

Court Denies Motorcyclist PIP Benefits After Broken Down Truck Not Shown to be an ‘Unreasonable Risk’ in Accident

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The Michigan Court of Appeals recently ruled that the alleged failure of a broken down truck's operator to use emergency flashers and to properly place warning triangles behind his parked truck and trailer does not automatically create an unreasonable risk.

The appellate court affirmed summary disposition in favor of a defendant-insurer, which argued that a motorcyclist who fatally drove into the back of semi-truck was not entitled to Personal Protection Insurance (PIP) benefits because the semi-truck was not parked in such a way to cause unreasonable risk of bodily injury which occurred. (MCL 500.3106(1)(a))

In *Jordan v Insurance Company of the State of Pennsylvania*, the plaintiff sought to recover survivor's loss benefits from the defendant-insurer, claiming that the defendant-insurer improperly denied benefits following a fatal motorcycle accident where the plaintiff's decedent crashed into the back of a parked semi-truck and trailer insured by the defendant.

The record at trial established that a white semi-truck and trailer insured by the defendant broke down and was parked in the far right lane on a straight portion of a five-lane highway with a posted speed limit of 50 miles per hour. The accident happened during the day in clear, dry weather. The truck driver had placed emergency warning triangles in the roadway behind the trailer. The plaintiff, however, disputed whether the defendant-insurer's driver activated his emergency flashers and whether he put the correct number of warning triangles behind his trailer.

Michigan's No-Fault Act provides that when there is a motorcycle accident involving a motor vehicle, it is deemed a "motor vehicle accident" (MCL 500.3101(2)(f)), therefore, triggering no-fault benefits. The Act further provides that where there is a motorcycle-motor vehicle accident, the insurer of the motor vehicle is at the highest order of priority to pay PIP benefits for the operator or passenger of the motorcycle. MCL 500.3114(5)(a)

A parked motor vehicle is not "involved" in an accident unless it "was parked in such a way as to cause unreasonable risk of the bodily injury which occurred." MCL 500.3106(1)(a)

COURT DENIES MOTORCYCLIST PIP BENEFITS AFTER BROKEN DOWN TRUCK NOT SHOWN TO BE AN 'UNREASONABLE RISK' IN ACCIDENT Cont.

At the trial court level, the defendant filed a motion for summary disposition, arguing that the semi-truck and trailer were not parked in such a way as to cause unreasonable risk of bodily injury. The trial court granted the defendant-insurer's motion, and in turn, the plaintiff appealed.

The appellate court affirmed the trial court's granting of summary disposition, concluding "as a matter of law that the parked vehicle did not pose an unreasonable risk of bodily injury." The court reasoned that because the accident occurred during the day in clear weather, under dry road conditions, and the driver had placed emergency warning triangles on the roadway behind the trailer, there was nothing to suggest that an oncoming driver would not have had an ample opportunity to observe, react to, and avoid the hazard posed by the parked semi-truck and trailer. The court went on to state that "the record reflects that a number of drivers in fact did so."

The appellate court went on to state that "[e]ven when viewing the evidence in the light most favorable to plaintiff and assuming that the driver did, in fact, fail to activate the vehicle's emergency flashers and did not place the correct number of warning triangles behind the vehicle or that one was missing prior to the accident, the parked semi-truck and trailer did not pose an unreasonable risk to oncoming traffic."

The plaintiff's effort to show the driver's violation of a federal regulation requiring the activation of emergency flashers and placement of warning triangles was insufficient to show that the parked semi-truck and trailer created an unreasonable risk within the meaning of MCL 500.3106(1)(a).

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