

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN MUTUAL INSURANCE COMPANY,

May 14, 1991

Plaintiff-Appellant,

v

No. 126373

AETNA CASUALTY & SURETY COMPANY,

Defendant-Appellee.

Before: Sawyer, P.J., and Marilyn Kelly and Neff, JJ.

PER CURIAM.

The Saginaw County Circuit Court granted summary disposition to defendant in this declaratory judgment action. MCR 2.110(C)(10). Plaintiff appeals as of right. We affirm.

Plaintiff seeks indemnification from defendant for no fault insurance monies it paid to its insured, Carl Laracy and Sons, under a commercial automobile insurance policy. Defendant insures Laracy under a general liability policy.

Laracy is in the business of moving and relocating houses. It uses pull trucks which have attached winches. On May 19, 1988, Laracy was engaging one of its trucks to haul a house on dollies across a bridge in Essexville. The truck was in a stationary position and blocked while the winch was pulling the house. Suddenly, the bridge collapsed, resulting in property damage. Plaintiff paid the claim and now seeks reimbursement from defendant.

Plaintiff contends the accident is outside the No-Fault Insurance Act, because it did not arise out of the use of a motor vehicle as a motor vehicle. MCL 500.3101 (2); MSA 24.13101(2). It argues that since the winch was in operation and the truck was stationary, the truck was being used as towing equipment rather than as a motor vehicle.

Plaintiff relies on Johnston v Hartford Ins Co, 131 Mich App 349; 346 NW2d 549 (1984). In Johnston, a crane operator was injured when he slipped while entering the crane's cab containing the driving controls. At the time of the accident, the crane was incapable of being driven or moved. Three days had been required to immobilize and ready it as a crane. This Court concluded that the crane was not being used as a motor vehicle at the time of the incident. Johnston, 360.

The Supreme Court subsequently narrowed the Johnston holding in Bialochowski v Cross Concrete Pumping Co, 428 Mich 219; 407 NW2d 355 (1987). It concluded that coverage of a dual-purpose vehicle is not necessarily precluded solely because there is no vehicular movement at the time of the accident. See Winter v Automobile Club of Michigan, 433 Mich 446, 455; 446 NW2d 132 (1989).

In Bialochowski, the plaintiff was injured when the boom of a concrete truck collapsed on him. The truck was parked and stabilized when the accident occurred. The Court noted that three days had not been needed to prepare it for its job. It could have been mobilized quickly and driven away. The Court also recognized that one of the intended functions of the truck was to pump concrete. The use of a motor vehicle as a motor vehicle, in that case, included pumping concrete. Bialochowski, 228-229.

In this case, although the pull truck was stationary while the winch was operating, it could have been driven away with little adjustment. The winch itself was operated by the engine of the truck and was

controlled from inside the cab. The truck was a dual-purpose vehicle, because winching a structure with it was one of the purposes for which it had been designed. This case presents a situation more similar to that in Bialochowski than in Winter or Johnston. We conclude that the accident occurred while the truck was being used as a motor vehicle.

Affirmed.

/s/ David H. Sawyer
/s/ Marilyn Kelly
/s/ Janet T. Neff