

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

RAYMOND DONALD SANFORD, JR.,
Plaintiff-Appellant,

MAY 19 1986

v

No. 85249

INSURANCE COMPANY OF NORTH AMERICA,
AETNA INSURANCE COMPANY, and
CIGNA COMPANIES,

Defendants-Appellees.

BEFORE: D.E. Holbrook, Jr., P.J., J.H. Shepherd and D.A. Roberson*, JJ.
JOHN H. SHEPHERD, J.

Plaintiff appeals as of right from an order entered July 1, 1985, granting defendants' motion for summary disposition of plaintiff's claim for benefits under the no-fault act. The issue before us is whether a passenger on a motorcycle injured in an accident which occurred while the operator was fleeing from police may recover benefits under the no-fault act. The trial court held that he could not and we agree.

Melvin Dertien purchased a used motorcycle on March 3, 1984, and took plaintiff for a ride the following day. Dertien did not yet have the title or insurance for the motorcycle. Shortly thereafter, an officer in a marked police cruiser began pursuing the motorcycle because it was exceeding the speed limit. When the officer activated the overhead lights to signal the motorcycle to stop, Dertien accelerated and attempted to flee. While fleeing the police vehicle, Dertien smashed into a tree after the motorcycle left the road. The police vehicle was about 100 to 150 yards behind at the time of the accident.

As a result of the accident, plaintiff sustained serious injuries. He subsequently filed a claim against defendants for benefits under the no-fault act, MCL 500.3101 et seq.; MSA 24.13101 et seq. Defendants are the no-fault

insurers of the police cruiser operated by the officer under the authority of the Ottawa County Sheriff's Department. Defendants refused to make voluntary payment under their policy.

Motorcycles are excluded from the definition of motor vehicles under the no-fault act. MCL 500.3101(2)(c); MSA 24.13101(2)(c). Therefore, a person injured while riding a motorcycle is not entitled to no-fault benefits unless he or she was injured in an accident involving a motor vehicle. Underhill v Safeco Ins Co, 407 Mich 175, 186; 284 NW2d 463 (1979). MCL 500.3105(1); MSA 24.13105(1) provides in pertinent part:

"Under personal protection insurance an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter."

The generally followed test for whether an accident involves a motor vehicle was stated in Kangas v Aetna Casualty & Surety Co, 64 Mich App 1, 17; 235 NW2d 42, lv den 395 Mich 787 (1975). In Kangas, the Court stated that, "while the automobile need not be the proximate cause of the injury, there still must be a causal connection between the injury sustained and the ownership, maintenance, or use of the automobile and which causal connection is more than incidental, fortuitous or but for. The injury must be foreseeably identifiable with the normal use, maintenance and ownership of the vehicle." While actual contact with the motor vehicle is not required, the injury should be "foreseeably identifiable" with the normal use of a motor vehicle. See Bradley v DAIIE, 130 Mich App 34, 42-3; 343 NW2d 506 (1983).

In Peck v Auto-Owners Ins Co, 112 Mich App 329; 315 NW2d 586 (1982), this Court addressed facts and issues similar to those in the present case. In Peck, the plaintiff was injured when he smashed into a brick wall while fleeing on his motorcycle from the police. The defendant was the no-fault

insurer of the plaintiff's automobile, and the plaintiff initiated suit to recover medical expenses and wage losses sustained as a result of the accident. The trial court granted the defendant's motion for summary judgment. On appeal, this Court addressed the issue of whether a motorcyclist fleeing from the police has sufficient "involvement" to allow recovery under the no-fault act. The Court, applying the test in Kangas, supra, stated that it did not believe that the accident was "foreseeably identifiable" with the normal use of a motor vehicle, and that the Legislature did not intend the phrase, "normal use" of a vehicle, to cover the unusual circumstances of an individual fleeing from the police. Peck, 334. The Court held the accident was not from the police use of a vehicle but from the plaintiff's act of fleeing from the police. It reasoned that the accident would have been equally likely had the police been pursuing the plaintiff on a motorcycle, in a helicopter, or on horseback, and the involvement of the cruiser was merely fortuitous. Accordingly, the Court held that a motorcyclist injured in an accident that occurs while he is fleeing from a police cruiser is not entitled to recover no-fault benefits where there has been no causal nexus established that would link the injuries incurred in the accident to a motor vehicle. Id.

We find the reasoning of the Court in Peck persuasive, and believe that it should be followed in the present case. We agree with the Court's reasoning that the involvement of a police cruiser in these circumstances is merely fortuitous, and that the accident here, as in Peck, arose from the act of flight from the police rather than the police use of a vehicle. As in Peck, the accident in the present case would have been equally likely to occur had the police been pursuing plaintiff on a motorcycle, in a helicopter, or on horseback. Although the presence of the police cruiser prompted Dertien's flight, which resulted in

the accident, and in that sense there is a causal connection between use of the police vehicle and plaintiff's injuries, we believe that the connection was an incidental one. Plaintiff's injuries did not arise out of the operation or use of a motor vehicle under MCL 500.3105(1). The cases relied upon by plaintiff involved some more direct connection and closer proximity between the motorcycle and the motor vehicle even if not involving actual contact. See Bromley v Citizens Ins Co, 113 Mich App 131; 317 NW2d 318 (1982) (motorcycle forced off road by on-coming motor vehicle which crossed center line), Bradley, supra (motor vehicle's presence in adjacent lane prevented a lane change by a motorcycle causing motorcycle to run into stalled car).

Plaintiff argues, based on the deposition testimony of Erik Beckman, a professor at the Michigan State University School of Criminal Justice, that motorist flight from police officers occurs on a regular basis and is foreseeable. Beckman stated that the chase which occurred in the instant case was not unusual and is experienced by every police department in the nation from time to time. Beckman further stated that the most commonly used police vehicle engaging in a pursuit is an automobile.

However, even if Beckman's testimony is accepted as true, our analysis is not affected. The involvement of a police cruiser is still fortuitous and incidental. The chase and accident would occur even if the police had been chasing plaintiff on a motorcycle. Beckman admitted that the particular type of vehicle involved in a chase is not significant and that the key to a person fleeing has more to do with the person's knowledge that he is being pursued by a police officer. Beckman further admitted that only a small minority of traffic stops result in flight and pursuit, further buttressing the conclusion of the Court in Peck that such accidents are not foreseeably identifiable with the normal use of a motor vehicle.

Plaintiff attempts to distinguish Peck on the ground that he was an "innocent" third-party and was not involved in Dertien's unlawful acts. The Court in Peck did not address the issue of whether a passenger on a motorcycle fleeing from police is entitled to recover no-fault benefits. However, the Court's analysis is equally applicable to passengers on a motorcycle. Again, the key consideration is that the involvement of the motor vehicle (i.e., the police cruiser) is fortuitous and that the accident did not arise because of the involvement of a motor vehicle, but rather from the flight from police. In short, the fact that a plaintiff was a passenger on the motorcycle, rather than the driver, and the fact that he might have been "innocent" are irrelevant. Under the no-fault act the issue is not guilt or innocence but rather whether one fits within the protected class.

We hold that plaintiff's injuries did not arise out of the ownership, use or maintenance of the police vehicle, and plaintiff therefore does not fall within the act's coverage.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ John H. Shepherd
/s/ Dalton A. Roberson