STATE OF MICHIGAN

COURT OF APPEALS

LINH TRAN, a minor, by her Next Friends JOSEPH HUNG-THANH NGUYEN and ANH THI TRAN,

Plaintiff-Appellant,

v

BRADFORD S. ANKNEY and KRL, INC. d/b/a MIDAS MUFFLER SHOP,

Defendants-Appellees.

UNPUBLISHED
August 21, 1998

No. 195378
Ingham Circuit Court
LC No. 94-078195-NI

Before: Holbrook, Jr., P.J., and Young, Jr. and J. M. Batzer*, JJ.

MEMORANDUM.

This is a tort action arising out of a an auto accident. Plaintiff appeals by right from an order dismissing her claim for economic work loss damages. We affirm.

Defendant Bradford S. Ankney, in the course of his employment with defendant KRL, Inc., repaired the brakes on a customer's vehicle and then took it for a test drive. The rear wheels came off the car while Ankney was driving. He lost control of the vehicle, which jumped a curb and struck plaintiff Linh Tran, an academically successful high school student, who suffered a brain injury. Testimony at trial established that plaintiff suffered reduced mental capabilities as a result of the accident, and that she would not likely recover enough to be able to successfully complete college courses. Trial testimony also established that plaintiff had planned to attend college and pursue a career in medicine, pharmacy, physics, biology or psychology.

Plaintiff argues that she is entitled to work loss benefits under the no-fault act because the act contemplates imprecise work loss claims by unemployed college students who introduce evidence of their educational plans and employment ambitions, and expert testimony that establishes their potential earnings. We disagree. Because this is a question of law, we review the trial court's ruling de novo. *Bradley v Saranac Bd of Ed*, 455 Mich 285, 293; 565 NW2d 650 (1997).

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

The no-fault act allows a seriously injured person to recover work loss damages in tort arising from the ownership, use or maintenance of a motor vehicle. See MCL 500.3135(3)(c); MSA 24.13135(3)(c); see also MCL 500.3107(1)(b); MSA 24.13107(1)(b). "[W]ork loss" is defined as "income [which the injured party] would have received *but for* the accident." *Marquis v Hartford Accident & Indemnity (After Remand)*, 444 Mich 638, 645; 513 NW2d 799 (1994) (quoting *MacDonald v State Farm Ins Co*, 419 Mich 146, 152; 350 NW2d 233 (1984) (emphasis original)); see also MCL 500.3107(1)(b); MSA 24.13107(1)(b).

However, work loss damages do not include lost earning capacity. *Marquis*, 444 Mich at 647. Lost earning capacity is what an injured party *could* have earned but for the accident, whereas work loss is what an injured party *would* have earned but for the accident. *Marquis*, 444 Mich at 638. Thus, the caselaw requires specific proof of how much money a victim would have made in order to be eligible for work loss damages. See *Swartout v State Farm Mutual Automobile Ins Co*, 156 Mich App 350, 352; 401 NW2d 364 (1986) (upholding a claim for work loss damages by an unemployed nursing student whose injuries caused her to graduate a year late but who submitted proof of an offer of employment from a specific hospital, including her starting date and salary); compare *Gerardi v Buckeye Union Ins Co*, 89 Mich App 90; 279 NW2d 588 (1979) (denying work loss benefits to a similarly situated nursing student who had no proof of a specific job offer, starting date, or promised salary).

Here, plaintiff has not established a viable claim for work loss because, although it seems she might prove that it is more likely than not that, but for the accident, she would have successfully completed college and, statistically, that it is more likely than not that, but for the accident, she would have earned income over her lifetime at least in the average range for a female college graduate with an average life expectancy, she cannot prove with sufficient specificity even what field she would have entered, or when, let alone that she would have worked at a specific job or at a specific salary. Therefore, as we understand the statute as authoritatively construed by our Supreme Court in *Marquis*, the trial court correctly dismissed her claim for economic work loss damages.

Given what appears to have been a promising future for plaintiff, but for the injuries she sustained, we recognize that some will see an unfairness in the law in this case. However, it is our duty to interpret statutes as written; questions about the fairness or wisdom of this provision are best addressed to the Legislature. See *Jennings v Southwood*, 446 Mich 125, 142; 521 NW2d 230 (1994).

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Robert P. Young, Jr.
/s/ James M. Batzer