STATE OF MICHIGAN

COURT OF APPEALS

ALLSTATE INSURANCE COMPANY,

Plaintiff-Appellee,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED

October 13, 1994

No. 154111
LC No. 92-427617

Before: Corrigan, P.J., and Wahls and Maceroni*, JJ.

PER CURIAM.

Defendant appeals as of right the circuit court's order granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

This case involves a priority dispute among insurers arising out of an accident that occurred on January 1, 1991. James Gibson was driving a motor vehicle owned by his mother when it stalled in the left lane of Southfield Road. Gibson exited the vehicle and examined the engine. He then walked behind the vehicle and opened the trunk to retrieve a screwdriver. As he leaned down and reached his hand into the trunk, a vehicle driven by Jennifer Biggs struck him. The vehicle driven by Gibson was not insured, nor did he have an insurance policy providing no-fault coverage. The vehicle driven by Biggs was insured by defendant State Farm Mutual Automobile Insurance Company.

Gibson requested no-fault benefits from defendant. Defendant made a few payments, but then denied benefits on the ground that he was an occupant of the uninsured vehicle at the time of the accident. Gibson's claim was assigned by the Assigned Claim Facility to plaintiff Allstate Insurance Company pursuant to MCL 500.3171; MSA 24.13171. Plaintiff subsequently filed suit against defendant seeking a determination that defendant was responsible for Gibson's PIP benefits under MCL 500.3115; MSA 24.13115. Both parties eventually filed motions for summary disposition. The trial court ruled that defendant was responsible for Gibson's PIP benefits because he was not an occupant of the uninsured vehicle at the time of the accident.

The issue on appeal, as below, is which of the two insurance companies is responsible for the payment of PIP benefits.[1] Resolution of this issue involves the interpretation of § 3115(1) of the no-fault act, which provides in relevant part:

> (1) Except as provided in section 3114(1), a person suffering an accidental bodily injury while not an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:
>
> (a) Insurers of owners or registrants of motor vehicles involved in the accident.

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

(b) Insurers of operators of motor vehicles involved in the accident. [MCL 500.3115; MSA 24.13115.]

Defendant argues that it is not responsible for PIP benefits because James Gibson was an occupant of the uninsured vehicle at the time of the accident. We disagree.

In Rohlman v Hawkeye-Security Ins Co, 442 Mich 520, 531-532; 502 NW2d 310 (1993), the Michigan Supreme Court held that a plaintiff, who exited a van and was attempting to overturn a trailer that became unhitched from the van when he was struck by a hit-and-run driver, was not an occupant under section 3111[2] of the no-fault act. In reaching this conclusion, the Supreme Court analyzed the issue as follows:

> Although the no-fault act does not define the terms occupant or occupying, other sections of the act provide guidance in determining its meaning. Subsection 3106(1)(c) of the act states in part:
>
> Accidental bodily injury does not arise out of ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle unless . . . the injury was sustained by a person while occupying, entering into, or alighting from the vehicle.
>
> The Legislature expressly recognized that "entering into" and "alighting from" are acts separate from "occupying" a vehicle. See Royal Globe, [419 Mich 565; 357 NW2d 652 (1984)] at 574, n. 5. Section 3111 does not include "entering into" or alighting from" the vehicle as acts that would trigger personal protection benefits for an out-of-state accident.
>
> By giving the term occupant its primary and generally understood meaning coupled with the above statutory reference, we conclude that the plaintiff was not an occupant of the van because he was not physically inside the van when the accident occurred. We find this interpretation consistent with our Royal Globe decision and the intent of the no-fault act. [Id. at 531-532.]

Construing the term occupant as used in section 3114(4) in light of the above analysis, we find that James Gibson was not an occupant of the uninsured vehicle at the time he was struck by Jennifer Biggs. Gibson was standing outside the vehicle with no intention of entering it. Although he was leaning and reaching into the trunk, Gibson was not in the process of entering the trunk nor was he in physical contact with the vehicle. Auto Club Ins Ass'n v Michigan Mutual Ins Co, 197 Mich App 275; 494 NW2d 822 (1992) and Hackley v State Farm Mutual Automobile Ins Co, 147 Mich App 115; 383 NW2d 108 (1985) also support our conclusion. Because Gibson was not an occupant of the uninsured vehicle, defendant is responsible for PIP benefits under MCL 500.3115(1); MSA 24.13115(1). Accordingly, the trial court did not err granting plaintiff's motion for summary disposition.

Affirmed.

/s/ Maura D. Corrigan
/s/ Myron H. Wahls
/s/ Peter J. Maceroni