

STATE OF MICHIGAN
COURT OF APPEALS

DAVID E. HAREN,

Plaintiff-Appellant,

v

JACOB ROBERT BRABBS, and DOMINOS
PIZZA, INC., d/b/a DOMINOS PIZZA,

Defendants-Appellees.

UNPUBLISHED

June 6, 2000

No. 217522

Washtenaw Circuit Court

LC No. 98-004599-NI

Before: Hoekstra, P.J., and Holbrook, Jr. and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting defendants' motion for summary disposition in this third party no-fault action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff brought this action after he was hit while crossing a street by a vehicle driven by defendant Brabbs, who was delivering pizzas for Dominos Pizza at the time. Plaintiff presented evidence that he received a laceration on the back of his head that required eight stitches to close. Plaintiff also sustained a concussion, and contusions and a sprain to his right knee. The trial court granted summary disposition under MCR 2.116(C)(10), finding as a matter of law that plaintiff's injuries did not meet the serious impairment of body function threshold.

MCL 500.3135; MSA 24.13135 provides in part:

(1) A person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.

(2) For a cause of action for damages pursuant to subsection (1) filed on or after 120 days after the effective date of this subsection, all of the following apply:

(a) The issues of whether an injured person has suffered serious impairment of body function or permanent serious disfigurement are questions of law for the court if the court finds either of the following:

(i) There is no factual dispute concerning the nature and extent of the person's injuries.

(ii) There is a factual dispute concerning the nature and extent of the person's injuries, but the dispute is not material to the determination as to whether the person has suffered a serious impairment of body function or permanent serious disfigurement....

* * *

(7) As used in this section, 'serious impairment of body function' means an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life.

Prior to making the determination whether a plaintiff sustained a serious impairment of body function, a court is required to make findings as to whether a factual dispute exists concerning the nature and extent of the plaintiff's injuries. *May v Sommerfield*, 239 Mich App 197, 202; 607 NW2d 422.

Here, the trial court made appropriate findings. While defendants contested the extent of plaintiff's injuries, for the purpose of the motion, they conceded that plaintiff's injuries were as represented. Although plaintiff had objectively manifested injuries that impaired an important body function, the court found that the impairment did not affect plaintiff's general ability to lead his normal life. Where plaintiff remained able to lead an active life, including running and playing baseball, there is no showing that the court erred as a matter of law in finding that plaintiff's injuries did not constitute a serious impairment of body function. The trial court properly granted summary disposition pursuant to MCR 2/116(C)(10). *Maiden v Rozwood*, 461 Mich 109; 597 NW2d 817 (1999).

Affirmed.

/s/ Joel P. Hoekstra

/s/ Donald E. Holbrook, Jr.

/s/ Brian K. Zahra