STATE OF MICHIGAN

COURT OF APPEALS

LOGAN CLOUM, Plaintiff-Appellant,	UNPUBLISHED March 18, 2004
v	No. 245071 Iosco Circuit Court
PROGRESSIVE MICHIGAN INSURANCE COMPANY, Defendant-Appellee.	LC No. 02-004008-CK

Before: Zahra, PJ., and Saad and Schuette, JJ.

PER CURIAM.

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

I. FACTS

Plaintiff received an eye injury when a truck tire he was working on exploded. He sought personal injury protection benefits under MCL 500.3105, asserting that he sustained his injury while performing maintenance work on a motor vehicle. The trial court granted defendant's motion for summary disposition, finding that the fact that the tire was not attached to the vehicle at the time of the accident established that plaintiff's injury was not within the scope of the statute.

II. STANDARD OF REVIEW

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

III. ANALYSIS

MCL 500.3105 provides in part:

> (1) Under personal protection insurance an insurer is liable to pay benefits for accidental bodily 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.

In *Miller v Auto-Owners Ins Co,* 411 Mich 633; 309 NW2d 544 (1981), the Supreme Court held that where an injury arises out of the maintenance of a parked vehicle, a claimant may recover under MCL 500.3105(1) without regard to the parked vehicle provisions in MCL 500.3106.

In *Kudek v Detroit Automobile Inter-Insurance Exchange,* 100 Mich App 635; 300 NW2d 350 (1980), the plaintiff's decedent was killed when a wheel he was working on exploded. The trial court granted summary disposition to plaintiff on her claim for personal injury protection benefits, and this Court reversed, finding that the action did not fall within parked car exceptions of § 3106. The Supreme Court held the matter in abeyance for *Miller,* and then peremptorily reversed the judgment of this Court. *Kudek v Detroit Automobile Inter-Insurance Exchange,* 414 Mich 956; 327 NW2d 69 (1982).

Kudek is directly on point with this case. As plaintiff notes, the requirement that an item be attached to a vehicle is related to the parked vehicle provision, which is not applicable to injuries arising out of vehicle maintenance. Replacing a tire is necessary to allow for the operation of a motor vehicle as a motor vehicle.

Central Mutual Ins Co v Walter, 143 Mich App 332; 372 NW2d 542 (1985), relied on by defendant, is distinguishable. In *Central Mutual,* fuel leaking from an automobile brought into a gas station for repairs was ignited by a hot water heater, and set fire to the premises. The Court found that the fire did not arise out of the ownership, operation, maintenance or use of a motor vehicle because there was no causal connection between the vehicle being maintained and the source of ignition, since the hot water heater was totally unrelated to the work of servicing automobiles. Here, there is a causal connection and plaintiff may claim PIP benefits.

Reversed.

/s/ Brian K. Zahra
/s/ Henry William Saad
/s/ Bill Schuette