STATE OF MICHIGAN

COURT OF APPEALS

VICTOR BURTON, December 27, 1990

Plaintiff-Appellant,

v No. 118494

MICHIGAN MUTUAL INSURANCE COMPANY,
A Michigan insurance company;
CAPITOL TRUCKING,
a Michigan corporation;
CITY TRUCKING,
a Michigan corporation;
CITY TRANSIT LINES,
a Michigan corporation, jointly and severally,

Defendants-Appellees.

and

AUTO CLUB INSURANCE ASSOCIATION,
a Michigan insurance company,

Defendant.

Before: Griffin, P.J., and Sawyer and Brennan, JJ.

PER CURIAM.

Plaintiff appeals by right from the March 22, 1989, order granting summary disposition to defendant Michigan Mutual Insurance Company (hereinafter Michigan Mutual) and the June 8, 1989, order dismissing defendants Capitol Trucking, City Trucking, and City Transit Lines (hereinafter Trucking Companies). Plaintiff brought this action against defendants seeking no-fault insurance benefits for injuries plaintiff sustained when he fell off the back of his flatbed trailer truck. We affirm.

Plaintiff is employed by defendant Capitol Trucking as a truck driver to haul steel to various businesses on a flatbed trailer. On January 2, 1987, he delivered a load of steel to a customer. After an employee of the customer unloaded the steel, plaintiff began to climb onto the rear of the trailer to inspect it for debris left from the unloading process when his footing slipped and he fell to the ground. Plaintiff injured his back and was required to undergo surgery. During the time plaintiff was unable to work, he received workers' compensation benefits. Plaintiff thereafter filed a complaint in the Wayne Circuit Court against Michigan Mutual (the no-fault insurer of the truck and trailer) and the Trucking Companies (as owners/lessors/lessees of the truck and trailer) seeking personal injury protection (PIP) benefits under the No-Fault Act, MCL 500.3101 et seq; MSA 24.13101 et seq.

Michigan Mutual filed a motion for summary disposition, claiming there was no genuine issue of material fact that pursuant to MCL 500.3106(2); MSA 24.13106(2), plaintiff's injuries did not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle. The trial court granted Michigan Mutual's motion for summary disposition in an order dated March 22, 1989. The court found that plaintiff's activity of attempting to inspect the trailer constituted "unloading" the vehicle within the meaning of the No-Fault Act and therefore, plaintiff was precluded from receiving PIP benefits pursuant to MCL 500.3106(2)(a); MSA 24.13106(2)(a). The Trucking Companies then filed a motion for summary disposition which plaintiff stipulated to.

On appeal, plaintiff claims that the trial court erred in granting summary disposition since he was not injured while unloading his tractor-trailer. Although the order granting summary disposition did not specify under which subsection of MCR 2.116 it was granted, it was presumably granted under MCR 2.116(C)(10). The only issue then is whether there exists a genuine issue of material fact that plaintiff's act of inspecting the trailer for debris after removal of the steel slabs constituted "unloading" within the meaning of § 3106(2)(a) of the No-Fault Act and therefore precluded plaintiff from receiving no-fault benefits. We hold that as a matter of law, no such question of fact exists.

The leading case in interpreting and applying the "loading" and "unloading" terms found in § 3106(2) is Bell v F. J. Boutell Driveaway Co, 141 Mich App 802; 369 NW2d 231 (1985). In that case, plaintiff was injured as he was removing chains to unload his trailer full of cars that he had just delivered to a dealership. In determining that his claim for no-fault benefits was barred by § 3106, this Court held that the terms "loading" and "unloading" must be broadly construed to include activities preparatory to the actual loading or unloading of the carrier and that the terms include the "complete operation" or "entire process" of loading and unloading. Id., pp 808-809. The court held that a broad construction of those terms was necessary to further the legislative intent and purpose in enacting the statute, that is, to eliminate duplication of benefits for work-related injuries except where the actual driving or operation of a motor vehicle is involved. Id., pp 809-810.

The Bell Court's broad interpretation of "loading" and "unloading" has been followed by subsequent panels of this Court in deciding whether an inquiry was compensable under the No-Fault Act. Raymond v Commercial Carriers, Inc., 173 Mich App 290; 433 NW2d 342 (1988); Crawford v Allstate Ins Co, 160 Mich App 182; 407 NW2d 618 (1987); MacDonald v Michigan Mutual Ins Co, 155 Mich App 650, 661; 400 NW2d 305 (1986), lv den 426 Mich 852 (1986); Gibbs v United Parcel Service, 155 Mich App 300; 400 NW2d 313 (1986); Gray v Liberty Mutual Ins Co, 149 Mich App 446; 386 NW2d 210 (1986), lv den 425 Mich 885 (1986). We find that the "unloading" of freight, broadly construed, involves more than the mere removal of freight from the carrier and that there are acts incidental to the actual removal of freight which are part of the unloading process itself. Hence, just as this Court has held that the loading and unloading process does not begin with the actual placement or removal of the freight on or from the carrier, neither does the unloading process end when the freight is removed from the carrier.

We conclude that there exists no genuine issue of material fact that plaintiff's act of inspecting for debris left from unloading the steel slabs should be considered part of the unloading process. Accordingly, since plaintiff's actions which gave rise to his injuries did not involve the actual driving or operation of the motor vehicle, but was part of the entire process of unloading the steel slabs from the flatbed trailer, plaintiff was not entitled to PIP benefits under § 3106 of the No-Fault Act and the trial court did not err in granting summary disposition to Michigan Mutual.

We note that while plaintiff also claims appeal from the order dismissing the trucking companies, he raises no argument in his brief that the dismissal was improper. Therefore, we decline to consider whether the trial court erred in granting the order dismissing the Trucking Companies and consider the issue waived. City of Midland v Helger Construction Co., Inc., 157 Mich App 736, 745, 403 NW2d 218 (1987).

Affirmed.

/s/ Richard Allen Griffin
/s/ David H. Sawyer
/s/ Thomas J. Brennan