

STATE OF MICHIGAN  
COURT OF APPEALS

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SAMUEL TRAPANI,

Plaintiff-Appellant,

v

ACIA,

Defendant-Appellee.

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UNPUBLISHED

January 9, 1998

No. 197309

Wayne Circuit Court

LC No. 95-503643 NF

Before: McDonald, P.J., and Wahls and J. R. Weber\*, JJ.

MEMORANDUM.

Plaintiff appeals by right summary disposition in favor of defendant in this action for first-party no fault insurance benefits. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

While driving his motor vehicle, plaintiff was injured when a gunman, who according to plaintiff was firing at his vehicle and not at plaintiff or his passenger, discharged several gunshots, one of which wounded plaintiff. Citing *Saunders v DAIIE*, 123 Mich App 570; 332 NW2d 613 (1983) and *Mann v DAIIE*, 111 Mich App 637; 314 NW2d 719 (1981), plaintiff contends that given the focus of his assailant on the vehicle itself as a target, his injuries arise out of the ownership, maintenance, or use of a motor vehicle as a motor vehicle and therefore qualify him for personal protection insurance benefits under MCL 500.3105(1); MSA 24.13105(1). We disagree.

Although *Saunders* and *Mann*, *supra*, do lend some support to plaintiff's position, their precedential validity in that respect has been vitiated by the Michigan Supreme Court's decision in *Bourne v Farmers Ins Exchange*, 449 Mich 193; 534 NW2d 491 (1995), where the Court rejected the authority of those cases, despite recognizing that it had previously cited them with approval in *Thornton v Allstate Ins Co*, 425 Mich 643; 391 NW2d 320 (1986). Specifically, the Court rejected any proposition based on *Saunders* and *Mann* that assaults "are part of 'the normal risk' of motoring." *Bourne*, *supra* at 200, n 3. The Court in *Bourne* then went on to expressly reject the very distinction on which plaintiff predicates his claim in the present case. The Court held that the intent of the assailant

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

cannot properly be used to create the requisite causal nexus between the injury and the use of the motor vehicle. *Id.* at 201. We have since recognized this principle in cases similar to the present one. *Kennedy v Auto Club of Michigan*, 215 Mich App 264; 544 NW2d 750 (1996). In this case there is nothing to indicate that plaintiff's use of his motor vehicle, as opposed to any other kind of conveyance or otherwise being in the wrong place at the wrong time, was a proximate cause of his injuries. Accordingly, summary disposition was properly granted by the circuit court.

Affirmed.

/s/ Gary R. McDonald

/s/ Myron H. Wahls

/s/ John R. Weber