

Chief Justice
Michael F. Cavanagh

Associate Justices
Charles L. Levir
James H. Brickley
Patricia J. Boyle
Dorothy Cornstock Riley
Robert P. Griffin
Conrad L. Mallett, Jr

Opinion

FILED AUGUST 22, 1991

ROBERTA LaMOTTE,

Plaintiff,

v

No. 87832

MILLERS NATIONAL INSURANCE COMPANY,

Defendant and Third-Party
Plaintiff-Appellee

and

FORUM INSURANCE COMPANY,

Defendant,

v

No. 87833

STATE FARM AUTOMOBILE INSURANCE
COMPANY,

Third-Party Defendant-
Appellant,

and AUTO CLUB INSURANCE ASSOCIATION,

Third-Party Defendant-
Appellant.

BEFORE THE ENTIRE BENCH

LEVIN, J.

Before the enactment of 1980 PA 445, § 3114 of the no-fault automobile liability act¹ provided that "[w]hen personal

¹MCL 500.3114(1); MSA 24.13114(1).

protection insurance benefits are payable to or for the benefit of an injured person under his own policy and would also be payable under the policy of his spouse, relative, or relative's spouse, the injured person's insurer shall pay all of the benefits and shall not be entitled to recoupment from the other insurer." (Emphasis added.)

Act 445 added "or personal injury benefits described in § 3103(2)" between "personal protection insurance benefits" and "are payable." The Court of Appeals held that as a result of the amendment, an injured person's insurer, who, prior to the amendment was primary and could not obtain recoupment from the insurer of the injured person's spouse, relative, or relative's spouse, was placed in the same level of priority as the insurer of the spouse, relative, or relative's spouse, and was "entitled to recoupment from the other insurer."² We reverse.

I

Plaintiff's decedent, William LaMotte, a truck driver, owned a Kenworth tractor. The tractor was leased to T & T Trucking and trip-leased to Distribution Carrier, Inc., when LaMotte died in a single-vehicle accident while driving the rig through North Carolina in March, 1985.

LaMotte had no-fault insurance for the truck with Millers National Insurance Company. DCI was insured by Forum Insurance Company.

²LaMotte v Millers Nat'l Ins Co, 180 Mich App 271; 446 NW2d 632 (1989).

LaMotte was also deemed, by § 3114 of the no-fault act,³ to be insured under a policy issued by State Farm Automobile Insurance Company to his wife, Roberta LaMotte, and also under a policy issued by Auto Club Insurance Association to his wife's mother, who resided in the LaMotte household.

This action was commenced against Millers National and Forum Insurance Company, seeking survivor's loss⁴ personal protection insurance benefits. Forum Insurance was dismissed with prejudice. Millers National settled with the plaintiff, Roberta LaMotte, for \$30,000, and then filed a third-party complaint against State Farm and Auto Club, seeking recoupment.⁵

³"Except as provided in subsections (2), and (3), and (5), a personal protection insurance policy described in section 3101(1) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident." MCL 500.3114(1); MSA 24.13114(1).

⁴MCL 500.3108; MSA 24.13108.

⁵Millers sought recoupment under § 3114, and also on the basis that an endorsement in its policy specifically excluded coverage if the named insured was using the tractor for commercial purposes.

We agree with the Court of Appeals that resolution of the meaning and effect of the endorsement

"only resolves the issue of whether it is Millers or Forum which is responsible to plaintiff for PIP benefits, in this case an interesting but irrelevant academic exercise.

"The more difficult question, and the dispositive issue of the case, is whether State Farm and Auto Club are relieved of liability." LaMotte, n 2 supra, pp 276-277.

II

Section 3114(1), before amendment in 1980, read as set forth in the margin.⁶ The 1980 amendment added the words underscored in the current version of § 3114(1) set forth in the margin.⁷

The Court of Appeals observed that the first sentence of § 3114(1) remained essentially unchanged, and that the second sentence is "new and applies only to motorcycle policies."⁸ It is the Court of Appeals interpretation of the third sentence with which we disagree. The Court of Appeals read

⁶"(1) Except as provided in subsections (2) and (3), a personal protection insurance policy applies to accidental bodily injury to the person named in the policy, his spouse, and a relative of either domiciled in the same household. When personal protection insurance benefits are payable to or for the benefit of an injured person under his own policy and would also be payable under the policy of his spouse, relative, or relative's spouse, the injured person's insurer shall pay all of the benefits and shall not be entitled to recoupment from the other insurer." MCL 500.3114(1); MSA 24.13114(1).

⁷"(1) Except as provided in subsections (2), (3), and (5), a personal protection insurance policy described in section 3101(1) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident. A personal injury insurance policy described in section 3103(2) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motorcycle accident. When personal protection insurance benefits or personal injury benefits described in section 3103(2) are payable to or for the benefit of an injured person under his or her own policy and would also be payable under the policy of his or her spouse, relative, or relative's spouse, the injured person's insurer shall pay all of the benefits and shall not be entitled to recoupment from the other insurer." MCL 500.3114(1); MSA 24.13114(1). (Emphasis added.)

⁸LaMotte, n 2 supra, p 279.

the amendment as providing that the insurer of the injured person was primary "now only to motorcycle policies."⁹

The legislative history of Act 445 indicates that the Legislature intended no change except to include motorcycles in the priority scheme set forth in § 3114(1). The House Legislative Analyses indicate that the Legislature's purpose was to add motorcycles to the "insurance priority scheme" already established by § 3114(1).¹⁰

We are persuaded that "described in section 3103(2)" modifies only "personal injury benefits" and not personal protection insurance benefits.

⁹Id., 279 (emphasis in original).

The Court of Appeals said:

"The third sentence, which incorporates the recoupment language of the second sentence of the former statute, as a result of the amendment, applies only to motorcycle policies. Hence, the Legislature, in amending the statute, made a substantial change. Language of the former statute which established the clear priority of the insurer of a named insured over the insurers of his or her spouse or domiciled relatives is applicable now only to motorcycle policies. The conclusion to be drawn is that, because the law prior to the amendment had language which established priority in all cases and the Legislature changed it to language which established priority only in motorcycle policies, the Legislature, thus, intended that in all other policies the insurers of persons named in the policies stand in the same order of priority as the insurers of their spouses or relatives domiciled in the same household. Hence, State Farm and Auto Club stand in the same order of priority to Millers, and Millers is entitled to partial recoupment from State Farm and Auto Club" Id.

¹⁰In the original HB 5623, motorcycle coverage is dealt with in a separate subsection of § 3114, with § 3114(1), pertaining to motor vehicles other than motorcycles, remaining substantially unchanged. The use of commas, before the "or" and after "3103(2)," might have clarified the legislative intent.

III

Personal protection insurance benefits, often described as "PIP" benefits, are payable in respect to a "[m]otor vehicle accident," which by definition "means a loss involving the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle" ¹¹ "Motor vehicle" is defined for this purpose as not including a motorcycle. ¹² Survivor's loss benefits are among the personal protection insurance benefits payable where there is a motor vehicle accident "regardless of whether the accident also involves the ownership, operation, maintenance, or use of a motorcycle as a motorcycle." ¹³

Act 445 elaborated on the insurance previously required of the owner or registrant of a motorcycle. In all events, § 3103, as amended by Act 445, only requires the owner or registrant of a motorcycle to provide "personal injury benefits" for the benefit of third persons, and does not provide for personal protection insurance benefits in respect to a motorcycle accident that, by definition, "means a loss involving the ownership, operation, maintenance, or use of a motorcycle as a motorcycle, but not involving the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle." ¹⁴

¹¹MCL 500.3101(2)(f); MSA 24.13101(2)(f).

¹²MCL 500.3101(2)(e); MSA 24.13101(2)(e).

¹³MCL 500.3101(2)(f); MSA 24.13101(2)(f).

¹⁴MCL 500.3101(2)(d); MSA 24.13101(2)(d).

IV

We conclude that the Legislature intended no change in the priority scheme set forth in § 3114(1), except to include the insurers of motorcycles who provide personal injury benefits described in § 3103(2).

Reversed.

Charles L. Levin

Dorothy Comstock Petty

Patricia J. Boyle

James H. Buckley

Conrad S. Maloney

Henry Zung

Michael F. Cavanaugh