

STATE OF MICHIGAN
COURT OF APPEALS

PAUL DUNFORD,

Plaintiff-Appellant,

v

OLD REPUBLIC INSURANCE COMPANY,

Defendant,

and

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellee.

UNPUBLISHED
February 26, 2002

No. 227069
Wayne Circuit Court
LC No. 99-930242-CK

Before: Smolenski, P.J., and Doctoroff and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting the motion for summary disposition filed by defendant Auto Club Insurance Association (ACIA). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff worked for Allied Systems as a car hauler. He loaded new vehicles onto a tractor-trailer and drove the trailer to dealerships. Plaintiff sustained injuries when a truck he was loading onto a trailer struck another vehicle. He received worker's compensation benefits. In addition, he filed suit seeking personal injury protection (PIP) benefits from Old Republic Insurance Company, the insurer of the tractor-trailer owned by Allied, and/or ACIA, the insurer of his personal vehicle.¹

ACIA moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that plaintiff was not entitled to PIP benefits. ACIA relied on MCL 500.3106(2), which reads in pertinent part as follows:

(2) Accidental bodily injury does not arise out of the ownership, operation,
maintenance, or use of a parked vehicle as a motor vehicle if benefits under the

¹ Old Republic was dismissed pursuant to stipulation.

worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, as amended, being sections 418.101 to 418.941 of the Michigan Compiled Laws, or under a similar law of another state or under a similar federal law, are available to an employee who sustains the injury in the course of his or her employment while doing either of the following:

(a) Loading, unloading, or doing mechanical work on a vehicle unless the injury arose from the use or operation of another vehicle. As used in this subdivision, 'another vehicle' does not include a motor vehicle being loaded on, unloaded from, or secured to, as cargo or freight, a motor vehicle.

In response, plaintiff argued that MCL 500.3106(2) was inapplicable both because he was injured while driving a moving vehicle not owned by his employer, and because he sought PIP benefits from his personal insurer. The trial court granted ACIA's motion, finding that MCL 500.3106(2)(a) precluded an award of PIP benefits to plaintiff because the vehicle plaintiff was driving when he was injured was being loaded as cargo.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature in enacting the statute. When applying legislation, a court must first determine whether the language of the statute is clear and unambiguous. If the language is clear and unambiguous, no judicial interpretation is warranted. *Lee v National Union Fire Ins Co*, 207 Mich App 323, 326; 523 NW2d 900 (1994).

Plaintiff argues that the trial court erred by granting ACIA's motion for summary disposition. We disagree and affirm. The language of MCL 500.3106(2)(a) is clear and unambiguous; therefore, judicial interpretation is not warranted. *Id.* At the time plaintiff was injured, the truck he occupied was in motion. Plaintiff was loading the truck onto the tractor-trailer as cargo or freight. The truck was not included in the definition of "another vehicle." The clear language of MCL 500.3106(2)(a) precludes plaintiff from recovering PIP benefits. See *Truby v Farm Bureau General Ins*, 175 Mich App 569, 575; 438 NW2d 249 (1988). The fact that plaintiff was seeking PIP benefits from his own insurer is of no moment. MCL 500.3114, the provision on which plaintiff relies, designates the order of priority among insurers who are liable for payment of benefits. It does not establish an entitlement to benefits. See *DeSot v Auto Club Ins Ass'n*, 174 Mich App 251, 257; 435 NW2d 442 (1988). The trial court correctly granted summary disposition in favor of ACIA.

Affirmed.

/s/ Michael R. Smolenski

/s/ Martin M. Doctoroff

/s/ Donald S. Owens