STATE OF MICHIGAN

COURT OF APPEALS

CITIZENS INSURANCE COMPANY OF AMERICA,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
August 23, 1996

No. 179333
LC No. 93 30999 NF

Before: McDonald, P.J., and Markman and C. W. Johnson*, JJ.

PER CURIAM.

Plaintiff appeals as of right from a September 23, l994, order granting summary disposition pursuant to MCR 2.116 (C)(10) in favor of defendant, in this action to recover personal injury protection benefits pursuant to the priority provisions contained in MCL 500.3114(1); MSA 24.13114(1) and MCL 500.3115(1); MSA 24.13115(1). We reverse.

This case arises out of injuries sustained by Ronald Parrish while he was replacing a fuel filter on a l981 Honda Accord owned by Peggy Jacobson. Parrish was severely burned when gasoline sprayed out of the pressurized gas tank and was ignited by a nearby kerosene heater. Plaintiff paid Parrish personal injury protection benefits pursuant to a policy held by Parrish's girlfriend Elizabeth Clark, on which Parrish was a named driver. Plaintiff brought the instant action to recover from defendant, Jacobson's no-fault insurer, pursuant to the priority provisions. Supra. Defendant answered that it was not liable for PIP benefits because Parrish's injuries did not arise out of the ownership, operation, or maintenance of the Honda. Subsequently, both parties moved for summary disposition under MCR 2.116(C)(10). Following a hearing on the cross motions, the trial court granted summary disposition in defendant's favor finding that although Parrish was unquestionably "maintaining" the Honda when the accident occurred, there was an insufficient nexus between the kerosene heater and Parrish's activity. On appeal plaintiff claims the trial court erred in concluding Parrish's injuries did not arise out of the ownership, operation, or maintenance of the Honda. We agree.

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

The question whether a person's injuries arose out of the maintenance of a motor vehicle is a determination which depends on the unique facts of each case and must be made on a case-by-case basis. *Musall v Golcheff*, 174 Mich App 700; 436 NW2d 451 (1989). An injury need not be caused directly by the motor vehicle itself in order for an injury to arise out of the maintenance of a vehicle. *Id*. at 704. Indeed, "the term 'arise out of" does not require as strict a showing of causation as does the concept of proximate cause." *Gutierrez v Dairyland Ins Co*, 110 Mich App 126, vacated in part on other grounds, 414 Mich 956; 312 NW2d 181 (1982). However, the relationship between the injuries and the maintenance must be more than incidental, fortuitous, or "but for." *Id*. at 135. There must be a causal relationship between the injury and the maintenance. *Turner v Auto Club Ins Ass'n*, 448 Mich 22; 528 NW2d 681 (1995).

We find such a casual relationship in the instant case. Parrish began working on the vehicle believing the Honda had a clogged fuel filter. He elevated the Honda on a hydraulic jack and sat underneath it. The fuel filter was right next to the gas tank near the left rear tire. When Parrish pulled some clamps off near the filter, gasoline from the "pressurized" tank sprayed all over him. As Parrish reached for some vise grips to "pinch the lines off," the gas fumes apparently ignited on a nearby kerosene heater. The kerosene heater was located approximately three feet from the Honda's front right tire and was running to provide the necessary heat to enable Parrish to work on the vehicle. A ball of fire raced toward Parrish and he was severely burned.

Defendant concedes Parrish was maintaining the Honda when the accident occurred. However, relying on opinions of this Court in *Central Mutual Ins Co v Walter*, 143 Mich App 332; 372 NW2d 542 (1985) and *Auto-Owners Ins Co v Citizens Ins Co*, 189 Mich App 458; 473 NW2d 753 (1991), defendant claims there was an insufficient nexus between Parrish's injuries and the maintenance of the vehicle. We disagree. The cases relied upon by defendant involve property damages caused by fires stemming from gasoline or fumes coming into contact with hot water heaters. In both cases the hot water heaters were "spatially and conceptually removed" from the repair work being performed on the automobiles. *Central* at 336; *Auto Owners* at 460. Here Parrish was doused with gasoline while attempting to change the fuel filter in the middle of December in a homeowner's garage and was burned when the spilled gasoline, or fumes therefrom, came into contact with a kerosene heater located approximately three feet from the front tire of the vehicle. We believe there was a clear causal relationship between Parrish's injuries and his maintenance of the Honda. *Turner, supra*. We also believe there was a close and direct connection between the maintenance of the vehicle and the source of the ignition. *Walter, supra*. See also *Buckeye Union Ins Co v Johnson*, 108 Mich App 46; 310 NW2d 268 (1981).

The trial court erred in granting summary disposition in favor of defendant on the grounds there was an insufficient nexus between the kerosene heater and Parrish's activity. Furthermore, because the parties agree there remain no genuine issues of material fact, the court erred in failing to grant summary disposition in favor of plaintiff.

MCL 500.3114(1); MSA 24.13114(1) provides the following people are entitled to PIP benefits pursuant to a no-fault policy:

> …the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident. [emphasis added]

Because Parrish was not an occupant of the Honda when he was injured, §3114(1) must be read in conjunction with MCL 500.,3115(1); MSA 24.13115(1). See *Schuster v Allstate Ins Co*, 146 Mich App 578; 381 NW2d 773 (1985). Section 3115(1) provides:

> Except as provided in subsection (12) of section 3114, a person suffering accidental bodily injury while not an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:
>
> (a) Insurers of owners or registrants of motor vehicles involved in the accident.
>
> (b) Insurers of operators of motor vehicles involved in the accident.

Thus, an injured nonoccupant of a motor vehicle must seek PIP benefits first from his own insurer or the insurer of his spouse or other relative with whom he is domiciled. *Shinabarger v Citizens Mutual Ins Co*, 90 Mich App 307; 282 NW2d 301 (1979). Only if the injured nonoccupant has no such available insurer is he entitled to seek compensation from the insurer of the owner or regristrant of the motor vehicle in the accident, *Id*.; MCL 500.3115(1); MSA 24.13115(1).

At all times relevant to the present case, Parrish neither owned nor registered a motor vehicle. Parrish was not married, and did not reside with a relative. Although Parrish was designated as a driver of a vehicle owned, registered, and insured with defendant by Parrish's girlfriend Clark, Parrish was not the "person named in the policy" for purposes of the priority provisions of §3114(1). *Transamerica Ins Corp v Hastings Mutual Ins Co*, 185 Mich App 249; 460 NW2d 291 (1990); *Dairyland Ins Co v Auto-Owners Ins Co*, 123 Mich App 675; 333 NW2d 322 (1983). Consequently, defendant, as insurer of the Honda, is primarily liable for PIP benefits. MCL 500.3114(1); MSA 24.13114(1); MCL 500.3115(1)(a);MSA 24.13115(1)(a).

Reversed and remanded for entry of summary disposition in favor of plaintiff. We do not retain jurisdiction. Costs to plaintiff.

/s/ Gary R. McDonald
/s/ Charles W. Johnson