

S T A T E O F M I C H I G A N
C O U R T O F A P P E A L S

NANCY NERAT,

Plaintiff-Appellee,

MAR 18 1985

v

No. 83414

MARILYN SWACKER and
STATE FARM INSURANCE COMPANY,

Defendants-Appellants.

BEFORE: D. F. Walsh, P.J., R. S. Gribbs and J. H. Shepherd,
JJ.

PER CURIAM

Defendants Marilyn Swacker and State Farm Insurance Company appeal the circuit court order affirming the district court's award of damages to plaintiff Nancy Nerat. We reverse.

This controversy arose out of a June 16, 1983, accident in which defendant Swacker's automobile collided with plaintiff's motorcycle. Defendant Swacker was issued a citation for a stop sign violation. No citation was issued to plaintiff's son, the driver of the motorcycle. Plaintiff had no collision insurance coverage on the motorcycle at the time of the accident.

Plaintiff filed a claim against defendant Swacker in the small claims division of the district court, seeking damages in the amount of \$228.85, the cost to repair the motorcycle. On petition of defendant Swacker and her automobile insurer, defendant State Farm Insurance Company, the case was removed to the general civil division of the district court.

Defendants filed a motion for summary judgment, claiming that plaintiff's action was barred by the provisions of the Michigan no-fault act. MCL 500.3101 et seq.; MSA 24.13101 et seq. The motion was denied and plaintiff was awarded damages pursuant to § 3135(2)(d) of the act. MCL 500.3135(2)(d); MSA 24.13135(2)(d). The circuit court affirmed.

Tort liability arising from the ownership, maintenance or use of an uninsured motor vehicle was generally abolished by Michigan's no-fault act. MCL 500.3135(2); MSA 24.13135(2). In 1979, the Legislature added § 3135(2)(d), the so-called mini-tort provision:

"(2) Notwithstanding any other provision of law, tort liability arising from the ownership, maintenance or use within this state of a motor vehicle with respect to which the security required by section 3103(3) and (4) was in effect is abolished except as to:

* * *

"(d) Damages up to \$400.00 to motor vehicles, to the extent that the damages are not covered by insurance. An action for damages pursuant to this subdivision shall be conducted in compliance with subsection (3)." MCL 500.3135(2)(d); MSA 24.13135(2)(d).¹

The Legislature has declared that "motor vehicle", as that term is used in the no-fault act, does not include a motorcycle. MCL 500.3101(2)(c); MSA 24.13101(2)(c).

When statutory language is clear and unambiguous, judicial interpretation to vary the plain meaning of the statute is precluded; the Legislature must have intended the meaning it plainly expressed, and the statute must be enforced as written. Hiltz v Phil's Quality Market, 417 Mich 335, 343; 337 NW2d 237 (1983); Pioneer Insurance Company v Allstate Insurance Company, 417 Mich 590, 595; 339 NW2d 470 (1983), reh den 418 Mich 1202 (1984); Lawrence v Department of Corrections, 88 Mich App 167, 171-172; 276 NW2d 554 (1979), lv den 407 Mich 909 (1979).

We find no ambiguity in the mini-tort provision. MCL 500.3135(2)(d); MSA 24.13135(2)(d). This statutory exception to the abolition of tort liability applies only to certain damages to motor vehicles. Since the relevant statutory definition of motor vehicle expressly excludes motorcycles, there is no right to sue for motorcycle damage under §3135(2)(d). MCL 500.3101(2)(c); MSA 24.13101(2)(c).

Reversed. No costs.

/s/ Daniel F. Walsh
/s/ Roman S. Gribbs
/s/ John H. Shepherd

Footnote

1 Subsections (3) through (5) of § 3135 provide:

"(3) In an action for damages pursuant to subsection (2)(d):

"(a) Damages shall be assessed on the basis of comparative fault, except that damages shall not be assessed in favor of a party who is more than 50% at fault.

"(b) Liability shall not be a component of residual liability, as prescribed in section 3131, for which maintenance of security is required by this act.

"(4) Actions under subsection (2)(d) shall be commenced, whenever legally possible, in the small claims division of district court or the conciliation division of the common pleas court of the city of Detroit or the municipal court. If the defendant or plaintiff removes such an action to a higher court and does not prevail, the judge may assess costs.

(5) A decision of a court made pursuant to subsection (2)(d), shall not be res judicata in any proceeding to determine any other liability arising from the same circumstances as gave rise to the action brought pursuant to subsection (2)(d)." MCL 500.3135(3)-(5); MSA 24.13135(3)-(5).