

STATE OF MICHIGAN
COURT OF APPEALS

HOME OWNERS INSURANCE COMPANY,
Subrogee of JEREMY BOGUE,

UNPUBLISHED
November 9, 2010

Plaintiff-Appellee,

v

PROGRESSIVE MICHIGAN INSURANCE
COMPANY,

No. 293417
Cass Circuit Court
LC No. 08-000140-NI

Defendant-Appellant.

Before: MURPHY, C.J., and SAWYER and MURRAY, JJ.

PER CURIAM.

Defendant appeals from an order granting summary disposition to plaintiff finding defendant liable to plaintiff for Jeremy Bogue's medical expenses. We affirm.

While riding his Yamaha YZ 250 cc motorcycle, Jeremy Bogue was injured in an accident involving a van insured by defendant. Bogue's personal vehicles were insured by plaintiff. When defendant refused to cover Bogue's Personal Injury Protection ("PIP") benefits for Bogue's injuries, plaintiff paid for them. Then, plaintiff sued defendant to recover the benefits it had paid to Bogue. Plaintiff filed a PIP first party no-fault priority dispute against defendant. Both parties filed motions for summary disposition.

The trial court granted plaintiff's motion for summary disposition and denied defendant's motion for summary disposition. The trial court found that defendant was liable for Bogue's no-fault PIP benefits covering the injuries he received from the accident. Both parties stipulated to a consent judgment in favor of plaintiff for \$184,000.00. Defendant appealed its denial of summary disposition.

Defendant argues that Bogue's motorcycle is neither a motor vehicle as defined by Michigan's No-Fault Insurance Act, nor is it a motorcycle; rather it is an off road vehicle (ORV). And, defendant further argues, because Bogue was driving an ORV, he must look to his own insurance provider for PIP benefits. Because plaintiff insured Bogue, defendant argues that plaintiff is higher in priority to pay Bogue's PIP benefits.

Bogue's Yamaha is both a motorcycle and an ORV. A motorcycle is defined as "a vehicle having a saddle or seat for the use of the rider, designed to travel on not more than 3

wheels in contact with the ground, which is equipped with a motor that exceeds 50 cubic centimeters piston displacement.” MCL 500.3101(2)(c). Bogue’s Yamaha has a seat, two wheels, and a 250 cc motor, which exceeds 50 cc; therefore, Bogue’s Yamaha is a motorcycle. The definition of ORV includes motorcycles. MCL 500.3101(g) (before the 2008 amendment). Thus, Bogue’s Yamaha is both a motorcycle and an ORV.

A motorcyclist is not required to have no-fault PIP insurance. But, a motorcyclist injured in an accident with a motor vehicle is entitled to receive no-fault PIP benefits. A motorcycle is excluded from the definition of motor vehicles under the no-fault act. *Peck v Auto Owners Ins Co*, 112 Mich App 329; 315 NW2d 586 (1982). So, a person injured while riding a motorcycle is not entitled to no-fault benefits unless that person was injured in an accident involving a motor vehicle, even though the motorcycle does not qualify as a motor vehicle under the no-fault act. *Sanford v Ins Co of North America*, 151 Mich App 747; 391 NW2d 473 (1986). *Guibord v Farmers Ins Exch*, 110 Mich App 218; 312 NW2d 219 (1981). Motorcyclists are entitled to no-fault benefits because they are not required to purchase no-fault insurance. *Edquist v Cadillac Mut Ins Co*, 119 Mich App 801; 327 NW2d 368 (1982). Also, motorcycle owners are not required to have PIP insurance. *Bray v Frankenmuth Mut Ins Co*, 92 Mich App 58; 284 NW2d 749 (1979).

A motorcyclist is entitled to no-fault PIP benefits as long as the motorcyclist was injured in an accident involving a motor vehicle that was designed to be driven on a public highway. *Detroit Auto Inter-Ins Exch v Irvine*, 92 Mich App 371; 284 NW2d 535 (1979). The type of road where the accident happened is irrelevant, as long as the accident involved a motor vehicle and a motorcycle. *Mills v Auto-Owners Ins, Inc*, 102 Mich App 105; 300 NW2d 757 (1980). Here, the van involved in the accident that injured Bogue was a motor vehicle designed to be driven on a public highway.

Bogue was riding his motorcycle when the accident happened, which means that the motorcycle priority provisions control. MCL 500.3114(5) states:

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 of the motorcycle involved in the accident.

(d) The motor vehicle insurer of the owner or registrant of the motorcycle involved in the accident.

From the plain language of the statute, it is clear that defendant, as the insurer of the owner-operator of the van, has first and second priority. Bogue was riding a motorcycle when he was injured in an accident involving the van insured by defendant. Therefore, defendant is liable for Bogue's no-fault PIP benefits.

Next, defendant argues that the 2008 amendment to the no-fault act should not apply to this case. The amendment excludes ORVs from the definition of motorcycles. MCL 500.3101(c). Defendant argues that the trial court erred when it applied the 2008 amendment. But, the trial court would have reached the same result because Bogue's Yamaha is a motorcycle. Therefore, the trial court's reliance on the 2008 amendment was harmless.

The no-fault act provides that motorcyclists are not required to carry no-fault PIP insurance, and motorcyclists injured in accidents with motor vehicles are entitled to no-fault PIP benefits. The motorcycle priority provisions state that, when a motorcyclist is injured in an accident with a motor vehicle, the motor vehicle owner's insurance has first priority to pay the motorcyclist's no-fault PIP benefits. Bogue was riding his motorcycle when he was injured in an accident with a van insured by defendant. Because plaintiff paid Bogue's no-fault PIP benefits, defendant must reimburse plaintiff.

Affirmed. Plaintiff may tax costs.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Christopher M. Murray