

STATE OF MICHIGAN
COURT OF APPEALS

STEPHEN DOMONKOS,

Plaintiff-Appellant,

v

AUTOMOBILE CLUB INSURANCE
ASSOCIATION,

Defendant-Appellee.

UNPUBLISHED

May 8, 1998

No. 199495

Wayne Circuit Court

LC No. 96-604995 NF

Before: Bandstra, P.J., and MacKenzie and N.O. Holowka*, JJ.

MEMORANDUM.

Plaintiff appeals by right the order granting defendant summary disposition pursuant to MCR 2.116(C)(10) in this no-fault insurance action. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured when he was struck by a thrown brick while driving a vehicle in the city of Detroit. Defendant was the insurer responsible for payment of first party no-fault insurance benefits. Defendant denied plaintiff's claim, and plaintiff filed the instant action for wage loss and medical benefits.

Defendant's motion for summary disposition was granted by the trial court, based on the finding that the injury was not causally connected to the operation of a motor vehicle as a motor vehicle as required by MCL 500.3105(1); MSA 24.13105(1). On appeal, plaintiff argues that the trial court erred where he would not have suffered his injuries had he not been driving the vehicle.

Plaintiff's argument is without merit. In *Kennedy v Auto Club of Michigan*, 215 Mich App 264, 265; 544 NW2d 750 (1996), the passenger in a motor vehicle was injured when he was struck by an unknown object that shattered the rear window of the vehicle. Following *Thornton v Allstate Ins Co*, 425 Mich 643; 391 NW2d 320 (1986), and *Bourne v Farmers Ins Exchange*, 449 Mich 193; 534 NW2d 491 (1995), this Court in *Kennedy, supra* at 266-267, found that the vehicle was not the instrumentality of the injury, nor was the injury caused by the inherent nature of driving an automobile.

* Circuit judge, sitting on the Court of Appeals by assignment.

The injury sustained by the plaintiff was not within the ordinary risks of driving a vehicle, and plaintiff was not entitled to no-fault benefits. *Kennedy, supra* at 267.

Plaintiff's case is indistinguishable from *Kennedy, supra*. Plaintiff's injury was the result of an intentional, reckless, or negligent act of an unknown assailant, and is not within the ordinary risks of driving an automobile. The trial court properly granted defendant's motion for summary disposition.

We affirm.

/s/ Richard A. Bandstra

/s/ Barbara B. MacKenzie

/s/ Nick O. Holowka