

STATE OF MICHIGAN  
COURT OF APPEALS

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GERALDINE ESSY,

UNPUBLISHED  
February 17, 1998

Plaintiff-Appellant,

v

No. 195427  
Oakland Circuit Court  
LC No. 95-492697 NF

ALLSTATE INSURANCE COMPANY,

Defendant-Appellee.

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Before: Michael J. Kelly, P.J., and Fitzgerald and M.G. Harrison\*, JJ.

MEMORANDUM.

In this action for no-fault insurance benefits, a jury awarded plaintiff both wage loss and allowable expense damages. The trial court, however, after the jury rendered its verdict, granted defendant's reserved motion for directed verdict on the wage loss claim, in effect granting judgment n.o.v. on that issue. Plaintiff appeals that determination as of right. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

Plaintiff's testimony was that, after the accident, she was physically weakened and in pain and that this interfered with her ability to conduct her vocation as a commissioned salesperson for a dental supply company. However, in the year after the accident, plaintiff drove the same number of miles calling on her customer base as she had in years before the accident. Her testimony was that she might have been able to develop new customers by working additional hours compared to her normal workday.

The Michigan No Fault Act does not allow compensation for loss of earning capacity. *Ouellette v Kenealy*, 424 Mich 83, 85; 378 NW2d 470 (1985). Under § 3107(1)(b) of the Insurance Code, an injured person may be entitled to work loss benefits to compensate them for income they would have received but for the accident. *Marquis v Hartford Accident & Indemnity (After Remand)*, 444 Mich 638, 645-647; 513 NW2d 799 (1994). Here, since plaintiff was able to make the same number of calls on the same customer base as she had in previous years, as objectively

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

measured by the mileage driven and reported on her federal income tax return as an employee business expense, any income differential is attributable to market conditions, since she did the same amount of work as she did in previous years. While plaintiff, as a result of the accident, may have been hampered in working additional hours to develop new customers, she had not done so in previous years since that would have required the driving of additional miles to make further sales calls; any loss of that nature is one of earning capacity and not of wages. Accordingly, the trial court properly granted defendant's motion for judgment notwithstanding the verdict.

Affirmed.

/s/ Michael J. Kelly

/s/ E. Thomas Fitzgerald

/s/ Michael G. Harrison