STATE OF MICHIGAN

COURT OF APPEALS

GREGORY A. JAMISON and PATRICIA JAMISON,

Plaintiffs-Appellees,

v

FARMERS INSURANCE EXCHANGE,

Defendant-Appellant.

October 27, 1993

No. 145677
LC No. 90 019748 CK

Before: Doctoroff, C.J., and Michael J. Kelly and Gribbs, JJ.

PER CURIAM.

This is a no-fault case in which plaintiffs sought personal protection insurance benefits from defendant for injuries suffered by plaintiff husband, Gregory Jamison. Defendant, Farmers Insurance Exchange appeals as of right from the trial court's order granting plaintiffs' motion for summary disposition. Summary disposition was granted in favor of plaintiffs "for the reasons that the accidental bodily injury to Gregory Jamison occurred during the loading/unloading process of an insured motor vehicle." We affirm.

On March 25, 1990, Gregory Jamison's wrist was injured when a 1966 Lincoln he had just purchased from a third person was being loaded onto a flatbed trailer attached to plaintiffs' van. Plaintiffs planned to load the new vehicle onto the trailer and haul it to their home. Both the van and trailer were insured by defendant. Gregory's wife, Patricia, drove the newly-purchased Lincoln up onto the trailer while Gregory directed. Gregory stood between the van and the attached trailer. Although plaintiff motioned for his wife to stop and she did try to do so, the Lincoln kept moving forward and crashed into the van. Gregory attempted to hold the Lincoln back by pushing on it, and his right arm was caught between the Lincoln and the van. As a result, Gregory sustained injuries to his wrist.

Subsequently, plaintiffs filed this action against defendant seeking personal protection insurance benefits they claimed were due under the insurance policy. Plaintiffs and defendant filed cross-motions for summary disposition. The trial court granted plaintiffs' motion on the grounds that the injury occurred during the loading or unloading process of an insured motor vehicle. On October 3, 1991, a final judgment was entered in the amount of $12,196 plus interest, costs, and fees. It is from this order that defendant appeals as of right.

Defendant claims that the trial court erred in granting summary disposition in favor of plaintiffs. We disagree.

The no-fault act provides that, in general, under personal protection insurance, an insurer is liable to pay personal injury protection benefits for accidental bodily injury which arises out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle. MCL 500.3105(1); MSA 24.13105(1); Truby v Farm Bureau, 175 Mich App 569, 572; 438 NW2d 249 (1988), lv den 432 Mich 876 (1989). Accidental bodily injury may arise out of the ownership, operation, maintenance, or use of a parked vehicle under MCL 500.3106(1); MSA 24.13106(1). That statute provides in pertinent part:

> Accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle unless any of the following occur:
>
> * * *

(b) Except as provided in subsection (2), the injury was a direct result of physical contact with equipment permanently mounted on a vehicle, while the equipment was being operated or used, or property being lifted onto or lowered from the vehicle in its loading or unloading process. [MCL 500.3106(1)(b); MSA 24.13106(1)(b).]

Section 3106(1) excludes coverage where a vehicle is parked unless an enumerated exception applies. Winter v Automobile Club of Michigan, 433 Mich 446, 457-458; 446 NW2d 132 (1989). A two-part analysis is required under §3106. First, one of the exceptions to the parked vehicle exclusion must apply. Second, there must be a causal connection between the injury and the use of the motor vehicle. Gordon v Allstate Insurance Co., 197 Mich App 609, 614; 496 NW2d 357 (1992); Gooden v Transamerican Insurance Corp of America, 166 Mich App 793; 420 NW2d 877 (1988), lv den 431 Mich 862 (1988).

Section 3106(1)(b) contains two exceptions to the parked vehicle exclusion: 1) For injuries which are the direct result of physical contact with equipment permanently mounted on the vehicle while this equipment is being used, and 2) for injuries which result from property which is lifted or lowered from the vehicle during the loading or unloading process. Winter, supra at 458-459. In this case, plaintiffs argue that the second exception applies. Under that exception, plaintiffs are entitled to personal protection insurance benefits if the insured vehicles, the trailer and attached van, were parked at the time of the accident, and plaintiff's injury resulted from the trailer being loaded or unloaded.

There is no question that the van and trailer, both insured vehicles, were parked at the time of the injury. When plaintiff was injured he was in the process of loading the newly-purchased Lincoln onto the trailer. Furthermore, there is no question that the trailer was a motor vehicle. Truby, supra at 573. Clearly, plaintiff's injury occurred during the loading process of an insured motor vehicle, the trailer.

Additionally, we believe the injuries received by plaintiff while loading the Lincoln were sufficiently related to the ownership, operation, and use of the trailer for its intended purpose, that being the hauling of cargo. It just so happens that the cargo in this case was another motor vehicle. We do not believe that the fact that the object being loaded onto the trailer was a motor vehicle bars plaintiffs' recovery under §3106(1)(b). See Truby, supra. Plaintiff was in the process of loading the trailer when he was struck by the 1966 Lincoln. The injury arose from the use of the trailer and there was a causal connection between the use of the trailer and the injury sustained. Plaintiffs have satisfied their burden of showing that an exception to the parked vehicle exclusion applies in this case, and, therefore, summary disposition was properly granted in their favor.

Defendant's assertion that plaintiffs are barred from recovery under MCL 500.3113(b); MSA 24.13113(b) is not persuasive. That provision provides that personal protection benefits need not be awarded when the owner of an uninsured vehicle is injured in an accident involving that uninsured vehicle. Defendant argues that since the Lincoln was involved in the accident and was not insured as required by the provisions of the insurance code, MCL 500.3101 et seq; MSA 24.13101 et seq., plaintiff was the owner of an uninsured vehicle and is therefore not entitled to coverage. We do not agree. Plaintiffs had an insurance policy covering accidents involving the trailer and van and that is the policy under which they sought benefits. The newly-purchased 1966 Lincoln was not required to be insured because it was not being driven or moved upon the highway at the time of this incident. MCL 500.3101(1); MSA 24.13101(1).

We do not believe that §3113(b) was intended to cover situations such as that presented here. This exclusion contemplates an accident involving an uninsured vehicle and another vehicle not owned by the insured. Here, plaintiff's injuries in fact arose out of an accident involving a vehicle plaintiff insured with defendant, the trailer, and another vehicle owned by plaintiffs which was not insured and was not required to be insured, the 1966 Lincoln. Under these circumstances, which include no showing that plaintiff intended to operate the uninsured vehicle as a motor vehicle in the common sense of the phrase, we hold that coverage under §3106(1)(b) prevails over the exclusion from coverage under §3113(b).

Affirmed.

/s/ Martin M. Doctoroff
/s/ Michael J. Kelly
/s/ Roman S. Gribbs