

STATE OF MICHIGAN
COURT OF APPEALS

JANET BOMBA, Personal Representative of the
Estate of ARTHUR BOMBA, Deceased,

UNPUBLISHED
August 22, 1997

Plaintiff-Appellant,

v

No. 193596
Wayne Circuit Court
LC No. 95-518195-NO

VILLAGE OF CARLETON,

Defendant,

and

JOHN RYZNAR and RYZNAR
TRUCKING COMPANY,

Defendants-Appellees.

Before: Sawyer, P.J., and Bandstra and E. A. Quinnell*, JJ.

MEMORANDUM.

Plaintiff appeals by right summary disposition based on the exclusive remedy provision of the Worker's Disability Compensation Act, MCL 418.131(1); MSA 17.237(131)(1), in this wrongful death action. This case is being decided without oral argument pursuant to MCR 7.214(E).

Granting that individual defendant John Ryznar had actual knowledge that the garbage truck was malfunctioning, the evidence nonetheless fails to establish that Ryznar also had knowledge that injury was certain to occur. No employee had previously been injured by virtue of the defective equipment, and the driver and loader, individually or in tandem by using extra caution for the safety of the loader, or by cooperation through a system of visual or audible signals, might well have continued to avoid injury indefinitely. On these facts, injury was not certain to occur. *Travis v Dreis & Krump Mfg Co*, 453

* Circuit judge, sitting on the Court of Appeals by assignment.

Mich 149, 182; 551 NW2d 132 (1996). Although appellees may have negligently permitted an unsafe work environment to exist, no intentional tort was committed. *Id.*, 453 Mich at 183.

Affirmed.

/s/ David H. Sawyer

/s/ Richard A. Bandstra

/s/ Edward A. Quinnell