

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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KAY E. O'MALLEY,

Plaintiff-Appellee,

v

FARMERS INSURANCE EXCHANGE,

Defendant-Appellant.

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UNPUBLISHED

August 7, 2003

No. 239585

Oakland Circuit Court

LC No. 01-029177-NF

Before: Zahra, P.J., and Talbot and Owens, JJ.

PER CURIAM.

Defendant appeals as of right the order granting plaintiff's motion for summary disposition in this insurance coverage dispute. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured when her vehicle was hit from behind while stopped at a traffic light. Plaintiff was not insured at the time, and defendant was assigned her claim for personal protection insurance benefits. Defendant moved for summary disposition, asserting that plaintiff was not entitled to benefits under MCL 500.3113(b). The trial court denied defendant's motion and granted summary disposition to plaintiff.

MCL 500.3113(b) provides in part:

A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:

\* \* \*

(b) The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security required by section 3101 or 3103 was not in effect.

The sole coverage question on this appeal is whether plaintiff's vehicle was "involved" in the accident when it was fully stopped at the traffic signal at the time it was rear-ended. Whether a vehicle was involved in an accident within the meaning of § 3113(b) is a question of law. *Witt v American Family Mutual Ins Co*, 219 Mich App 602, 606; 557 NW2d 163 (1996).

For a motor vehicle to be involved in an accident, it must actively contribute to the accident. *Turner v Auto Club Ins Assn*, 448 Mich 22, 38; 528 NW2d 681 (1995). There must be an active link between the injury and the use of the motor vehicle as a motor vehicle. *Id.* at 39. In *Turner*, the Supreme Court found that a truck that was hit by a stolen vehicle in a police chase was involved in the accident.

Plaintiff's car was stopped at a traffic light, in use as a motor vehicle, rather than a stationary object. Although it was not in motion, plaintiff's vehicle had an active link to the accident. Unlike the cases cited by plaintiff<sup>1</sup>, here the accident would not have occurred without plaintiff's presence at the stoplight. The trial court erred in granting summary disposition to plaintiff.

Where plaintiff was not entitled to personal protection insurance benefits, there was no basis for awarding attorney fees because of the failure to pay those benefits. MCL 500.3142.

Reversed.

/s/ Brian K. Zahra  
/s/ Michael J. Talbot  
/s/ Donald S. Owens

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<sup>1</sup> The cases cited by plaintiff are distinguishable. In *Stonewall Ins Group v Farmers Ins Group*, 128 Mich App 307; 340 NW2d 71 (1983), there was no physical contact with the vehicle that was found to be not involved in the accident. In *Bachman v Progressive Ins Co*, 135 Mich App 641; 354 NW2d 292 (1984), and *Brasher v Auto Club Ins Assn*, 152 Mich App 544; 393 NW2d 881 (1986), the accidents involved collisions between other vehicles.