

STATE OF MICHIGAN  
COURT OF APPEALS

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EDWARD FARLEY II,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant-Appellee.

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UNPUBLISHED

November 30, 2004

No. 249315

Wayne Circuit Court

LC No. 02-215672-NF

Before: Meter, P.J., and Wilder and Schuette, JJ.

PER CURIAM.

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

Under MCL 500.3105(1), a person is entitled to personal protection insurance benefits "for accidental injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter." Accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle unless "the injury was sustained by a person while occupying, entering into, or alighting from the vehicle." MCL 500.3106(1)(c). To recover benefits for injuries related to parked vehicles, the plaintiff must prove "that (1) his conduct fits one of the three exceptions of subsection 3106(1); (2) the injury arose out of the ownership, operation, maintenance, or use of the parked motor vehicle *as a motor vehicle*; and (3) the injury had a causal relationship to the parked motor vehicle that is more than incidental, fortuitous, or but for." *Putkamer v Transamerica Ins Corp of America*, 454 Mich 626, 635-636; 563 NW2d 683 (1997) (emphasis in original).

The third part of the *Putkamer* test for parked vehicles is similar to the causal connection requirement for other vehicles under § 3105. *Id.* at 634-635. Whether an injury arises out of the use of a motor vehicle "'as a motor vehicle' turns on whether the injury is closely related to the transportation function of motor vehicles." *McKenzie v Auto Club Ins Ass'n*, 458 Mich 214, 225-226; 580 NW2d 424 (1998). That means that the injury for which benefits are sought must be closely related to the vehicle's function as a vehicle. Coverage is available in cases of assault where the assault is closely related to the transportation function of the motor vehicle, *Morosini v Citizens Ins Co of America (After Remand)*, 461 Mich 303, 310-311; 602 NW2d 828 (1999),

but not where the vehicle is merely the situs of the injuries rather than the cause thereof. *Id.* at 308, 310; *Thornton v Allstate Ins Co*, 425 Mich 643, 660-661; 391 NW2d 320 (1986).

Taking the facts in a light most favorable to plaintiff, he was occupying or alighting from a vehicle at the time he was injured, and the vehicle was being used as a motor vehicle. However, his injuries lacked the requisite causal connection to the vehicle. Plaintiff was shot during the course of an attempted carjacking, and the requisite causal connection between the injury and the vehicle is not present during carjackings and armed robberies. See *Bourne v Farmers Ins Exchange*, 449 Mich 193, 200; 534 NW2d 491 (1995), and *Thornton, supra*; see also *O'Key v State Farm Mut Auto Ins Co*, 89 Mich App 526, 530; 280 NW2d 583 (1979) (the role of the automobile during the shooting of the plaintiff was "incidental").

Although the act of opening the door purportedly caused the carjacker to fire his weapon, he could have continued his assault against plaintiff and fired whether or not the door opened or whether or not plaintiff was even in the vehicle. In order for an injury to arise out of the use of an automobile, there must be more than an incidental or fortuitous connection between the injury and the use of the automobile. It is insufficient to show that, but for the automobile, the injury would not have occurred. The automobile must not merely contribute to cause the condition that leads to the injury but must itself produce the injury. *Keller v Citizens Ins Co of America*, 199 Mich App 714, 715-716; 502 NW2d 329 (1993). The injury in this case occurred because of the unlawful activity of the possessor of the gun and could have occurred in the absence of the automobile. We therefore conclude that the assault in this case was not closely tied to the transportation function of the vehicle in question. See *Morosoni, supra* at 311. Indeed, this case is analogous to *O'Key*, in which an assailant fired shots into a vehicle after the plaintiff drove the vehicle in reverse in an attempt to escape from the assailant. *O'Key, supra* at 527. The use of the automobile likely *contributed* to the injury in *O'Key*, just as it likely *contributed* to the injury in the instant case. Nevertheless, in *O'Key* and in the present case, the assaults and the injuries were not closely tied to the transportation function of the vehicles. The trial court correctly granted summary disposition to defendant.

Affirmed.

/s/ Patrick M. Meter  
/s/ Kurtis T. Wilder  
/s/ Bill Schuette