

STATE OF MICHIGAN
COURT OF APPEALS

THOMAS BRINKLEY,

Plaintiff-Appellant,

v

AUTO OWNERS INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

July 31, 2001

No. 223252

Wayne Circuit Court

LC No. 98-838866-NF

Before: Wilder, P.J., and Hood and Griffin, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured in a single vehicle accident when he lost control of his motorcycle after striking a piece of tire tread lying in the roadway. He sought personal injury protection benefits from the no-fault insurer of an automobile owned by the owner of the motorcycle.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). The trial court apparently granted defendant's motion pursuant to subrule (C)(10). Such a motion tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

An insurer is liable to pay personal injury protection benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle. MCL 500.3105(1). A motorcycle is not a motor vehicle. MCL 500.3101(2)(e). However, a motorcyclist can claim no-fault benefits when he is injured in an accident involving a motor vehicle. *Underhill v Safeco Ins Co*, 407 Mich 175, 186; 284 NW2d 463 (1979); *Piersante v American Fidelity Ins Co*, 88 Mich App 607, 613; 278 NW2d 691 (1979).

For an injury to arise out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle, the injury must be closely related to the vehicle's function as a means of transportation. *McKenzie v Auto Club Ins Ass'n*, 458 Mich 214, 225-226; 580 NW2d 424 (1998); *Keller v Citizens Ins Co of America*, 199 Mich App 714, 715-716; 502 NW2d 329 (1993). Thus, while the motor vehicle need not be the proximate cause of the injury, the injury must be foreseeably identifiable with the normal ownership, operation, maintenance, or use of the motor vehicle and be causally connected in a way that is more than incidental, fortuitous, or but for. *Thornton v Allstate Ins Co*, 425 Mich 643, 659-660; 391 NW2d 320 (1986); *Kangas v Aetna Cas & Sur Co*, 64 Mich App 1, 17; 235 NW2d 42 (1975). Such a causal connection is lacking where a motorcycle loses control after striking an object in the roadway that has come detached from a motor vehicle. *Ricciuti v DAIIE*, 101 Mich App 683, 686; 300 NW2d 681 (1980). While such a connection may be sufficient to establish the physical contact requirement necessary to receive uninsured motorist benefits or to sue the secretary of state under MCL 257.1112 for injuries caused by an unknown motor vehicle and driver, *Wills v State Farm Ins Co*, 222 Mich App 110, 115; 564 NW2d 488 (1997); *Adams v Zajac*, 110 Mich App 522, 528; 313 NW2d 347 (1981), it does not create a sufficient causal connection between that motor vehicle and another motorist's injury such that the injury could be said to arise out of the ownership, operation, maintenance or use of that motor vehicle. *Ricciuti, supra*.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Harold Hood

/s/ Richard Allen Griffin