

STATE OF MICHIGAN
COURT OF APPEALS

PAUL SHUDELL,

May 11, 1993

Plaintiff Appellant,

v

No. 135055

MICHIGAN MUTUAL INSURANCE CO.,

Defendant-Appellee.

Before: Gribbs, P.J., and Holbrook, Jr. and Neff, JJ.

PER CURIAM.

Plaintiff appeals by right from the circuit court order granting defendant's motion for summary disposition. We affirm.

Plaintiff was injured while he was a passenger in a taxicab operated by a friend. When the driver of the taxi parked in front of a bar, another car drove up and the two drivers began to argue. The other driver eventually backed his automobile away and out of sight. When plaintiff's driver also began to drive away, the other driver "opened tire" on the taxicab, striking and injuring plaintiff. Plaintiff filed a claim for personal protection benefits against the taxicab owner, which was insured with defendant Michigan Mutual Insurance Company. Both parties filed motions for summary disposition, and, following argument, the trial court granted defendant's motion.

First-party benefits are available under MCL 500.3105(1); MSA 24.13105(1) where the involvement of the car in the injury is "directly related to its character as a motor vehicle." Marzone v Auto Club Ins Ass'n, 441 Mich 522, 531-532, ___ NW2d ___ (1992); Thornton v Allstate Ins Co, 425 Mich 643, 659; 391 NW2d 320 (1986). The connection between the injuries and the use of the motor vehicle must be "more than incidental, fortuitous, or 'but for.'" *Id.* The proper focus is upon the relation between the injury and the use of a motor vehicle as a motor vehicle, not on the intent of the assailant. Thornton, 425 Mich at 660, n 10.

In this case, we agree that plaintiff was not entitled to recover no fault benefits. The inherent nature of a motor vehicle did not cause plaintiff's injuries. Rather, as in Marzone, plaintiff was injured as a result of an argument. The involvement of the automobile and taxicab was incidental and fortuitous. The trial court correctly found that the assault on plaintiff in the course of an argument between two drivers was not within the ordinary risks of driving a motor vehicle.

Affirmed.

/s/ Roman S. Gribbs
/s/ Donald E. Holbrook, Jr.
/s/ Janet T. Neff