STATE OF MICHIGAN

COURT OF APPEALS

MANHAL NANNOSHI,

Plaintiff,

v

AUTO-OWNERS INSURANCE COMPANY and STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Jointly and Severally,

Defendants,

and

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Cross-Plaintiff-Appellant,

v

AUTO-OWNERS INSURANCE COMPANY,

Cross-Defendant-Appellee.

UNPUBLISHED
September 2, 1997

No. 196014
Oakland Circuit Court
LC No. 95-493915

Before: Hood, P.J., and McDonald and Young, JJ.

PER CURIAM.

Defendant State Farm Mutual Insurance Company (State Farm) appeals as of right the trial court's grant of summary disposition in favor of defendant Auto-Owners Insurance Company (Auto-Owners) pursuant to MCR 2.116(C)(10). We reverse and remand.

This case involves a question of insurer priority. The relevant facts are essentially undisputed. Plaintiff was seriously injured while traveling northbound on I-75 in the State of Ohio. While attempting to pass a semi-truck insured by Auto-Owners', plaintiff lost control of the motorcycle he was riding, moved into the truck's lane, and was run over by the rear wheels of the truck. It is unclear why plaintiff lost control, however, the truck did not influence the loss of control. The motorcycle which plaintiff was riding was uninsured.[1]

After the accident plaintiff sought no-fault personal protection insurance (PIP) benefits from both defendants. The claims were denied. Plaintiff subsequently filed suit, alleging he was entitled to PIP benefits from defendant Auto-Owners because it insured the truck he was hit by and from defendant State Farm, because it insured an automobile owned by his father, with whom he lived. All parties filed motions for summary disposition.[2] The trial court granted summary disposition in favor of Auto-Owners, ruling its insured was not "involved in the accident" for purposes of the applicable no-fault priority statute, MCL 500.3114(5); MSA 24.13114(5). Subsequently, State Farm entered into a settlement with plaintiff, pursuant to which it paid him $65,000.

State Farm argues the trial court incorrectly concluded the truck was not involved in the accident for purposes of § 3114(5) of the no-fault act. We agree.

MCL 500.3114(5); MSA 24.13114(5) provides:

> A person suffering accidental bodily injury arising from a motor vehicle accident which shows evidence of the involvement of a motor vehicle while an operator or passenger of a motorcycle shall claim personal protection insurance benefits from insurers in the following order of priority:
>
> (a) The insurer of the owner or registrant of the motor vehicle involved in the accident.
>
> (b) The insurer of the operator of the motor vehicle involved in the accident.
>
> (c) The motor vehicle insurer of the operator involved in the accident.
>
> (d) The motor vehicle insurer of the owner or registrant of the motorcycle involved in the accident.

Therefore, a motorcyclist who is injured in an accident involving a motor vehicle looks first to the insurer of the motor vehicle involved in the accident, rather than to his own no-fault insurer. *Autry v Allstate Ins Co*, 130 Mich App 585, 590 n 1; 344 NW2d 588 (1983).

Recently, in *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 39; 528 NW2d 681 (1995), the Michigan Supreme Court interpreted the phrase "involved in the accident" in the context of § 3125 of the no-fault act, which addresses insurer priority in terms of property protection benefits. There, the Court held that in order to be considered "involved in the accident," "the motor vehicle, being operated

or used as a motor vehicle, must actively, as opposed to passively, contribute to the accident." *Id.* The Court explained that establishing "a mere 'but for' connection between the operation or use of the motor vehicle and the damage is not enough" to constitute involvement. *Id.* The Court further clarified the standard by explaining "physical contact is not required to establish that the vehicle was 'involved in the accident.'" *Id.* Moreover, the Court clearly stated fault is not relevant to the determination of involvement in the accident. *Id.* While this case arises under § 3114 of the no-fault act, the Supreme Court's interpretation of the phrase is applicable because this Court has observed that this phrase "should be consistently construed throughout the no-fault act." *Michigan Mutual Ins Co v Farm Bureau Ins Group*, 183 Mich App 626, 636; 455 NW2d 352 (1990).

Here, in addressing the truck's involvement in the accident the trial court erred in focusing too narrowly on the reason why plaintiff lost control of the motorcycle and not on the accident as a whole. We find the truck played an active role in the accident because it is undisputed it ran over plaintiff, resulting in serious injuries. This case is similar to the facts in *Hastings Mutual Ins Co v State Farm Ins Co*, 177 Mich App 428; 442 NW2d 684 (1989) wherein this Court upheld the trial court's finding a car which struck and killed a motorcyclist while attempting to avoid a multi-vehicle crash was "involved in the accident." *Id.*, 435. Here the truck was not akin to a stationary object with which plaintiff might have collided, such as a tree, or stopped or parked vehicle because the truck was moving forward at the time it hit plaintiff. It was the forward motion of the truck which caused plaintiff's injuries. We therefore find the cases cited by Auto-Owners inapposite. Applying the priorities set forth in § 3114(5) of the no-fault act, Auto-Owners, as an insurer of the owner of a motor vehicle involved in the accident is the highest priority insurer. Contrary to Auto-Owner's contention, the trial court applied the correct priority statute. See *Hastings*, *supra* at 432-435.

Auto-Owners contends it should be liable for only partial reimbursement because State Farm also insured a motor vehicle which was "involved in the accident". However, the policy covering the vehicle referred to, was never at issue in this litigation. Plaintiff did not make a claim against the policy covering the vehicle, and Auto-Owners never filed a cross-complaint alleging the policy was at issue.

Auto-Owners as the priority insurer must reimburse State Farm for all reasonable no-fault benefits paid plaintiff. We therefore remand for further proceedings to determine the reasonable amount of no-fault benefits plaintiff was entitled to receive, and thus the amount Auto-Owners is required to reimburse to State Farm.

Reversed and remanded. We do not retain jurisdiction.

/s/ Harold Hood
/s/ Gary R. McDonald
/s/ Robert P. Young, Jr.

[1] This fact did not disqualify plaintiff from receiving PIP benefits because the motorcycle was owned by his father.

[2] The insurers' motions each claimed the other was higher in priority for payment of PIP benefits, while plaintiff's motion alleged there was no question he was entitled to benefits under one of the policies.