

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

JAMES A. TARASZKIEWICZ,

Plaintiff-Appellant,

v

No. 113233

DETROIT AUTOMOBILE INTER-INSURANCE
EXCHANGE, a/k/a AUTO CLUB INSURANCE
ASSOCIATION,

Defendant-Appellee.

Before: Gribbs, P.J., and Cavanagh and R.B. Burns,* JJ.

PER CURIAM.

In this action for no-fault benefits, plaintiff appeals by right from an October 31, 1988 order granting summary disposition in favor of defendant based on the provision of MCL 500.3106(2); MSA 24.13106(2), which bars no-fault benefits when workers' disability compensation benefits are available to an employee injured in the course of employment while loading or unloading a vehicle.

We have reviewed the trial court's decision under MCR 2.116(C)(10) rather than MCR 2.116(C)(9), which is decided based on the pleadings alone. MCR 2.116(G)(5), and see Jones v Employers Ins of Wausau, 157 Mich App 345, 349-350; 403 NW2d 130 (1987), lv den 428 Mich 899 (1987). Both parties relied on the same undisputed facts contained in plaintiff's affidavit and deposition excerpt in the trial court.

Those facts showed that plaintiff opened the door to the trailer of his truck to check on items that he believed became loose because the items were "improperly and unsafely stacked." Plaintiff found that the items were loose, and was injured attempting to separate the items and rectify the problem. While it is unknown from the proofs whether plaintiff would have separated the items as preparation for any unloading, we conclude that his activities in attempting to rectify the improper stacking of the items relates at least to the loading process.

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

Plaintiff's activities were part of the "complete operation of loading and unloading." Bell v F J Boutell Driveaway Co, 141 Mich App 802, 809; 369 NW2d 231 (1985). See also Gray v Liberty Mutual Ins Co, 149 Mich App 446; 386 NW2d 210 (1986), lv den 425 Mich 885 (1986); Crawford v Allstate Ins Co, 160 Mich App 182; 407 NW2d 618 (1987). The trial court broadly held that plaintiff's activities in rearranging the items related to the loading and unloading process. Since the trial court reached the correct result, we affirm.

Affirmed.

/s/ Roman S. Gibbs
/s/ Mark J. Cavanagh
/s/ Robert B. Burns