STATE OF MICHIGAN

COURT OF APPEALS

OCT 07 1987

OLIVER HOWARD,

Plaintiff-Appellant,

v No. 88884

LIBERTY MUTUAL INSURANCE COMPANY,

Defendant-Appellee.

BEFORE: R. S. Gribbs, P.J., D. E. Holbrook, Jr. and N. J. Lambros,*JJ.

PER CURIAM

Defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(8), alleging that plaintiff's claim for no-fault benefits was barred by the exception to the recovery of no-fault benefits contained in MCL 500.3106(2); MSA 24.13106(2). The trial court granted defendant's motion, finding that the vehicle was parked and that plaintiff was injured while engaged in the final steps of the loading process. Plaintiff appeals as of right.

At the time he was injured, plaintiff was employed as a driver by United Parcel Service (UPS). On May 10, 1984, plaintiff was dispatched from the UPS office in Livonia, Michigan, to the UPS office in Clawson, Michigan, for the purpose of picking up and taking to Livonia two trailers. Through the use of a mechanical dolly, plaintiff attached the two trailers to the tractor he was driving. Prior to plaintiff arriving at the Clawson office, the trailers had been loaded by other UPS employees.

After the trailers had been connected, plaintiff got out of the vehicle with the door left open and the engine running, to hook up the air hoses for the brakes and check all the lights on the tractor and two trailers. Plaintiff then got back in the tractor and with the rear door of the trailer

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

pulled the tractor and trailers about 25 feet from the loading dock to have sufficient room to close the door safely and to allow room to check out the equipment. Plaintiff got out of his vehicle, walked to the back of the rear trailer, and climbed inside to "make sure that they have loaded everything in there correctly". This step is standard company policy. Plaintiff then attempted to pull the rear door down with the cord but the door would not close. After several unsuccessful attempts, plaintiff contacted a supervisor who proceeded to get some wire clippers. The supervisior used the clippers to cut the cable but before plaintiff had an opportunity to get out of the trailer the door came down knocking plaintiff unconscious and pinning his shoulder to the floor injuring it severely.

After the accident, defendant began receiving worker's compensation benefits because he was injured in the course and scope of his employment. Plaintiff also sought no-fault benefits from defendant, who carried both the worker's compensation and no-fault insurance policies for UPS, but no-fault benefits were denied. Plaintiff then filed a complaint in Wayne Circuit Court contending that defendant wrongfully denied his claim for no-fault benefits.

After plaintiff's deposition was taken, both parties moved for summary disposition on the issue of whether plaintiff's claim was barred by MCL 500.3106(2); MSA 24.13106. The trial court granted defendant's motion and denied plaintiff's motion, finding that the vehicle was parked and that plaintiff was injured while completing the final steps in the loading process. On November 14, 1985, an order was entered granting defendant's motion. Plaintiff appeals from this order.

The trial court granted summary judgment based on its finding that plaintiff was barred by an amendment to the parked vehicle provision of the no-fault act, MCL 500.3106; MSA 24.13106 (Section 3106), which provides:

"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." [This section was amended effective June 1, 1987, but that amendment has no relevance to this appeal].

On appeal, plaintiff first disputes the trial court's finding that the vehicle was parked. Plaintiff asserts that it was standing. Plaintiff's claim is meritless. The vehicle in question was not moving. While the engine was running, it was standing still. Thus, it was clearly parked for purposes of the statute. See, generally, MacDonald v Michigan Mutual Ins Co, 155 Mich App 650; ___ NW2d ___ (1986).

In plaintiff's other argument on appeal, he disputes the trial court's finding that plaintiff was engaged in loading the trailer when he was injured. Plaintiff argues that the trailer was already loaded when he arrived and that it was his job just to haul the two loaded trailers back to his home terminal, not to load or unload them.

This Court, for the purpose of furthering legislative intent, has adopted a broad construction of the terms "loading" and "unloading" contained in Section 3106. See Gibbs v UPS, 155 Mich App 300, 303-305; ___ NW2d ___ (1986); Gray v Liberty Mutual, 149 Mich App 446, 449; 386 NW2d 210, lv den 425 Mich 885 (1986); Marshall v Roadway Express, 146 Mich App 753, 756; 381 NW2d 422 (1985); Bell v F J Boutell Driveway Co, 141 Mich App 802, 809; 369 NW2d 231 (1985).

The terms "loading" and "unloading" encompass the complete operation or the entire process of loading or unloading. Gibbs, 303; Bell, 808. This broad interpretation includes activities preparatory to the actual loading or unloading, Gray, 451; Bell, 808-809; and activities incidental to the completion of the loading or unloading process. Gibbs, supra, 305. The

legislative purpose in enacting subsection 3106(2) was to eliminate duplication of benefits for work-related injuries except where the actual driving or operation of a vehicle is involved. Gibbs, 304; Bell, 810.

In his brief, plaintiff relies exclusively on Marshall, supra, for his argument that he was not engaged in loading or unloading when injured.[1] In Marshall, the plaintiff was injured during the process of unhitching the trailer from his trailer rig. Id. 754. He had merely detached the trailer so that he could continue with his work. The Marshall Court reversed the trial court's finding that the plaintiff was engaged in the unloading process and performing mechanical work when the injury occurred since there was no evidence whatsoever that detaching the trailer in any way aided the unloading process. Id. 755-756. We believe that Marshall is distinguishable. A brief discussion of some other cases concerning this issue demonstrates the misguided reliance plaintiff places on Marshall.

In Bell, supra, one of the plaintiffs was injured while he was removing chains which attached the load of cars he was delivering from his trailer. Id. 805. The Bell Court held that such activity was "unloading" within the meaning of Section 3106 since it was undisputed that plaintiff's activities were preparatory to actual unloading or delivery of property. Id. 811.

In Gray, supra, a UPS driver was injured on two occasions while reorganizing some packages in the back of his truck that were scheduled for delivery. The Gray court held that plaintiff's activities when injured were preparatory to the process of unloading and thus plaintiff was not entitled to no-fault benefits pursuant to subsection 3106(2). Id. 450-451.

Finally, in Gibbs, supra, a UPS worker was found to be engaged in the process of unloading when she was injured while exiting from the vehicle after she had finished stacking packages inside the trailer. Id, 305.

The above cases are considerably more analogous to the present situation than Marshall. Here, although the trailer was loaded before plaintiff arrived, the loading process was not complete as is indicated by the fact that plaintiff had to check the load to ensure that everything was loaded properly and then close the trailer door. These steps had to be taken before the loading process could be deemed complete. We find this result unavoidable considering that a broad interpretation of loading and unloading is to be applied. This result is also consistent with the legislative purpose to eliminate duplication of benefits for work-related injuries except where the actual driving or operation of a vehicle is involved.

We conclude that plaintiff's vehicle was parked and that plaintiff was involved in the loading process when he was injured. Accordingly, the trial court correctly ruled that plaintiff was not entitled to no-fault benefits.

Affirmed.

/s/ Roman S. Gribbs
/s/ Donald E. Holbrook, Jr.
/s/ Nicholas J. Lambros

Footnote.

1. At oral argument, plaintiff also claimed support for his decision from the recently decided Michigan Supreme Court case of Bialochowski v Cross Concrete Pumping Co (Docket No. 76180, Dec'd June 1, 1987). Bialochowski involved a different section of the no-fault act. Our reading of Bialochowski does not demonstrate any support for plaintiff's position.