STATE OF MICHIGAN

COURT OF APPEALS

VIRGINIA OMAITS,

Plaintiff-Appellant,

v No. 115372

MIC GENERAL INSURANCE CORPORATION,

Defendant-Appellee.

Before: MacKenzie, P.J., and Sawyer and Doctoroff, JJ.

PER CURIAM.

Plaintiff appeals by right from an order granting summary disposition in favor of defendant, her no-fault automobile insurer, and from an order denying plaintiff's motion for summary disposition. Plaintiff argues that she is entitled to personal injury protection (PIP) benefits under the Michigan No-Fault Act, MCL 500.3100 et seq.; MSA 24.13101 et seq., because her injuries arose out of the maintenance of a motor vehicle. We disagree and affirm.

On February 26, 1986, plaintiff was walking on the sidewalk when she encountered a Dudek Deli Foods truck parked across the sidewalk. The truck had just been washed. Plaintiff stepped into the street to pass the truck. As she stepped back onto the sidewalk, plaintiff fell on ice which had formed as a result of the washing of the truck. Plaintiff suffered a fractured hip from the fall.

Defendant denied plaintiff's application for PIP benefits and plaintiff filed this action. Plaintiff and defendant both filed motions for summary disposition pursuant to MCR 2.116(C)(10). The trial court denied plaintiff's motion and granted defendant's motion, reasoning that plaintiff's injury had not arisen from her maintenance of a motor vehicle and, as such, was not covered under the no-fault act.

A motion for summary disposition may be granted

pursuant to MCR 2.116(C)(10) when, except as to the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to judgment or partial judgment as a matter of law. A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. The court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence available to it. Gruett v Total Petroleum, Inc, 182 Mich App 301, 304; ___ NW2d ___ (1990). Giving the benefit of reasonable doubt to the nonmovant, the court must determine whether a record might be developed which would leave open an issue upon which reasonable minds might differ. Id., p 305.

Plaintiff contends that she is entitled to PIP benefits under her own automobile insurance policy pursuant to MCL 500.3105; MSA 24.13105, and MCL 500.3106; MSA 24.13106.

The threshold issue in any action concerning a claim for benefits under the no-fault act is whether the act was designed to compensate the claimant for the type of injury suffered. Wills v State Farm Ins Co, 178 Mich App 263, 265; 443 NW2d 396 (1989).

The goal of the no-fault insurance system is to provide individuals injured in motor vehicle accidents assured, adequate and prompt reparation for certain economic losses at the lowest cost to the individual and the system. Shavers v Attorney General, 402 Mich 554, 578-570; 267 NW2d 72 (1978), cert den sub nom Allstate Ins Co v Kelley, 442 US 934; 99 S Ct 2869; 61 L Ed 2d 303 (1979). MCL 500.3105(1); MSA 24.13105(1), provides:

> Under personal protection insurance an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle. . .

Recovery under the no-fault act is generally precluded where the vehicle involved is parked at the time the injury occurred. MCL 500.3106(1); MSA 24.13106(1). Engwis v Michigan Mutual Ins Co, 181 Mich App 16, 20; 448 NW2d 731 (1989); Wills, supra, pp 265-266. The reason recovery is precluded is because

injuries involving parked cars normally do not involve the vehicle "as a motor vehicle." Id. However, the act was intended to compensate for injuries which arise out of maintenance of a vehicle without regard to whether the vehicle might be considered parked at the time of injury. Miller v Auto-Owners Ins, 411 Mich 633, 641; 309 NW2d 544 (1981); Yates v Hawkeye Security Ins Co, 157 Mich App 711, 715; 403 NW2d 208 (1987).

In the present case, there is no dispute as to whether washing a vehicle constitutes maintenance. In addition, we note that this Court has held that a motorist's washing of his vehicle constituted "maintenance" within the meaning of the statute. Musall v Golcheff, 174 Mich App 700, 703-704; 436 NW2d 451 (1989), lv den 433 Mich 914 (1989).

To come within the provisions of the no-fault act, plaintiff's injury must have arisen out of maintenance of the vehicle insured by the policy under which plaintiff seeks to recover. See Musall, supra, pp 702-703. Although the vehicle does not have to be the proximate cause of the injury, there must be a causal connection between maintenance of the vehicle and the injury sustained. Harkins v State Farm Mutual Automobile Ins Co, 149 Mich App 98, 100; 385 NW2d 741 (1986), lv den 425 Mich 877 (1986). The causal connection must be more than incidental, fortuitous or but for. Thornton v Allstate Ins Co, 425 Mich 643, 659-660; 391 NW2d 320 (1986); Musall, supra, pp 702-703.

The no-fault act was intended to provide compensation for injuries incurred by persons performing maintenance on a vehicle. Miller, supra, p 639. We conclude that there is no support for a finding that, under the facts of this case, the no-fault act was intended to compensate plaintiff. Plaintiff was not involved in the maintenance of the truck and was not an employee of the owner of the truck. The vehicle insured by the policy under which plaintiff seeks to recover was not involved in her injuries in any way. There is no causal connection between maintenance of that vehicle and plaintiff's injuries.

Furthermore, we note that plaintiff has successfully

pursued other avenues of compensation for her injuries and obtained a settlement in an action against Dudek Deli Foods. To allow plaintiff to recover under the no-fault act would permit a double recovery. The trial court did not err in granting summary disposition to defendant.

Affirmed.

s/Barbara B. MacKenzie
s/David H. Sawyer
s/Martin M. Doctoroff