

STATE OF MICHIGAN  
COURT OF APPEALS

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NORA FAYLING,

Plaintiff-Appellant,

v

NATIONAL INDEMNITY COMPANY, and  
CITIZENS INSURANCE COMPANY OF AMERICA

Defendant-Appellee.

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March 2, 1994

No. 148131  
LC No. 91-6807-CK

Before: Weaver, P.J., and Shepherd and D. A. Johnston III,\* JJ.

PER CURIAM.

Plaintiff was employed by Rehabitat, Inc. as a nurse's aide. On April 2, 1990, plaintiff was injured while on the job. Plaintiff was showing a fellow coworker, Catherine Riley, how to operate a wheelchair locking device inside a van owned by defendant's insured. When Riley jumped off the rear of the van, plaintiff was thrown off balance and struck her head on a part of the van. Plaintiff sustained a severe head injury which has disabled her from returning to her former employment. Plaintiff has been receiving worker's compensation benefits.

Plaintiff filed a claim against defendants, the insurer of the vehicle involved and her personal no-fault insurance carrier, requesting no-fault benefits.

Defendants both moved for summary disposition, which the trial court granted. Plaintiff now appeals. We affirm.

Plaintiff argues that the court erred in holding her injury occurred while exiting the vehicle, MCL 500.3106(2)(b) and in holding that the injury occurred during the loading of a parked motor vehicle, MCL 500.3106(2)(a). We affirm the court's grant of summary disposition on other grounds.

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(a); MSA 24.13105(1), Gordon v Allstate Ins Co, 197 Mich App 609; 496 NW2d 357 (1992). Where an injury is sustained while the vehicle is parked, recovery under the no-fault act is generally precluded. Gooden v Transamerica Ins Corp, 166 Mich App 793; 420 NW2d 877 (1988). However, MCL 500.3106; MSA 13106 provides several statutory exceptions to this "parked vehicle exception." Gooden, supra.

The relevant portion of § 3106 provides:

(1) 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:

... the injury was sustained by a person while occupying, entering into, or alighting from the vehicle.

The key question before us is whether the van plaintiff occupied at the time she was injured was being used as a motor vehicle.<sup>1</sup>

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\*Circuit judge, sitting on the Court of Appeals by assignment.

The evaluation of whether a claimant's injury arises out of the use of a motor vehicle must be made on a case-by-case basis. Musall v Golcheff, 174 Mich App 700; 436 NW2d 451 (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. Marzoni v Auto Club Ins Ass'n, 441 Mich 522; 495 NW2d 788 (1992).

Here, the van was parked when plaintiff was injured. Plaintiff hit her head when she was moving around in the van in order to leave it. It was mere fortuity that the injury occurred inside the van. The parked van was not in use as a motor vehicle. See Shellenberger v INA, 182 Mich App 601; 452 NW2d 892 (1990), and Thornton v Allstate Ins Co, 425 Mich 643; 391 NW2d 320 (1986).

We affirm the trial court's grant of summary judgment.

/s/ Elizabeth A. Weaver  
/s/ John H. Shepherd  
/s/ Donald A. Johnston III

<sup>1</sup> In Gordon v Allstate, *supra*, this Court recently held that:

where an injury arises from the use of a parked vehicle, 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 § 3105(1).

However, § 3106(1) also specifies the "use of a parked vehicle as a motor vehicle" [emphasis added]. Thus, while it is not necessary to consider the use "as a motor vehicle" under § 3105(1) it is still necessary to consider it under § 3106(1).