STATE OF MICHIGAN

COURT OF APPEALS

MARK WILLIAMS,

Plaintiff-Appellant,

v

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant-Appellee,

and

PROGRESSIVE INSURANCE COMPANY, SENTRY SELECT INSURANCE COMPANY and GEICO INSURANCE COMPANY,

Defendants.

UNPUBLISHED
April 18, 2006

No. 258608
Wayne Circuit Court
LC No. 03-318852-NF

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

In this action to recover no-fault personal protection insurance benefits, plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendant Progressive Michigan Insurance Company. 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 that is also reviewed de novo on appeal. *Roberts v Mecosta Co Gen 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 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." 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.

Thus,

> [w]here a claimant suffers an injury in an event related to a parked motor vehicle, he must establish that the injury arose out of the ownership, operation, maintenance, or use of the parked vehicle by establishing that he falls into one of the three exceptions to the parking exclusion in subsection 3106(1). In doing so under § 3106, he must demonstrate that (1) his conduct fits one of the three exceptions of subsection 3106(1); (2) the injury arose out of the ownership, operation, maintenance, or use of the parked motor vehicle *as a motor vehicle*; and (3) the injury had a causal relationship to the parked motor vehicle that is more than incidental, fortuitous, or but for. [*Putkamer v Transamerica Ins Corp of America*, 454 Mich 626, 635-636; 563 NW2d 683 (1997) (emphasis in original).]

Assuming without deciding that plaintiff's injury comes within the scope of § 3106(1)(b), we conclude that the injury did not arise out of the ownership, operation, maintenance, or use of the parked vehicle as a motor vehicle. For an injury to arise out of the use of a motor vehicle as a motor vehicle, the injury must be closely related to the transportational function of the vehicle when the vehicle is engaged in that function. *McKenzie v Auto Club Ins Ass'n*, 458 Mich 214, 220, 225-226; 580 NW2d 424 (1998); see also *Drake v Citizens Ins Co*, ___ Mich App ___, ___; ___ NW2d ___ (2006).

The *McKenzie* Court identified several uses of a vehicle that do not qualify as use of a vehicle as a motor vehicle because they are unrelated to the vehicle's transportational function. One such use is "as an advertising display (such as at a car dealership) . . . ." *Id*. at 219. In the present case, the vehicle at issue was being used as an advertising display at a dealership and the injury occurred in the course of its use as such–a salesman was demonstrating the features of the vehicle to encourage plaintiff to purchase it when plaintiff was hit in the head by a falling tailgate. Because plaintiff's injury did not arise out of the use of the parked vehicle as a motor vehicle, the trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra