STATE OF MICHIGAN

COURT OF APPEALS

STATE FARM FIRE AND CASUALTY COMPANY,

Plaintiff-Appellant,

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellee,

and

ROBERT DOUGLAS JOHNSON,

Defendant.

UNPUBLISHED
June 18, 1999

No. 209325
Eaton Circuit Court
LC No. 97-000288-NI

Before: Neff, P.J., and Hood and Murphy, JJ.

PER CURIAM.

Plaintiff State Farm Fire and Casualty Company (State Farm) appeals as of right from the grant of summary disposition in favor of defendant Auto Club Insurance Association (ACIA) in this first-party priority dispute between two no-fault carriers. We reverse and remand for entry of summary disposition in favor of plaintiff.

I

This case stems from an accident that occurred when defendant Robert Johnson drove a Chevrolet Blazer to drop off his son at school. The Blazer was owned and insured by Johnson's live-in girlfriend through plaintiff State Farm. After parking the Blazer, Johnson turned off the ignition, walked around to the passenger side of the vehicle, and leaned over to unfasten his son's seat belt. Although a portion of his upper body was inside the vehicle, Johnson's feet remained on the ground. As Johnson began to straighten up, the parked vehicle was struck from behind by a Buick driven by Sandra Bennett which was insured by ACIA. The impact caused Johnson to strike the side of his face on the vehicle's door frame and his knees to hit the running board. Johnson then fell to the ground, hitting his head.

State Farm paid $22,000 in medical expenses for Johnson and filed suit seeking reimbursement of these expenses from ACIA, Bennett's insurer. ACIA denied liability, insisting that it was not the first insurer in priority under the no-fault act. Both parties filed motions for summary disposition pursuant to MCR 2.116(C)(10). The court granted ACIA's motion, determining that Johnson was an occupant of the parked vehicle pursuant to MCL 500.3106(1)(c). This appeal followed.

II

Michigan's no-fault act requires insurers to provide first-party injury protection for certain injuries related to a motor vehicle:

> 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. [MCL 500.3105(1); MSA 24.13105(1).]

Whether an injury arises out of the use of a motor vehicle "as a motor vehicle" under MCL 500.3105(1); MSA 24.13105(1) turns on whether the injury is closely related to the transportational function of automobiles. *McKenzie v ACIA*, 458 Mich 214, 215; 580 NW2d 424 (1998).

In the present case, we find that the vehicle that struck Johnson's vehicle was being used for a transportational function at the time of impact. Specifically, Johnson was dropping off his son at school and the other vehicle was being driven in the same circular drive for the same reason. It is without question that Johnson was injured when his Blazer was struck by this other vehicle. Because Johnson's accidental bodily injury arose out of the use of a motor vehicle being used "as a motor vehicle," i.e., the moving vehicle which struck Johnson's Blazer, he is entitled to no-fault benefits pursuant to §3105, *supra*.[1]

III

The question that remains is which of the two insurers is responsible for payment of the no-fault benefits at issue. Generally, the injured party must seek benefits from the insurance company covering the owner, registrant or operator of the vehicle that the injured party occupied at the time of the accident. MCL 500.3114(4); MSA 24.13114(4). If, however, the injured party was not an "occupant" of a motor vehicle, liability for no-fault benefits lies with the owner, registrant or operator of the vehicle "involved in the accident." MCL 500.3115(1); MSA 24.13115(1).

A

The term "occupant" is not specifically defined by the statute and has been the subject of much litigation. In *Rohlman v Hawkeye-Security Ins Co*, 442 Mich 520, 531-532; 502 NW2d 310 (1993), our Supreme Court held that the claimant was not an occupant because he was not physically inside the vehicle when the accident occurred.[2] Indeed, a person standing outside of a vehicle generally is not deemed an occupant of the vehicle. *Rohlman v Hawkeye-Security Ins Co*, 207 Mich App 344, 350; 526 NW2d 183 (1994); *ACIA v Michigan Mutual Ins Co*, 197 Mich App 275, 278; 494

NW2d 822 (1992); *Lankford v Citizens Ins Co of America*, 171 Mich App 413, 420; 431 NW2d 59 (1988).

In the present case, there is no question that both of Johnson's feet were on the ground at the time of impact. The fact that some portion of his upper body was leaning inside the Blazer does not transform him into an occupant of the vehicle. See *Rohlm*an, *supra* at 349-350.

B

Because Johnson was not an occupant of the vehicle at the time of impact, the priority rule of MCL 500.3115; MSA 24.13115 applies. Under this rule, ACIA, as the insurer of the vehicle "involved in an accident" is liable for Johnson's first-party no-fault benefits.[3] The trial court erred in concluding otherwise.

Reversed and remanded for entry of an order granting summary disposition to plaintiff. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Harold Hood
/s/ William B. Murphy

[1] Because no-fault coverage clearly exists pursuant to §3105, we find it unnecessary to conduct any analysis (such as that undertaken by the trial court) of the various exceptions to the parked vehicle exclusion contained in MCL 500.3106; MSA 24.13106. *Kalin v DAIIE*, 112 Mich App 497, 501, n2; 316 NW2d 467 (1982); see also the dissenting opinion of Judge Hood in *Clute v General Accident Assurance Co of Canada*, 142 Mich App 640, 643; 369 NW2d 864 (1985), which was later relied upon by our Supreme Court, *Clute v. General Accident Assurance Co of Canada*, 428 Mich 871, 401 NW2d 615 (1987).

[2] The Court further noted that, at least for purposes of § 3106(1)(c), "entering into" and "alighting from" were acts separate from "occupying" a vehicle. *Royal Globe Ins Co*, *supra* at 574 n 5.

[3] Johnson's vehicle was not "involved" in the accident as that phrase is used in the no-fault act. See generally *Heard v State Farm Mutual Automobile Ins Co*, 414 Mich 139, 324 NW2d 1 (1982).