

STATE OF MICHIGAN
IN THE CIRCUIT COURT OF THE COUNTY OF OCEANA

TAMMY LYNN SMITH,
Plaintiff,

File # 85-2609-NI

-vs-

OPINION ON MOTION FOR
SUMMARY DISPOSITION

MARK LEE TOZER,
Defendant.

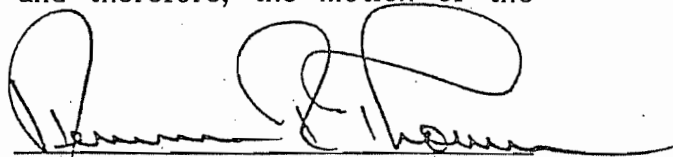
On July 11, 1984, plaintiff was a passenger on a motorcycle that was involved in a collision with an automobile. She was injured. She sued and settled with the operator of the motor vehicle and now proceeds against the defendant owner-operator of the motorcycle on which she was riding.

Defendant moves for summary disposition claiming that plaintiff has not suffered injuries amounting to a serious impairment of body functions as required by MCL 500.3135; MSA 24.13135, (Michigan No-Fault Act) as construed by relevant case law.

Plaintiff contends, on the authority of Citizens Insurance v Tuttle, 411 Mich 536, 547, 551 (1981) that tort liability was not abolished as to the non-motorist tortfeasor and since motorcycles are outside the basic no-fault system, the defendant is subject to tort liability. Plaintiff further says that in the present circumstance she can receive both the benefits of the No-Fault Act as a passenger on a motorcycle because it was involved with a motor vehicle and the benefits of full tort recovery because defendant motorcycle owner-operator was not given immunity under the Michigan No-Fault Act.

The court agrees with the plaintiff and therefore, the motion of the defendant for summary disposition is denied.

Dated: May 22, 1986



Terrence R. Thomas, Circuit Judge