

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT BARR,

Plaintiff-Appellee,

v

COLONIAL PENN LIFE INSURANCE COMPANY,

Defendant-Appellant,

and

AUTOMOBILE CLUB OF MICHIGAN, and
AUTO CLUB INSURANCE ASSOCIATION,

Defendants-Appellees.

March 4, 1993

No. 132688

Before: Connor, P.J., and Holbrook, Jr., and McDonald, JJ.

PER CURIAM.

Defendant Colonial Penn appeals as of right the trial court's decision that it, and not defendant Auto Club, is liable for plaintiff's no-fault insurance benefits. We affirm.

Plaintiff was injured when an automobile insured by Auto Club struck a stalled pickup truck insured by Colonial Penn. Neither Colonial Penn nor Auto Club dispute that plaintiff was entitled to no-fault insurance benefits, and neither dispute the underlying facts of the case. Plaintiff was a passenger in the truck before it stalled. At the time of the collision, plaintiff was outside the disabled truck. He had one foot on the front bumper and with both hands grasping a cross bar he was pulling himself into the engine compartment to check the truck's carburetor. The question before this Court is whether, as the trial court found, plaintiff was an occupant of the pickup truck under MCL 500.3114 and .3115; MSA 24.13114 and .13115.

In cases involving priority disputes between insurers, the word "occupant" is assigned its primary and generally understood meaning. See Royal Globe Ins Cos v Frankenmuth Mutual Ins Co, 419 Mich 565, 575; 357 NW2d 652 (1984); Rosner v Michigan Mutual Ins Co, 189 Mich App 229, 233; 471 NW2d 923 (1991). This is in contrast to cases where coverage, not priority, is at issue. In coverage cases, "occupant" is more broadly construed. See Rohlman v Hawkeye Security Ins Co, 190 Mich App 540, 549-550; 476 NW2d 461 (1991).

In Farm Bureau Mutual Ins Co v MIC General Ins Corp, 193 Mich App 317, 324; 483 NW2d 466 (1992), a priority case, this Court decided that the generally understood meaning of occupant is someone who is in or upon a vehicle. Applying that definition, this Court found a man injured while on the hood of a car to be an occupant of that car. Id. at 324-325.

Under the doctrine of stare decisis, we are bound to follow Royal Globe, supra, and give the word "occupant" its primary and generally understood meaning. Under Administrative Order 1990-6, we are bound to follow Farm Bureau, supra, and find that the generally understood meaning of occupant is anyone who is "in or upon" a vehicle. Therefore, because plaintiff was pulling himself into the engine compartment with one foot braced upon the truck's bumper, we find that he was indeed an occupant of the pickup truck. Under the statute, Colonial Penn, the truck's insurer, is the insurer liable to pay plaintiff's no-fault benefits.

Affirmed.

/s/ Michael J. Connor
/s/ Donald E. Holbrook, Jr.
/s/ Gary R. McDonald