

STATE OF MICHIGAN
COURT OF APPEALS

KEITH MARCOU,

Plaintiff-Appellee,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED

September 28, 2001

No. 220190

Benzie Circuit Court

LC No. 96-004790-NF

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

PER CURIAM.

Defendant appeals as of right, challenging the trial court's grant of plaintiff's motion for summary disposition, and entry of judgment for plaintiff regarding his claim for no fault insurance personal injury protection (PIP) benefits. We reverse.

During a break from deer hunting, plaintiff sat in the passenger seat of his hunting companion's pick-up truck. While plaintiff's friend was inserting a rifle into its case on the front seat of the truck, the rifle accidentally shot plaintiff's thigh. Plaintiff sought PIP benefits from defendant, his no fault insurer. The trial court granted plaintiff's motion for summary disposition. The court noted that state law requires the casing of guns during their transport, and reasoned that the use of the truck to transport hunting gear was foreseeable and that plaintiff's injury occurred during the loading of the gun into the truck.

Because the injury undisputedly occurred in a parked motor vehicle, MCL 500.3106(1) governs the determination whether the injury is covered by the no fault insurer. *Putkamer v Transamerica Ins Corp of America*, 454 Mich 626, 632-633; 563 NW2d 683 (1997).¹ No fault liability exists under this subsection when the facts involve conduct fitting one of the three exceptions of subsection 3106(1)² and the injury is "directly related" to the vehicle's character

¹ Where, as here, there is no dispute regarding the facts, the issue whether an injury arose out of the use of a vehicle is a legal issue for the court to decide. *Id.* at 630.

² MCL 500.3106(1) provides in relevant part as follows:

(continued...)

and use as a motor vehicle. *Id.* at 634-636. To justify recovery, a sufficiently close nexus must exist between the injury and the use of the vehicle as a motor vehicle. The injury must have a causal relationship to the motor vehicle “that is more than incidental, fortuitous, or but for.” *Id.* at 635.

Although the law required plaintiff’s friend to case the weapon before possessing or transporting it in the vehicle, the gun discharged only because plaintiff’s friend had the gun’s hammer back and his finger on the trigger while he put the gun into its case. The accident did not occur because of a need to maneuver the weapon within the confines of the truck, see *Perryman v Citizens Ins Co of America*, 156 Mich App 359, 365; 401 NW2d 367 (1986), or for any other reason related to the truck’s use as a motor vehicle, but because of plaintiff’s friend’s decisions to case the gun on the truck’s front seat, to case the gun while loaded, and to case the gun while it was cocked and his finger was on the trigger. Nothing distinctive about the truck’s front seat invited its use as a platform for casing a gun. *Yost v League General Ins Co*, 213 Mich App 183, 185; 539 NW2d 568 (1995). Because plaintiff’s injury only incidentally related to the parked truck and could have occurred in any setting, *Morosini v Citizens Ins Co of America (After Remand)*, 461 Mich 303, 311; 602 NW2d 828 (1999); *Putkamer, supra* at 634-635, we conclude that the injury was not related to the use of the truck as a motor vehicle, and that plaintiff is not entitled to no fault PIP insurance benefits.

Reversed and remanded for entry of judgment in favor of defendant. We do not retain jurisdiction.

/s/ Jeffrey G. Collins
/s/ Joel P. Hoekstra
/s/ Hilda R. Gage

(...continued)

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) . . . the injury was a direct result of . . . property being lifted onto or lowered from the vehicle in the loading or unloading process.
- (c) . . . the injury was sustained by a person while occupying, entering into, or alighting from the vehicle.