MSA 24.13009. MCL 500.3103(2); MSA 24.13103(2), as amended in 1980, effective January 15, 1981, also allows the owner of a motorcycle to purchase first party medical benefits in \$5,000 increments at additional, appropriate premiums. We further note that §3135 of the no-fault act does not bar plaintiff's right to proceed against Sparbeck in tort, since that section applies only to injuries sustained by the use or operation of a motor vehicle, which term does not include motorcycle.

Affirmed.

/s/ Daniel F. Walsh
/s/ Michael J. Kelly
/s/ Charles W. Simon