

08852

STATE OF MICHIGAN
COURT OF APPEALS

ARTHUR JONES,

Plaintiff-Appellant,

v

CONTINENTAL CASUALTY COMPANY,

Defendant-Appellee.

January 2, 1991

9:00 a.m.

FOR PUBLICATION

No. 119665

Before: Cynar, P.J., and Gillis and Weaver, JJ.

PER CURIAM.

Plaintiff was injured in a collision between the motorcycle he was operating and a construction vehicle insured by defendant. He filed suit, claiming personal protection benefits under the no-fault insurance act, MCL 500.3105; MSA 24.13105. Plaintiff now appeals by right from an order entered denying his motion for summary disposition and entering judgment in favor of defendant. We reverse and remand.

The trial judge ruled that plaintiff was not entitled to personal protection benefits under § 3105 of the no-fault insurance act, MCL 500.3105; MSA 24.13105, because the vehicle insured by defendant was not a "motor vehicle" within the meaning of the statute. Plaintiff is before us claiming the court erred in ruling the wheel loader was not a "motor vehicle."

The definition of "motor vehicle" in effect at the time of the accident provided:

(c) "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 2 wheels. Motor vehicle does not include a motorcycle or a moped, as defined in section 32b of Act No. 300 of the Public Acts of 1949. MCL 500.3105(2)(c); MSA 24.13105(2)(c). (Amended 1987).

It is undisputed that the vehicle in question has more than two wheels and was operated by other than muscular power. The trial court found it was not included within the definition as it was not designed for operation on the highway, even though it was being operated upon a public highway at the time of the accident.

This ruling is erroneous. Whether a vehicle is operated upon a public highway or designed for operation on the highway are separate considerations under the statute. Apperson v Citizens Mutual Ins Co, 130 Mich App 799; 344 NW2d 813 (1983). When a vehicle was operated on a public highway, that element of the statute is met, and the judge does not need to analyze whether the vehicle was designed for operation upon a public highway. Coffey v State Farm Ins Co, 162 Mich App 264; 412 NW2d 281 (1987).

The trial court also based its ruling on a finding that the wheel loader is exempt from registration under the Michigan Vehicle Code, MCL 257.216(b) and (d); MSA 9.1916(b) and (d), and MCL 257.62; MSA 9.1862. The court concluded that exemption from registration exempts the owner or registrant from maintaining no-fault insurance on the vehicle under MCL 3101(1); MSA 13101(1), which in turn results in exemption from payment of personal protection benefits with respect to accidents involving that vehicle. We again find the trial court erred in its ruling. The registration status of a vehicle is not relevant to whether it is a motor vehicle and thus covered by the no-fault statute. Lee v DAIIE, 412 Mich 505; 315 NW2d 413 (1982).

Defendant attempts to bolster this argument by citing the 1984 amendment to the no-fault insurance act, which expressly excluded from the definition of motor vehicle, "a farm tractor or other implement of husbandry which is not subject to the registration requirements of the Michigan vehicle code . . ." 1984 PA 84, § 1 (effective April 19, 1984). Defendant argues that this amendment supports its contention that the no-fault insurance act does not apply where the vehicle in question is not subject to registration. This argument has no merit. Had the legislature intended to exclude all vehicles exempted from registration, it could have easily done so, instead of exempting only farm implements.

On appeal defendant also argues that plaintiff is not entitled to personal protection benefits from any source because of failure to maintain liability insurance coverage on his motorcycle. MCL 500.3103(1), 3113(b); MSA 13103(1), 13113(b). This issue was raised for the first time on appeal and is therefore not subject to this Court's review. Schanz v New Hampshire Ins Co., 165 Mich App 395; 418 NW2d 478 (1988) lv den 431 Mich 865 (1988).

We reverse the order of the trial court granting defendant judgment and remand for further proceedings.

We do not retain jurisdiction.

Reversed and remanded.

/s/ Walter P. Cynar
/s/ John H. Gillis
/s/ Elizabeth A. Weaver

¹ The vehicle insured by defendant is a "wheel loader" owned by a construction company. It is a four-wheeled, tractor-type machine, powered by a six cylinder diesel engine, equipped with a front bucket. It is designed primarily for construction work, to dig, lift, load and carry. It has a single seat in the cab for the operator, and its maximum speed is under twenty-five miles per hour.