FOR PUBLICATION

STATE OF MICHIGAN

COURT OF APPEALS

CLARENCE LOGAN,

Plaintiff-Appellant,

JUN 17 1986

-v- No. 85534

COMMERCIAL CARRIERS and OLD REPUBLIC INSURANCE COMPANY,

Defendants-Appellants.

/

BEFORE: M.J. Kelly, P.J., and J.H. Shepherd and C.W. Simon*, JJ.

PER CURIAM

Plaintiff appeals by right from an order granting defendants' motion for summary disposition entered pursuant to MCR 2.116(C)(10).

The facts are not in dispute. Plaintiff was employed by defendant Commercial Carriers, a car hauler, to load the company's trailers with cargo. On April 21, 1983, plaintiff was loading a tractor trailer with a motor home chassis. While driving the chassis onto the trailer, plaintiff was injured when the portable seat in which he was sitting became dislodged and caused plaintiff to fall and strike his back against the side of the trailer.

As a result of the injury, plaintiff received worker's compensation benefits from defendant Commercial Carriers. Plaintiff also applied to both defendants for no-fault insurance benefits. After plaintiff's claim was denied, he instituted this suit.

We are called upon to interpret an amendment to the parked vehicle provision of the no-fault act, MCL 550.3106; MSA 24.13106. Subsection (2) now reads:

"Accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle if benefits under the worker's disability compensation act of 1969, as amended, being sections 418.101 to

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

418.941 of the Michigan Complied Laws, are available to an employee who sustains the injury in the course of his or her employment while loading, unloading, or doing mechanical work on a vehicle unless the injury arose form the use or operation of another vehicle." (Emphasis added).

Subsection (2) was added to preclude individuals eligible for workers' compensation benefits from collecting no-fault benefits for injuries arising from acts of loading or unloading a parked vehicle.

The construction to be given to the words "loading" and "unloading" was recently addressed by this Court. In Bell v F J Boutell Driveaway Co, 141 Mich App 802, 810-811; 369 NW2d 231 (1985), this Court, after reviewing the legislative purpose and history of the amendment, concluded that:

> "[T]he Legislature intended to eliminate duplication of benefits for work-related injuries except where the actual driving or operation of the motor vehicle is involved. Therefore, we find it appropriate to broadly interpret the terms 'loading' and 'unloading' in subsection (2) because by doing so the statute further eliminated duplication of benefits for work-related injuries that do not relate to the actual driving or operation of a motor vehicle." (Emphasis added).

Thus, the driving of the chassis onto the trailer for shipment as cargo constituted the loading of a vehicle during the course of employment. The question remaining to be resolved is whether "the injury arose from the use or operation of another vehicle."

Section 3101(2)(c) of the no-fault act defines "motor vehicle" as follows:

> "'Motor vehicle' means a vehicle, including a trailer, operated or designed for operation upon a public highway by power other than muscular power which has more than 2 wheels. Motor vehicle does not include a motorcycle or a moped, as defined in section 32b of Act No. 300 of the Public Acts of 1949."

Accordingly, to fall within the statutory definition, a vehicle must be operated or designed for operation upon a public highway, be powered by a source other than muscular power, and have more than two wheels. McDaniel v Allstate Ins Co, 145 Mich App 603, 607; 378 NW2d 488 (1985).

The chassis in this case was the stripped down frame of a vehicle, consisting of steel rails, a motor, and a steering

wheel. Although it did not include the body, hood, windshields, or even the seat of the finished vehicle, there is no dispute that the chassis was powered by an engine and had more than two wheels. Because the chassis was not being operated upon a public highway at the time of the injury, the decisive inquiry is whether the chassis was designed for operation upon a public highway.

Plaintiff argues that because the chassis was equipped with the minimal components for highway operation (e.g., engine, wheels, steering wheel, etc.) and because similar chassis had been operated on public streets by employees of defendant Commercial Carriers, the chassis was designed for oepration on a public highway. We disagree.

In Apperson v Citizens Mutual Ins Co, 130 Mich App 799; 344 NW2d 812 (1983), this Court ruled that a car which had been modified for racing on a track was not a "motor vehicle" because it was no longer designed for use on a public highway. This Court noted that the vehicle was no longer equipped with lights, windshield wipers, turn signals, exhaust pipes, or an outside mirror. Id at 802.

Even more persuasive is this Court's decision in Ebernickel v State Farm Mutual Automobile Ins Co, 141 Mich App 729; 367 NW2d 444 (1985), lv den 422 Mich 969 (1985). In Ebernickel, the plaintiff was injured at his place of employment when he was struck from behind by a forklift which was equipped with an engine, four wheels, lights and an exhaust system and was capable of being driven on a highway. This Court ruled that the forklift was not a "motor vehicle" because it was not "primarily designed for operation on a public highway" at the time of the accident. Id at 731 (emphasis added). Significantly, this Court also stated that the fact that the machine "could be" or "had been previously" operated on a highway was of no consequence in the determination of whether the vehicle was primarily designed for highway use.

Similarly, we find that the chassis in this case was not a motor vehicle within the statutory definition. While it may have been equipped with a motor, steering wheel, and tires, it was not equipped with a body, hood, windshield, or a permanent seat. In its stripped-down state, the chassis was not designed primarily for operation on a highway. The fact that defendant Commercial Carriers may have operated similar chassis on the highway is of no consequence.

Given the above, we find that granting summary disposition in favor of defendants was not erroneous.

AFFIRMED.

/s/ Michael J. Kelly
/s/ John H. Shepherd
/s/ Charles W. Simon, Jr.