

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ALLSTATE INSURANCE COMPANY,

Plaintiff-Appellant,

and

LARRY WILSON,

Plaintiff,

v

KEITH T. ULRICH, d/b/a TUFFY TOOL,

Defendant-Appellee.

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UNPUBLISHED

July 31, 2001

No. 222261

Macomb Circuit Court

LC No. 98-003469-CK

Before: Collins, P.J., and Hoekstra and Gage, JJ.

PER CURIAM.

Plaintiff Allstate Insurance Company brought this action seeking defendant's reimbursement of no-fault benefits that Allstate paid on behalf of injured motorcyclist Irving Ledger. Allstate paid Ledger personal injury protection (PIP) benefits as a second priority insurer under MCL 500.3114(5)(b). Allstate then sued defendant, the owner of an uninsured truck involved in the accident in which Ledger was injured. Allstate alleged that defendant was primarily liable for Ledger's PIP benefits because had defendant insured the truck, defendant's insurer would have been the first priority insurer according to MCL 500.3114(5)(a). The trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10), accepting defendant's argument that he could not be liable for PIP benefits under 500.3114(5) because the facts showed that his truck was not involved in the accident that injured Ledger. Plaintiff appeals as of right. We reverse and remand.

The sole issue on appeal is whether under the instant facts the truck owned by defendant and operated by plaintiff Larry Wilson was involved in an accident according to the no-fault act. The issue is a question of law that we review de novo. *Witt v American Family Mut Ins Co*, 219 Mich App 602, 606; 557 NW2d 163 (1996). The phrase "involved in the accident" appears in several sections of the no-fault act and should be construed consistently throughout the act.

*Turner v Auto Club Ins Ass'n*, 448 Mich 22, 37; 528 NW2d 681 (1995); *Michigan Mut Ins Co v Farm Bureau Ins Group*, 183 Mich App 626, 636; 455 NW2d 352 (1990).

The instant facts indicate that on May 24, 1996 Wilson was operating defendant's 48-foot flat bed tractor trailer. Wilson was driving on Maple Road, which at that point consisted of three lanes, one in each direction and a center turn lane. Wilson intended to refuel the truck at a fuel depot, and recalled seeing the motorcycle driven by Ledger following him for several blocks. Approaching the fuel depot's driveway at approximately fifteen miles per hour, Wilson activated the truck's right turn signal. Wilson began making a right turn into the driveway, by initially adjusting the steering wheel slightly to the left to permit the trailer's clearance past a light pole near the fuel depot's driveway. Wilson testified that he then began turning the truck right "on about a 20 percent degree into the driveway."<sup>1</sup> Before further "committing the truck into the driveway," Wilson looked in the truck's right rearview mirror and observed the motorcycle operated by Ledger near the rear of the trailer "approaching up the right side of the truck on the gravel shoulder." Wilson estimated that when he first saw the motorcycle it was traveling at approximately thirty miles per hour. To avoid colliding with the motorcycle, Wilson stopped the truck when he saw the motorcycle approaching, apparently trying to pass. When the motorcycle reached a point adjacent to the cab of the truck, approximately ten feet from the truck, Wilson witnessed Ledger lose control of the motorcycle, slide along the ground into a fire hydrant, and be struck by the sliding motorcycle. Wilson believed that Ledger suddenly hit his brakes and that the gravel caused Ledger to lose control. Neither Ledger nor the motorcycle struck the truck.

The trial court determined that the truck was not involved in the accident because (1) no contact occurred between the truck and the motorcycle and (2) the accident was not caused by the truck, but rather occurred due to the motorcycle traveling at a high rate of speed on the gravel shoulder. Because the trial court held that the truck was not involved in the accident, the court granted defendant's motion for summary disposition.

We conclude as a matter of law that the trial court erred in finding that defendant's truck was not involved in the accident with Ledger. In *Turner, supra*, the Supreme Court explained as follows the meaning of "involved in the accident" according to the no-fault act:

Combining what we said in *Heard [v State Farm Mut Auto Ins Co*, 414 Mich 139; 324 NW2d 1 (1982)] with the guidance provided by the Court of Appeals, we hold that for a vehicle to be considered "involved in the accident" under § 3125, the motor vehicle, being operated or used as a motor vehicle, must actively, as opposed to passively, contribute to the accident. Showing a mere "but for" connection between the operation or use of the motor vehicle and the damage is not enough to establish that the vehicle is "involved in the accident." Moreover, *physical contact is not required to establish that the vehicle was "involved in the accident," nor is fault a relevant consideration in the determination whether a vehicle is "involved in an accident."* [*Turner, supra* at 39 (emphasis added).]

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<sup>1</sup> Wilson's testimony is the only evidence of record describing the accident's occurrence.

Defendant's truck was "involved in the accident" with Ledger because the truck actively contributed to the accident, notwithstanding that the actions of its driver Wilson may have been lawful or that Wilson may not have been at fault. Although no contact occurred between the truck and the motorcycle, the facts indicate that Ledger, who was traveling on the gravel shoulder along the truck's right side, lost control of the motorcycle while attempting to avoid a collision with the truck, which was in the process of making a right turn into the motorcycle's path. The truck's commencement of its right turn directly precipitated Ledger's application of the passing motorcycle's brakes and its subsequent slide on the gravel shoulder. Because the truck actively contributed to the accident, the truck was involved in the accident for purposes of the no-fault act. *Turner, supra.*

We reverse the trial court's grant of summary disposition to defendant and remand for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Jeffrey G. Collins

/s/ Joel P. Hoekstra

/s/ Hilda R. Gage