STATE OF MICHIGAN

COURT OF APPEALS

ROY WRIGHT,

Plaintiff-Appellant,

v

AMERICAN STATES INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
August 19, 1997

No. 190448
Clinton Circuit Court
LC No. 94-007500-NI

Before: Cavanagh, P.J., and Holbrook, Jr. and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting summary disposition in favor of defendant and dismissing plaintiff's complaint for no-fault benefits. We reverse and remand.

The trial court's grant of summary disposition to defendant is reviewed de novo by this Court. *Tranker v Figgie Int'l, Inc*, 221 Mich App 7, 11; 561 NW2d 397 (1997). Review of a summary disposition motion brought under MCR 2.116(C)(10) requires us to consider all relevant affidavits, depositions, admissions and other documentary evidence submitted by the parties in a light most favorable to the nonmoving party and determine whether a genuine issue of material fact exists upon which reasonable minds could differ or whether the moving party is entitled to judgment as a matter of law. MCR 2.116(G)(5); *Tranker*, *supra*.

The trial court granted summary disposition to defendant based upon its interpretation of MCL 500.3106(2); MSA 24.13106(2). The statute provides:

> (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 worker's disability compensation act . . . 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. . . .

(b) Entering into or alighting from the vehicle unless the injury was sustained while entering into or alighting from the vehicle immediately after the vehicle became disabled.

In interpreting a statute, we must determine and effectuate the Legislature's intent. To determine legislative intent, we must focus on the statutory language. If it is clear and unambiguous, the statute is to be applied as written. If the language is ambiguous, judicial construction is required. *Piper v Pettibone Corp*, 450 Mich 565, 571-572; 542 NW2d 269 (1995). In interpreting a statute, the words used in the statute must be given their ordinary and generally accepted meaning. *Yaldo v North Pointe Ins Co*, 217 Mich App 617, 621; 552 NW2d 657 (1996).

The no-fault insurance act is remedial in nature and is to be liberally construed in favor of persons who are intended to benefit from it. *Putkamer v Transamerica Ins Corp of America*, 454 Mich 626, 631; 563 NW2d 683 (1997). The intent of the Legislature in enacting MCL 500.3106; MSA 24.13106(2) was to "eliminate duplication of benefits for work-related injuries except where the actual driving or operation of a motor vehicle is involved." *Lee v Nat'l Union Fire Ins Co*, 207 Mich App 323, 327; 523 NW2d 900 (1994).

The trial court applied subsection (a), concluding that because plaintiff's injury occurred during the unloading of the truck, no-fault benefits were precluded. Plaintiff argues that subsection (b) should apply, entitling him to benefits because he was injured while getting out of the truck immediately after it became disabled. If plaintiff's vehicle were in fact disabled, we agree that subsection (b) should apply. A fundamental rule of statutory construction is that specific statutory provisions control over general provisions. *Gebhardt v O'Rourke*, 444 Mich 535, 542-543; 510 NW2d 900 (1994).

Thus, the question is whether plaintiff's truck was disabled within the meaning of MCL 500.3106(2)(b); MSA 24.13106(2)(b). The term "disabled," as used in MCL 500.3106(2)(b); MSA 24.13106(2)(b), "requires some sort of motor vehicle disability." *Lee*, *supra* at 329. Plaintiff presented evidence that, because hydraulic fluid had sprayed all over his windows and mirrors, he could not see out of the cab and therefore could not safely drive. The hydraulic line that burst was connected to the loading/unloading system of the truck and not its engine.

Keeping in mind that the statute is to be liberally construed, *Putkamer*, *supra*, we conclude that on the facts of this case, as alleged by plaintiff, the truck was functionally disabled. Although the engine was not affected and the vehicle could be operated, the facts, viewed in a light most favorable to plaintiff, establish that he was not able to safely drive the truck because his visibility was impaired. We find that plaintiff established a genuine issue of material fact regarding whether he is entitled to benefits under MCL 500.3106(2)(b); MSA 24.13106(2)(b). Therefore, the trial court erred in granting defendant's motion for summary disposition.

Reversed and remanded for further proceedings in accordance with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Donald E. Holbrook, Jr.
/s/ Kathleen Jansen