

STATE OF MICHIGAN
COURT OF APPEALS

DAVID McFARLAND,

Plaintiff-Appellee,

v

TRAVELERS INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED

June 17, 2004

No. 245771

Wayne Circuit Court

LC No. 01-122775-NF

Before: Neff, P.J., and Zahra and Murray, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment entered in plaintiff's favor after the court denied defendant's motion, and granted plaintiff's cross-motion, for summary disposition on the issue of liability. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Statutory interpretation is a question of law, which is also, reviewed de novo. *Roberts v Mecosta Co General Hosp*, 466 Mich 57, 62; 642 NW2d 663 (2002).

Pursuant to 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."

MCL 500.3106 provides in part:

(1) Accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle unless any of the following occur:

* * *

(b) Except as provided in subsection (2), the injury was a direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment was being operated or used, or property being lifted onto or lowered from the vehicle in the loading or unloading process.

* * *

(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 of 1969 . . . 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. As used in this subdivision, "another vehicle" does not include a motor vehicle being loaded on, unloaded from, or secured to, as cargo or freight, a motor vehicle.

There is no dispute that plaintiff incurred the injury while loading or unloading a tractor-trailer in the course of his employment and that the injury was compensable by worker's compensation benefits. The only dispute is whether the vehicle was "parked."

A vehicle is parked only when it is stopped and standing and its wheels are not moving. See *Amy v MIC Gen Ins Corp*, 258 Mich App 94, 123-125; 670 NW2d 228 (2003); *MacDonald v Michigan Mut Ins Co*, 155 Mich App 650, 655-656; 400 NW2d 305 (1986). If it is moving, it is not parked. See *Wright v League Gen Ins Co*, 167 Mich App 238, 244; 421 NW2d 647 (1988). In this case, the tractor-trailer was meant to be parked and indeed had been parked when first stopped at the loading dock. For whatever reason, its wheels began to move and the tractor-trailer was still moving when plaintiff was injured. Therefore, the trial court did not err in ruling that the parked vehicle exclusion did not apply because the vehicle was not parked.

Affirmed.

/s/ Janet T. Neff
/s/ Brian K. Zahra
/s/ Christopher M. Murray