

STATE OF MICHIGAN
COURT OF APPEALS

MARSHALL SLATER, Personal Representative
of the Estate of Dawn Slater, Deceased,

UNPUBLISHED
October 26, 2004

Plaintiff-Appellant,

v

No. 248782
Grand Traverse Circuit Court
LC No. 02-022396-NF

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellee.

Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

PER CURIAM.

Plaintiff Marshall Slater, personal representative of the estate of Dawn Slater, deceased, appeals as of right the order granting defendant State Farm Mutual Automobile Insurance Company's motion for summary disposition in this no-fault insurance coverage dispute. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

A falling tree limb killed Dawn Slater after she got out of Marshall Slater's truck to help him remove fallen tree branches from the road. Marshall Slater sought no-fault PIP survivor's loss benefits. The trial court granted State Farm's motion for summary disposition, finding that although the truck was not parked, Slater failed to establish that the injuries arose out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle.

II. Ownership, Operation, Maintenance, Or Use Of A Motor Vehicle As A Motor Vehicle

A. Standard Of Review

We review de novo the trial court's decision on a motion for summary disposition.¹

¹ *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

B. Statutory Provisions

MCL 500.3105(1) provides:

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 500.3106(1) provides:

Accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle unless any of the following occur:

(a) The vehicle was parked in such a way as to cause unreasonable risk of the bodily injury which occurred.

(b) Except as provided in subsection (2), the injury was a direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment was being operated or used, or property being lifted onto or lowered from the vehicle in the loading or unloading process.

(c) Except as provided in subsection (2), the injury was sustained by a person while occupying, entering into, or alighting from the vehicle.

C. Applying The Statute

Here, whether the vehicle was parked or not, there was no entitlement to PIP benefits because the injury did not arise out of the use of a motor vehicle as a vehicle. In *Morosini v Citizens Ins Co of America (After Remand)*,² the Supreme Court determined that whether an injury arises out of the use of a motor vehicle as a motor vehicle turns on whether the injury is closely related to the transportation function of motor vehicles. Incidental involvement of a motor vehicle does not give rise to coverage.³

In *Morosini*, the plaintiff was injured when he was assaulted by another driver after he stopped his vehicle in response to a traffic accident. The Supreme Court found that while the assault may have been motivated by the closely antecedent events that involved the use of a motor vehicle as a motor vehicle, the assault was a separate occurrence. The assault was therefore not closely related to the transportation function of motor vehicles.⁴

² *Morosini v Citizens Ins Co of America (After Remand)*, 461 Mich 303, 310; 602 NW2d 828 (1999).

³ *McKenzie v ACIA*, 458 Mich 214; 580 NW2d 424 (1998).

⁴ *Morosini*, *supra* at 310-311.

Here, there was no traffic accident. Marshall Slater stopped his vehicle because the road was blocked by a tree. Dawn Slater was outside the vehicle when she was killed by a falling tree branch. Like the assault in *Morosini*, the falling branch was unrelated to the use of the motor vehicle as a motor vehicle. We therefore conclude that the trial court properly granted State Farm's motion for summary disposition.

Affirmed.

/s/ William C. Whitbeck

/s/ Kathleen Jansen

/s/ Richard A. Bandstra