STATE OF MICHIGAN

COURT OF APPEALS

DEBRA GORDON,

Plaintiff-Appellee,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellant.

December 21, 1992
10:20 a.m.
FOR PUBLICATION

No. 129212

PUBLISHED

Before: Doctoroff, C.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Defendant appeals by leave granted from an order of the Wayne Circuit Court that granted partial summary disposition to plaintiff in connection with her claim for benefits under the no-fault act. MCL 500.3101 et seq.; MSA 24.13101 et seq. Defendant argues that the circuit court erred in reversing the district court's order denying coverage in connection with injuries plaintiff suffered while she was unloading steel from a truck. We disagree and affirm.

The facts giving rise to the instant claim are essentially undisputed. On January 26, 1988, plaintiff, an iron worker, suffered a fractured ankle while she was unloading a bundle of steel from a truck. Plaintiff was on the bed of the truck seeking to free the bundle that was being unloaded with the assistance of a crane. The crane had a boom attached which was used to lift the load off the bed of the truck. Plaintiff and another worker had the duty of attaching the boom to the load so that it could be lifted by the crane. At the time of the accident, the bundle of steel to which the boom was attached became lodged underneath the remainder of steel. When plaintiff attempted to dislodge the load, the crane operator lifted the load which swung free and pushed plaintiff off the truck resulting in her injury.

Plaintiff received medical and wage-loss benefits through her employer's workers' compensation insurance carrier. However, plaintiff filed a claim for additional wage-loss benefits from defendant under an insurance policy issued to plaintiff's mother. When defendant denied coverage, plaintiff filed a complaint in district court seeking excess wage-loss benefits under her mother's policy. The district court granted defendant's motion for summary disposition on the ground that the no-fault act did not cover injuries arising out of the use or operation of a crane. Plaintiff appealed to the circuit court which reversed the district court's order denying benefits. We granted defendant's delayed application for leave to appeal.

No-fault benefits may be recovered for "accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle...." MCL 500.3105(1); MSA 24.13105(1). This case implicates an additional section of the no-fault act commonly referred to as the parked vehicle exclusion. MCL 500.3106; MSA 24.13106. The policy behind the parked vehicle exclusion is that, as a general rule, injuries involving parked vehicles do not usually involve the use of a motor vehicle "as a motor vehicle" such that benefits are payable. McCaslin v Hartford Accident & Indemnity, 182 Mich App 419, 423; 452 NW2d 834 (1990), lv den 437 Mich 874 (1990) (quoting Miller v Auto-Owners Ins Co, 411 Mich 633, 639-641; 309 NW2d 544 [1981]). However, the Legislature has determined that there are certain situations which involve injuries that are so intricately related to the character of the motor vehicle that the parked vehicle exclusion will not apply. Id. These situations are codified as exceptions to the parked vehicle exclusion. See MCL 500.3106(1)(a-c) & (2)(a-b); MSA 24.13106(1)(a-c) & (2)(a-b). It is one of these exceptions that is applicable to this case.

As a threshold matter, we must dispel the notion asserted by defendant that plaintiff must satisfy the provisions of both MCL 500.3105(1); MSA 24.13105(1) and MCL 500.3106; MSA 24.13106 in order to be entitled to benefits under the no-fault act. In Winter v Automobile Club of Michigan, 433 Mich 446; 446 NW2d 132 (1989), our Supreme Court stated that it is unnecessary to make a determination of whether section 3105(1) is fulfilled separate from a determination under section 3106. Id., p 458, n 10 (overruling the conclusion that the Court previously made requiring satisfaction of both sections as a prerequisite to recovery under section 3106). Thus, where an injury arises from the use of a vehicle that is parked, if the circumstances under which the accident occurred are such that they implicate one of the enumerated exceptions to the parked vehicle exclusion, recovery may be had without consideration of whether the vehicle was being used "as a motor vehicle" under section 3105(1). See Mack v Travelers Ins Co, 192 Mich App 691, 694; 481 NW2d 825 (1992).

Defendant makes much of the fact that the crane at issue is not a "motor vehicle" as defined under the no-fault act. See MCL 500.3101(2)(e); MSA 13101(2)(e). However, nowhere in the no-fault act does it say that every vehicle involved in an accident must satisfy the definition of "motor vehicle" before recovery will be permitted. In fact, our Supreme Court seemed to suggest otherwise when it analyzed the scenario before it in Wills v State Farm Ins Cos, 437 Mich 205; 468 NW2d 511 (1991). In that case, the Court was faced with a situation where the plaintiff sought death benefits under the no-fault act after her husband was killed when the snowmobile he was riding collided with a parked vehicle. The Court recognized that the snowmobile was not a "motor vehicle" for the purpose of the no-fault act. Id., p 209. Nonetheless, the Court went on to construe whether the parked vehicle fit within one of the enumerated exceptions to the parked vehicle exclusion. Id., pp 209-214. The implication is that recovery may be permitted under an exception to the parked vehicle exclusion, notwithstanding the fact that one of the vehicles involved may not fit within the definition of "motor vehicle."

"Motor vehicle" is defined under the no-fault act as follows:

> "Motor vehicle" means a vehicle, including a trailer, operated or designed for operation upon a public highway by power other than muscular power which has more than two wheels. [MCL 500.3101(2)(e); MSA 24.13101(2)(e).]

Neither party disputes the fact that the truck upon which the steel was hauled to the site fits within the parameters of section 3101(2)(e). In fact, in its answer to the complaint filed in district court, defendant admits that the truck was a motor vehicle. Thus, the question whether the crane also fits within the definition of a "motor vehicle" is not dispositive, unless the circumstances are such that an exception to the parked vehicle exclusion does not apply.

We reject defendant's contention that the injury in this case arose solely out of the use of the crane. A determination whether a claimant's injury arises out of the use of a motor vehicle must be evaluated on a case-by-case basis. Musall v Golcheff, 174 Mich App 700, 702; 436 NW2d 451 (1989), lv den 433 Mich 916 (1989). In making this determination, the causal connection between the injury and the use of the motor vehicle must be more than incidental, fortuitous, or but for. Marzonie v Auto Club Ins Ass'n, 193 Mich App 332, 334-335; ___ NW2d ___ (1992) (quoting Jones v Allstate Ins Co, 161 Mich App 450, 454-456; 411 NW2d 457 [1987]). The involvement of the motor vehicle in the injury should be directly related to the character of the vehicle as a motor vehicle. Id.

In this case, we are convinced that there was a sufficient causal relationship between plaintiff's injury and the parked truck. Plaintiff was on the bed of the truck unloading steel when the injury arose. Inasmuch as the injury occurred during the unloading process and was intricately connected to the performance of the unloading function, we conclude that the injury arose out of the use of the truck. See Shinabarger v Citizens Mutual Ins Co, 90 Mich App 307, 315-316; 282 NW2d 301 (1979), lv den 407 Mich 895 (1979). We further note that this conclusion does not preclude a similar finding with regard to the use of the crane. Rather, section 3106(2)(a) necessarily implies that there will be an injury arising out of a parked motor vehicle and another vehicle in order for recovery to be permitted. See discussion, infra.

Because plaintiff's injury arose out of a motor vehicle that was parked at the time of the incident, we now turn our attention to section 3106. The relevant portions of section 3106 read as follows:

> (2) Accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle if benefits under the worker's disability compensation act of 1969, . . . are available to an employee who sustains the injury in the course of his or her employment while doing either of the following:
>
> (a) Loading, unloading, or doing mechanical work on a vehicle unless the injury arose from the use or operation of another vehicle. [MCL 500.3106; MSA 24.13106.]

Construing the above provision within the facts of this case, we conclude that the circuit court properly reversed the decision of the district court.

The general rule, as codified in section 3106(1), is that accidental bodily injury is not compensable under the no-fault act where the injury arises out of the use or operation of a parked motor vehicle. McCaslin, supra, p 423. Further, pursuant to section 3106(2)(a), if the claimant has recovered benefits under the WDCA for an injury that arose from loading or unloading a vehicle, the claimant cannot also recover benefits under the provisions of the no-fault act. The purpose of this section is to prevent duplicative recovery. Stanley v State Auto Mutual Ins CO, 160 Mich App 434, 437; 408 NW2d 467 (1987). However, section 3106(2)(a) also provides that if, in the course of employment, the employee is injured while loading or unloading a vehicle and the injury arises out of the use or operation of **another vehicle**, the claimant may recover under the no-fault act even though he or she may have also recovered under the WDCA. Section 3106(2)(a). Defendant asks that we read this section as requiring the "another vehicle" language to be the definitional equivalent of the "motor vehicle" language under section 3101(2)(e). This we decline to do.

The Legislature is presumed to have intended the meaning plainly expressed in the statute. Wilson v League General Ins Co, ___ Mich App ___; ___ NW2d ___ (Docket No. 128931, rel'd September 8, 1992), slip op, p 2. If the meaning of the language is clear and unambiguous, judicial construction is unnecessary and impermissible. Id. The Legislature will be presumed to have intended that its amendments of a statute be construed harmoniously with other provisions of the statute. Michigan Millers Mutual Ins Co v West Detroit Building Co, ___ Mich App ___; ___ NW2d ___ (Docket No. 132935, rel'd October 19, 1992), slip op, p 3. In construing a statute, courts should presume that every word has some meaning and should avoid any construction that would render a statue, or any part of it, surplusage or nugatory. Id.

In this case, the language of the statute is clear and unambiguous, thus precluding any sort of judicial construction. The clear language states that recovery will be precluded "unless the injury arose from the use or operation of another vehicle." The statue does not say that recovery will be precluded unless the injury arose from the use or operation of another motor vehicle, nor will we construe it to so read. In fact, when the Legislature amended the statute in 1986 (1986 PA 318, effective June 1, 1987), it expressly excluded certain "motor vehicles" from the category thereby implying that "another vehicle" is not necessarily synonymous with "motor vehicle."

The term "vehicle" is not given a specific definition in the no-fault act. Where a term is not defined in the statute, we may look to the dictionary definition for guidance. Ludington Service Corp v Comm'r of Ins, 194 Mich App 255, 261; ___ NW2d ___ (1992). The American Heritage Dictionary of the English Language (1976), defines "vehicle" as follows:

> 1. Any device for carrying passengers, goods, or equipment, usually one moving on wheels or runners, as a car or sled; a conveyance.

Under this definition, the term "vehicle" appears to be more expansive than the term "motor vehicle." In fact, reading this definition in conjunction with the statutory definition of a "motor vehicle," it is apparent that a motor vehicle is a type of vehicle. Thus, according to the way the statute is written, recovery will be precluded unless the injury arose from the use or operation of another vehicle, whether that vehicle be a "motor vehicle" or otherwise.

In the case at bar, we conclude that the crane which was used in assisting the unloading operation that led to plaintiff's injury falls within the definition of the term "vehicle" as commonly understood. The crane is a "device" for carrying goods. Further, the crane had four wheels and was capable of moving about the job site with little or no difficulty. We decline to replace the clear language expressed by the Legislature in this section of the statute with more specific language from a separate section. Having concluded that the crane in this case is another vehicle for the purpose of this section of the statute, plaintiff was entitled to seek payment of benefits under the no-fault act because the injury arose from the use of a parked vehicle under circumstances which constitute an exception to the parked vehicle exclusion.

Affirmed. We do not retain jurisdiction. Plaintiff may tax costs.

/s/Martin M. Doctoroff
/s/William B. Murphy
/s/Mark J. Cavanagh