STATE OF MICHIGAN

COURT OF APPEALS

JOHN HARTMAN,

Plaintiff-Appellee,

NOV 25 1986

v

No. 89927

ASSOCIATED TRUCK LINES, INC.,

Defendant-Appellant.

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

PER CURIAM

Defendant Associated Truck Lines appeals from the Wayne County Circuit Court's order of summary judgment in this action for no-fault benefits. We affirm.

In September, 1980, plaintiff suffered a spinal injury while working for defendant. He returned to work in 1980, and worked "on and off" until December 1, 1981, when his truck hit an upraised portion of pavement and he suffered further spinal injury. After December 1, 1981, plaintiff was unable to return to work. Plaintiff argued that, if defendant could not produce a counter-affidavit, he was entitled to summary judgment because his disability arose out of the incident of December 1, 1981. We agree.

An insurer[1] is liable for accidental bodily injury "arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle," MCL 500.3105(1); MSA 24.13105(1). An injury "arises out of" the use of the vehicle when there is a causal connection between the injuries sustained and the ownership, maintenance or use of a motor vehicle, and that connection is "more than incidental, fortuitous or but for". Shaw v Allstate Ins Co, 141 Mich App 331, 333; 364 NW2d 325 (1985). Thus, under the no-fault act, something less than proximate cause is required. A plaintiff need not show that

an automobile accident was the only cause of his disability. See Comment to SJI 2d 35.02; Johnson v Auto Owners Ins Co, 138 Mich App 813, 816; 360 NW2d 310 (1984).

In this case, plaintiff produced an affidavit of Dr. C. Kohli which stated that plaintiff's injuries were caused in part by the December 1, 1981 incident and that "[p]rior injuries may also have been partial causes of the problem, but the incident of 12/1/81 was a significant cause". Defendant did not produce any evidence to indicate that the accident of December 1, 1981 was not a cause of plaintiff's disability, despite the fact that its doctors have examined plaintiff. Defendant's position below was that it did not need to submit any affidavit, because a certain letter written by plaintiff raised a material issue of fact. That letter, which was sent to another insurance carrier, read as follows:

> "Combined Insurance Company
> Attn: Mr. Barris
> Claims Analyst
> Agency Division
>
> "Claim No. A119196
> Policy No. 50003-333
>
> "Dear Mr. Barris:
>
> "In reference to your letter dated January 15, 1982, I find that all of the documents enclosed state that this is a continuation of my previous injury. Your doctor examined me on May 28, 1981, and his findings are the same as my doctors'. I can't see how you can find that this is not a continuation of the previous claim.
>
> "If you still feel that they are not please let me know as soon as possible. Your prompt attention in this matter would be appreciated.
>
> "Sincerely yours,
> /s/ John Hartman
> John Hartman
> 4710 Webb Road
> Youngstown, Ohio 44515"

Plaintiff does not dispute that his September, 1980 injury was a cause of his medical problems. He does not deny that he was injured in both the September, 1980 and the December, 1981 incidents. The letter plaintiff wrote was consistent with his claim that the disability arose out of both traumas.

Appellant's contention that the letter raised a material factual issue must be rejected.

Next, defendant contends that the trial court erred when it ruled that defendant's conduct in refusing to pay benefits was unreasonable, because there was no factual basis in support of that opinion. We disagree.

MCL 500.3148(1); MSA 24.13148(1)(1) provides:

> "An attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits which are overdue. The attorney's fee shall be a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment."

A no fault insurer's refusal or delay in paying a claim is not unreasonable where the refusal or delay is based on a legitimate question of factual uncertainty or a legitimate question of law. The trial court's finding of unreasonable refusal or delay in paying a no-fault claim will not be disturbed on appeal unless it is clearly erroneous. Nelson v DAIIE, 137 Mich App 226, 232-233; 359 NW2d 536 (1984). See also Fortier v Aetna Casualty and Surety Co., 131 Mich App 784, 794; 346 NW2d 874 (1984).

In this case, defendant had no proof that plaintiff's disability did not arise out of the December, 1981, accident. There was no legitimate factual uncertainty or question of law presented. Consequently, the trial court's finding that it was unreasonable for defendant to deny benefits was not clearly erroneous.

Affirmed.

/s/ Roman S. Gribbs
/s/ Daniel F. Walsh
/s/ William R. Beasley

Footnote.

1. Defendant is self insured for no-fault insurance.