

STATE OF MICHIGAN  
COURT OF APPEALS

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JEFFREY LAPLANTE,

October 17, 1991

Plaintiff-Appellant,

v

No. 118681; 120394

AUTOMOBILE CLUB INSURANCE ASSOCIATION and  
CADILLAC INSURANCE COMPANY,

Defendants-Appellees.

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Before: Shepherd, P.J., and Sawyer and Reilly, JJ.

PER CURIAM.

Plaintiff appeals by right a declaratory judgment and subsequent amended opinion and order denying no-fault benefits. His two appeals have been consolidated by this Court. We affirm.

According to the stipulated facts, plaintiff was injured on May 28, 1988, when a motorcycle which he was operating collided with a Honda three-wheel all-terrain vehicle (ATV) which was owned and operated by Robert M. Muttart. Neither vehicle involved in the accident was insured. However, plaintiff was insured for personal protection insurance benefits under a no-fault liability insurance policy issued by defendant Automobile Club Insurance Association on another vehicle in his household. Similarly, Mr. Muttart was insured for no-fault benefits by defendant Cadillac Insurance Company on an automobile which he owned.

The trial court, relying on Michigan Millers Mutual Ins Co v Farm Bureau General Ins Co, 156 Mich App 823; 402 NW2d 96 (1986), determined that the ATV, like a trail bike, is appropriately classified as a motorcycle. Because motorcycles are excluded from the definition of a motor vehicle under the no-fault act, the injury did not arise out of a motor vehicle accident, and therefore plaintiff was not entitled to no-fault benefits. MCL 500.3105(2); MSA 24.13105(2).

In reaching its decision, the trial court viewed the plaintiff's exhibits, and noted that the ATV looks like a three-wheel motorcycle, is shaped like one, and has handlebar controls and a saddle seat. Although the ATV has a headlight and taillight, it has no speedometer, turn signals, rear view mirror nor any other devices necessary for highway operation. The trial judge reasoned that because the ATV, like the trail bike in Michigan Millers, did not have the appropriate equipment for highway travel, was an off-road recreational vehicle (ORV), MCL 257.1601; MSA 9.3300(1), which was not legally permitted to be operated on a public highway, MCL 257.1614; MSA 9.3300(14), it was not a motor vehicle as defined by the no-fault act.

We believe that the trial court properly relied on Michigan Millers, *supra*, but used the wrong basis for its conclusion. Michigan Millers determined that the trail bike was to be classified as a motorcycle because the characteristics of the trail bike fit the statutory definition of motorcycle in the no-fault act.

(c) "Motorcycle" means a vehicle having a saddle or seat for the use of the rider, designed to travel on not more than 3 wheels in contact with the ground, which is equipped with a motor that exceeds 50 cubic centimeters piston displacement. The wheels on any attachment to the vehicle shall not be considered as wheels in contact with the ground. Motorcycle does not include a moped, as defined in section 32b of the Michigan vehicle code, Act No. 33 of the Public Acts of 1949, being section 257.32b of the Michigan Compiled Laws. MCL 500.3101(2)(c); MSA 24.13101(2)(c).

The trail bike was powered by a 175 cubic centimeter piston displacement motor, was designed to travel on two wheels in contact with the ground, was equipped with a saddle or seat for use of a rider, and was not a moped.

In this case, the parties agree that the ATV was designed to travel on not more than three wheels in contact with the ground, was equipped with a motor which exceeds 50 cubic centimeters piston displacement, had a seat for use of the rider, and was not a moped as defined in section 32b of the Michigan vehicle code. The ATV fit the definition of a motorcycle under the no-fault act.

We recognize that the statutory definition of a motor vehicle would also cover ATVs and trail bikes. However, because motorcycles are specifically excluded from the no-fault definition of a motor vehicle, and ATVs and trail bikes fit the definition of motorcycle, we conclude that ATVs and trail bikes should be excluded as well. See Farm Bureau Ins v Stark, 437 Mich 175; \_\_\_ NW2d \_\_\_ (1991).

Plaintiff argues that because an owner or registrant of a motorcycle must have third-person liability coverage under MCL 500.3103(1), MSA 24.13103(1), and an ATV is not required to be insured under the no-fault act, MCL 257.1603; MSA 9.3300(3), it should not be classified as a motorcycle for purposes of the no-fault act. We disagree.

An ATV is defined by statute as an ORV and is exempt from the requirements of the no-fault insurance act because, with few exceptions, it is illegal to operate an ATV which is not registered under the Michigan vehicle code on a public highway. MCL 257.1614; MSA 9.3300(14). However, if the ATV is operated on a public highway, contrary to the law expressly prohibiting such action, and an injury occurs as a result of such operation, we see no reason why such a vehicle should not be treated as a motorcycle for the purpose of determining whether the injured person may recover under the no-fault act. Michigan Millers, supra. We believe that a determination that the ORV in this case is a motorcycle as defined in the no-fault act neither subjects the ORV to the provisions of the no-fault act, nor negates that vehicle's release from the duties imposed by the no-fault act. Id. at 830.

The fact that plaintiff is denied the benefits of Mr. Muttart's no-fault policy should not control our decision. If an ATV looks like a motorcycle, acts like a motorcycle, has the same safety hazards as a motorcycle, fits the definition of a motorcycle, and is operated on the highway in the same manner as a motorcycle, we find no error in the trial court's classification of that ATV as a motorcycle. Plaintiff is not entitled to no-fault benefits because his injuries did not arise out of a motor vehicle accident. MCL 500.3105(2); MSA 24.13105(2); Shoemaker v National Ben Franklin of Mich, 78 Mich App 175; 259 NW2d 414 (1977). The judgment denying no-fault benefits is affirmed.

/s/ John H. Shepherd  
/s/ David H. Sawyer  
/s/ Maureen Pulte Reilly