

STATE OF MICHIGAN  
COURT OF APPEALS

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CYNTHIA and RANDALL BRINKMAN,  
Plaintiffs-Appellants,

v

No. 115533

AMERICAN FELLOWSHIP MUTUAL INSURANCE,  
Defendant-Appellee.

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Before: Michael J. Kelly, P.J., and Holbrook, Jr. and  
Shepherd, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order of the Wayne Circuit Court granting defendant summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff Cynthia Brinkman was injured at the Detroit Grand Prix in June of 1986 when she was struck by an electric flat-bed vehicle being used within the confines of the race course to deliver beverages to concession stands. The vehicle which struck defendant was an electric flat-bed without windshields, doors, turn signals, windows, back-up lights, speedometers, odometers, or gears. It had a 36 volt DC motor and a maximum speed of nine miles per hours. The vehicle was not registered with the Secretary of State and did not bear license plates since it was not designed to be used on public highways.

Plaintiffs filed a claim for benefits with defendant stating the injuries had occurred when plaintiff was struck by a beer truck. Defendant paid plaintiffs approximately \$4400 for lost wages through May 12, 1987, but denied further payments upon learning that plaintiff had not been struck by a motor vehicle.

Plaintiffs raise two issues on appeal. First, plaintiffs argue there was a genuine issue of material fact concerning whether the vehicle involved in the accident fell within the no-fault act's definition of motor vehicle. We disagree.

MCL 500.3101(2)(c); MSA 24.13101(2)(c) states in pertinent part:

"Motor vehicle" means a vehicle, including a trailer, operated or designed for operation upon a public highway by power other than muscular power which has more than two wheels.

In the instant case, the vehicle in question was designed to operate by power other than muscular power and it had more than two wheels, but it was being operated on a sidewalk, which is not a public highway. Therefore, the only question is whether it was "designed for operation upon a public highway." We find that Jones v Employers Ins of Wausau, 157 Mich App 345; 403 NW2d 130 (1987), lv den 428 Mich 899 (1987), is dispositive of the issue.

In Jones, the Court held the a forklift was not a motor vehicle within the meaning of MCL 500.3103(2)(c); MSA 24.13101(2)(c). Id., p 348. The forklift had one seat, no windows or doors, no turn signals, no back-up lights, no headlights, no taillights, and no speedometer or odometer. Id., p 348-349. It had only two gears and was capable of a maximum speed of only fifteen miles per hour. Id., p 349. The electric flat-bed truck in the instant case was identical to the forklift in Jones except that it was capable of only nine miles an hour. See also Ebernickel v State Farm Mutual Automobile Ins Co, 141 Mich App 729; 367 NW2d 444 (1985), lv den 422 Mich 971 (1985)(a high-low was held to be a vehicle not designed for highway use and therefore not a motor vehicle within the ambit of Sec. 3101).

Plaintiffs at bar have not, therefore, raised a genuine issue of material fact sufficient to defeat a motion for summary disposition pursuant to MCR 2.116(C)(10).

Plaintiffs also argue that defendant waived any claim that the flat-bed was not a motor vehicle within the meaning of the act by the fact that it initially paid a portion of plaintiffs' claim. We find plaintiffs' argument to be without merit.

This Court has held that a defendant insurer is not estopped from asserting it owes nothing when the uncompensated insured party files a subsequent legal action. Calhoun v Auto Club Ins Ass'n, 177 Mich App 85, 89; 441 NW2d 54 (1989). It is clear in the case before us that defendant paid the initial claim based on plaintiffs' initial representation that she was struck by a beer truck. Defendant properly discontinued payment when it finally learned that plaintiffs' claim did not comply with the statutory requirements and is not estopped from asserting that fact now. The grant of summary disposition was proper.

Affirmed.

/s/ Michael J. Kelly  
/s/ Donald E. Holbrook, Jr.  
/s/ John H. Shepherd