STATE OF MICHIGAN

COURT OF APPEALS

MARC E. ANDERSON,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
April 25, 2000

No. 208651
Lapeer Circuit Court
LC No. 95-021596 CK

Before: Kelly, P.J., and Jansen and White, JJ.

White, J. (dissenting).

I respectfully dissent.

MCL 500.3105(1); MSA 24.13105(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.

During the pendency of this appeal, the Supreme Court decided *Morosini v Citizens Ins Co of America (After Remand)*, 461 Mich 303; 602 NW2d 828 (1999), holding that injuries the plaintiff driver received when he was assaulted by the driver of another car following a minor traffic incident did not give rise to a claim for PIP benefits under MCL 500.3105(1); MSA 24.13105(1). The Supreme Court disagreed with this Court's determination that the plaintiff's injuries arose out of the use of his motor vehicle as a motor vehicle. After discussing four cases, none of them factually similar to the instant case as they largely involved assaults in motor vehicles,[1] the Court concluded that the assault in *Morosini* "was not 'closely related to the transportational function of motor vehicles,'" quoting *McKenzie v ACIA*, 458 Mich 214, 226; 580 NW2d 424 (1998). The Court further observed, in pertinent part:

> From these decisions we learn:

* * *

- The focus is on the relationship between the injury and the use of a motor vehicle as a motor vehicle, not on the intent of the assailant. *Marzonie*.

- Incidental involvement of a motor vehicle does not give rise to coverage under the language enacted by the Legislature . . . *Bourne*.

- The statute authorizes coverage in the event of an assault only if it is "closely related to the transportational function of motor vehicles." *McKenzie*. [*Morosini* at 310]

In the instant case, there can be no question that the actual collision with the deer arose out of the ownership, operation, maintenance or use of the vehicle as a motor vehicle, and was closely related to plaintiff's van's transportational function. Further, while there may not be a legal obligation to clear the roadway after a collision to prevent injury to other motorists, plaintiff's actions in doing so were directly related to the motor vehicle collision with the deer. Applying the applicable principles identified by the Supreme Court, I conclude that the motor vehicle's involvement in plaintiff's injury was not merely incidental, and that a motorist's removal of an obstacle in the roadway directly resulting from a motor vehicle collision is an injury causing activity that is "closely related to the transportational function of motor vehicles." Thus, there is a sufficient causal nexus between the injuries sustained and the use of the motor vehicle as a motor vehicle to bring the injury within the intended purview of the no-fault act. See *Morosini*, at 308-309.

In the cases relied on by defendant, many involving gunshot injuries, the motor vehicle's involvement was fortuitous, simply providing the site for injury. Here, there was first a motor vehicle collision and then an injury producing event -- dragging the carcass from the roadway -- that was a normal, direct and foreseeable response to a common motoring occurrence. That is, motor vehicle - deer collisions are a recognized risk of motoring, and it is normal, expected, and reflective of the direct risks of motoring that a driver might attempt to remove the deer from the road to prevent harm to other motorists. The connection between the injury producing event - - pulling the deer from the roadway - - and the motor vehicle is not simply fortuitous. Rather, the need to drag the deer from the roadway arose directly from the transportational function of the motor vehicle. *Id*. The deer was hit by the motor vehicle and was blocking the roadway. The requisite nexus between the injury and the transportational function of the motor vehicle is present. *Id.*

The instant case presents considerations vastly different from those presented in the fortuitous assault cases. Recognizing coverage here is consistent with the legislative purposes of lowering the overall cost of providing benefits for motoring-type injuries and confining benefits to risks closely related to the transportational function of motor vehicles, in that, rather than providing coverage for a fortuitous extra-motoring event such as an assault, it encourages motorists to make the roadway more safe for other motorists, and recognizes the close and

natural causal connection between the motor vehicle collision and the motorist's effort to clear the road of the obstruction caused by the collision.

I would reverse and remand for further proceedings.

/s/ Helene N. White

[1] Three of the four cases discussed by the *Morosini* Court involved assaults. See *Thornton v Allstate Ins Co*, 425 Mich 643; 391 NW2d 320 (1986) (taxi driver shot during armed robbery by passenger); *Marzonie v ACIA*, 441 Mich 522; 495 NW2d 788 (1992) (occupants of two vehicles argued, one pursued the other vehicle home, occupant of the latter vehicle retrieved a gun and shot at first vehicle, injuring driver); and *Bourne v Farmers Ins Exchange*, 449 Mich 193; 534 NW2d 491 (1995) (driver assaulted during carjacking by two men hidden in back seat of his vehicle). In the fourth case, *McKenzie*, *supra*, two men were hospitalized after inhaling carbon monoxide while they slept from a heater in a camper/trailer attached to the back of a truck.