STATE OF MICHIGAN

COURT OF APPEALS

AUTO OWNERS INSURANCE COMPANY, a Michigan corporation,

Plaintiff-Appellee,

v

VERA RUCKER, as personal representative of the Estate of Melody Rucker,

Defendant-Appellant,

and

VERNARD CARTER and ETHEL CARTER,

Defendants.

January 7, 1991

No. 122929

Before: Marilyn Kelly, P.J., and Holbrook, Jr., and Sullivan, JJ.

PER CURIAM.

Defendant Vera Rucker appeals as of right from the entry of a declaratory judgment. The court held that defendants Vernard and Ethel Carter were not entitled to coverage under the automobile insurance policy issued by plaintiff, Auto Owners. We affirm.

The facts underlying this case are not in dispute. Vera Rucker's sixteen-year-old daughter, Melody, was waiting in front of a friend's house for her ride home when defendant, Vernard Carter, drove by in his mother's car. The front-seat passenger, Damion Todd, held a loaded shotgun. As the car passed Melody, Todd leaned out of the open window and fired several shots, one of which killed Melody. Auto Owners had issued an insurance policy to Ethel Carter, Vernard's mother, covering the automobile.

The sole issue before us on appeal is whether Melody Rucker's death arose out of the use of the motor vehicle. Defendant argues that the use of the automobile was an integral part of the drive-by shooting and that, therefore, coverage exists under plaintiff's policy.

The policy provides coverage for damage incurred by the insured "arising out of the use of an automobile." For that clause to apply, a causal connection between the use of the vehicle and the injury must be shown. The connection must be more than incidental or fortuitous. It is insufficient to show that, but for the automobile, the incident would not have occurred. The injury must be foreseeably identifiable with the normal use of the vehicle. Thornton v Allstate Insurance Co, 425 Mich 643, 660-661; 391 NW2d 320 (1986); DAIIE v Higginbotham, 95 Mich App 213, 222; 290 NW2d 414 (1980); Kangas v Aetna Casualty & Surety Co, 64 Mich App 1, 17; 235 NW2d 42 (1975).

In this case, the death arose from the firing of a shotgun. Although the vehicle made it easier for the criminals to approach the scene and to escape, its use was nonetheless incidental to the injury. One shudders to contemplate whether drive-by shootings have become foreseeable. It is, however, uncontestable that they are not identified with the normal use of a motor vehicle. Melody's death did not "arise out of the use of an automobile" as that expression was used in plaintiff's policy of insurance. We hold that the trial court did not err.

Affirmed.

/s/ Marilyn Kelly
/s/ Donald E. Holbrook, Jr.
/s/ Joseph B. Sullivan