

STATE OF MICHIGAN
COURT OF APPEALS

BARBARA L. PITTS,

Plaintiff-Appellee,

v

JUDY K. PERSKI,

Defendant-Appellant.

UNPUBLISHED
September 3, 1999

No. 210257
Muskegon Circuit Court
LC No. 96-334289 NI

Before: Markman P.J., and Saad and P. D. Houk*, JJ.

MEMORANDUM.

Defendant appeals of right from the judgment entered in favor of plaintiff and from a pre-trial ruling denying her motion in limine. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed suit alleging that she suffered injuries and a serious impairment of body function as a result of an automobile accident with defendant. MCL 500.3135(1); MSA 24.13135(1). Defendant admitted negligence, but denied that plaintiff had suffered a serious impairment of body function. Defendant was defaulted after failing to comply with discovery. Her motion to set aside the default was denied.

Defendant filed a motion in limine, seeking permission to argue at trial that plaintiff was not entitled to damages because she had not suffered a serious impairment of body function. The trial court denied the motion, concluding that a default constituted an admission of liability as to all well-pleaded allegations, except those relating to damages. *Wood v DAIIE*, 413 Mich 573, 578; 321 NW2d 653 (1982). At trial, plaintiff presented lay and medical evidence regarding the extent of her damages. Defendant presented no evidence. The jury awarded plaintiff damages in the amount of \$6,000.

We review an issue of law de novo. *Duggan v Clare Co Bd of Comm'rs*, 203 Mich App 573, 575; 513 NW2d 192 (1994).

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

On appeal, defendant argues that the trial court erred by denying her motion in limine, thereby precluding her from arguing at trial that plaintiff was not entitled to damages because her injuries did not constitute a serious impairment of body function. We disagree and affirm. Under § 3135(1), a person “remains subject to tort liability” if the injured person suffered a serious impairment of body function. The issue of whether a person suffered a serious impairment of body function is one of liability rather than damages. A default “settles the question of liability as to well-pleaded allegations and precludes the defaulting party from litigating that issue.” *Wood, supra*. Because defendant’s default constituted an admission of all well-pleaded allegations, and resolved the issue of liability as to those allegations, a trial on the question of whether plaintiff suffered a serious impairment of body function was not necessary. Cf. *DiFranco v Pickard*, 427 Mich 32; 398 NW2d 896 (1986). The trial court’s ruling on the motion in limine did not preclude defendant from participating fully in the trial on damages. *Dollar Rent-A-Car Systems v Nodel Construction*, 172 Mich App 738, 743; 432 NW2d 423 (1988).

Affirmed.

/s/ Stephen J. Markman

/s/ Henry William Saad

/s/ Peter D. Houk