

STATE OF MICHIGAN
COURT OF APPEALS

JUL 30 1990

HELEN LYDIA SWIRCZEK,

Plaintiff-Appellant,

v

No. 120142

STATE FARM INSURANCE COMPANY,

Defendant-Appellee..

Before: Michael J. Kelly, P.J., and Gillis and Gribbs, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court's grant of defendant's motion for summary disposition. The sole issue concerns whether plaintiff's injuries arose out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle. MCL 500.3105; MSA 24.13105. Plaintiff was injured while attempting to cross a street congested with stop and go traffic. Plaintiff was struck by a motorcycle as she stepped out from in front of a stopped van. The motorcyclist testified by deposition that he would have seen plaintiff in time to avoid hitting her if his view had not been blocked by the van. The parties agree that a motorcycle is not a "motor vehicle" under the Michigan No-Fault Act, MCL 500.3101, MSA 214.13101. We reverse.

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, subject to the provisions of this chapter.

While a motor vehicle need not be the proximate cause of the injury, there must be a causal connection between the injury and the ownership, operation, maintenance of use of the motor vehicle. The causal connection must be "more than incidental, fortuitous or but for". Kangas v Aetna Casualty and

Surety Ins, 64 Mich App 1, 17; 235 NW2d 42 (1975). The injury must be "foreseeably identifiable with the normal use, maintenance and ownership of the vehicle". Id.

Although the van in this case was momentarily stopped, it was "proceeding normally through traffic" given the contested conditions at the time of the accident. Bradley v DAIIE, 130 Mich App 34, 43; 343 NW2d 506 (1983). We believe problems attendant to stop and go traffic are part of the normal perils of driving. Id. Since the injuries here arose from a normal use of a motor vehicle, the trial court erred in granting defendant's motion for summary disposition.

Reversed.

/s/ Michael J. Kelly
/s/ John H. Gillis
/s/ Roman S. Gibbs