STATE OF MICHIGAN

COURT OF APPEALS

EUGENE THUE,

MAY 15 1987

Plaintiff-Appellant,

v No. 95049

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee,

and

R & W SERVICE, INC., CONSOLIDATED RAIL CORPORATION, DEUR'S VENTURE, INC, BOSTON & MAINE CORPORATION, MICHIGAN MUTUAL INSURANCE COMPANY, and NATIONWIDE MUTUAL INSURANCE COMPANY,

Defendants.

BEFORE: E. A. Weaver, P.J., and D. E. Holbrook, Jr. and T. Gillespie*, JJ.

PER CURIAM

Plaintiff appeals by right an order granting defendant State Farm Mutual Automobile Insurance Company's (State Farm),[1] motion for summary disposition, pursuant to MCR 2.116(C)(10). The trial court concluded, as a matter of law, that the injuries plaintiff sustained in a fall from the trailer portion of a semi-tractor-trailer were not accidental bodily injuries arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, MCL 500.3105; MSA 24.13105, since his exit from the trailer was a necessary part of the loading process in which plaintiff had been engaged. Hence, plaintiff was not

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[1] Plaintiff brought suit against defendants R & W Service, Inc., Consolidated Rail Corporation, Deur's Venture, Inc, Boston & Maine Corporation, State Farm, Michigan Mutual Insurance Company, and Nationwide Mutual Insurance Company. Consolidated Rail Corporation and Nationwide were voluntarily dismissed on June 13, 1986. Boston & Maine Corporation, Michigan Mutual, R & W Service and Deur's Venture, were voluntarily dismissed on August 25, 1986.

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

entitled to no-fault personal protection insurance benefits. MCL 500.3106(2); MSA 24.13106(2).

The facts are not in dispute. On November 10, 1983, plaintiff was employed as a truck driver for R & W Service, Inc. Plaintiff had been instructed to pick up a load of freight from a yard in Joliet, Illinois, and return it to Detroit. After the cargo was loaded by a yard worker, plaintiff voluntarily assisted the worker in placing air bags between the pallets of the freight to secure the load. When the worker left to get a camera to photograph the load, plaintiff remained in the back of the trailer talking to other workers. A short while later plaintiff slipped while alighting from the trailer and fell to the ground. He sustained back injuries in the fall. Plaintiff received worker's disability compensation benefits for his injuries.

Plaintiff sought no-fault personal protection benefits from the various defendants in the action, including State Farm, plaintiff's no-fault insurer. Defendant State Farm moved for summary disposition on the ground that the undisputed facts demonstrated that plaintiff's injuries did not arise out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle. The trial court agreed and granted defendant's motion.

On appeal, plaintiff contends that his injuries were sustained while he was alighting from the trailer; that the injuries occurred after the trailer was loaded; and, that in any event, plaintiff did not take part in the loading process. Hence he is entitled to benefits under section 3106(1)(c) and is not precluded from benefits under section 3106(2).

Defendant contends that the term "loading" must be interpreted broadly. According to defendant plaintiff was engaged in loading the vehicle and that his departure from the trailer was a necessary part of concluding the loading process. We agree with defendant's contention.

Section 3106(1) provides that accidental bodily injury does not arise out of the ownership, operation, maintenance or use of a parked vehicle as a motor vehicle unless:

"(c) Except as provided in subsection (2) for an injury sustained in the course of employment while loading, or doing mechanical work on a vehicle, the injury was sustained by a person while occupying, entering into, or alighting from the vehicle."

Subsection (2) provides that where an employee sustains an injury in the course of his or her employment while loading or unloading a vehicle and is paid benefits under the worker's disability compensation act, accidental bodily injury for which personal protection insurance benefits are paid does not arise:

"(2) Accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle if benefits under the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, as amended, being sections 418.101 to 418.941 of the Michigan Compiled Laws, are available to an employee who sustains the injury in the course of his or her employment while loading, unloading, or doing mechanical work on a vehicle unless the injury arose from the use or operation of another vehicle."

In Bell v F J Boutell Driveway Co, 141 Mich App 802; 369 NW2d 231 (1985), which defendant cites in its brief on appeal, a panel of this Court reviewed the legislative purpose and history of section 3106(2) and concluded:

"We conclude that the Legislature intended to eliminate duplication of benefits for work-related injuries except where the actual driving or operation of a motor vehicle is involved. Therefore, we find it appropriate to broadly interpret the terms "loading" and "unloading" in subsection (2) because by doing so the statute further eliminates duplication of benefits for work-related injuries that do not relate to the actual driving or operation of a motor vehicle." Bell, supra, pp 810-811. See also Gray v Liberty Mutual Ins Co, 149 Mich App 446; 386 NW2d 210 (1986).

Although both Bell and Gray deal with acts that were preparatory to the actual loading or unloading, those Courts noted that the terms "loading" and "unloading" must be broadly construed so as to encompass the entire process of loading and unloading.

More on point with the instant case which involved activity which took place after the loading process is Gibbs v United Parcel Service, 155 Mich App 30; ___ NW2d ___ (1986). The plaintiff in Gibbs had just finished stacking packages inside a trailer and was moving toward the back of the trailer to exit when she tripped on a loose package and fell to the floor injuring her knees. Following Bell and Gray, the Gibbs panel stated:

"As in Bell and Gray, we apply a broad definition of the terms "load" and "unload" and hold that, like acts in preparation, acts incidental to the completion of the loading or unloading process fall within the scope of subsection 3106(2). The "complete operation of loading" certainly encompasses walking toward the exit of a trailer once the property is aboard, as the only reason plaintiff was in the trailer in the first place was to load it. It would be logically inconsistent to conclude that while activities preparatory to loading a vehicle should be broadly considered excluded from no-fault coverage, activities immediately after the last box has been stacked should not receive the same broad consideration." Gibbs, supra, p 305.

Plaintiff attempts to avoid this conclusion by arguing that before he fell from the trailer he had not been nor was at all involved in the loading process. However, in his brief on appeal, plaintiff admits that "he voluntarily assisted the loader in placing some air bags between the pelletized freight to secure the load." Hence it is clear that plaintiff was assisting in the loading process and, under Bell, Gray and Gibbs, this process encompassed his exit from the trailer. Accordingly, we conclude that plaintiff's injuries are not compensable under the no-fault act.

Affirmed.

/s/ E. A. Weaver
/s/ D. E. Holbrook, Jr.
/s/ T. Gillespie