

STATE OF MICHIGAN
COURT OF APPEALS

ERIC CHAPDELAINE,

Plaintiff-Appellant,

v

TED GROSS,

Defendant-Appellee.

UNPUBLISHED

June 10, 2004

No. 246503

Saginaw Circuit Court

LC No. 01-038459-NI

Before: Sawyer, P.J., and Gage and Owens, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition in this third-party automobile negligence action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich App 109; 597 NW2d 817 (1999). In evaluating the motion, the court considers the evidence submitted by the parties in a light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.*

Under MCL 500.3135 a person remains subject to tort liability for noneconomic loss caused by his use of a motor vehicle only if the injured person has suffered death, serious impairment of a body function, or permanent serious disfigurement. The issue of whether an injured person has suffered serious impairment of body function is a question of law if there is no factual dispute concerning the nature and extent of the person's injuries, or if there is a dispute that is not material to the determination. MCL 500.3135(2)(a).

In determining whether a plaintiff has suffered a serious impairment of body function, the trial court must consider the nature and extent of the injuries. *May v Sommerfield*, 239 Mich App 197, 202-203; 607 NW2d 422 (1999). A plaintiff must show that his general ability to lead her normal life has been significantly altered by his injury. *Miller v Purcell*, 246 Mich App 244, 250; 631 NW2d 760 (2001).

A plaintiff must prove that the driver's conduct was both a cause in fact and a legal cause of his injuries. *Weymers v Khera*, 454 Mich 638, 647; 563 NW2d 647 (1997). A tortfeasor takes a victim as he is, and will be held responsible for the full extent of the injury, even though a

latent susceptibility of the victim renders the injury far more serious than reasonably could have been anticipated. *Wilkinson v Lee*, 463 Mich 388, 394-395; 617 NW2d 305 (2000). Regardless of the preexisting condition, recovery is allowed if the trauma caused by the accident triggered symptoms from that condition. *Id.*

The medical evidence did not establish that the accident caused a serious impairment of body function. The objective manifestations of the injury were negligible. X-rays taken shortly after the accident were negative, and MRI and EMG exams showed no difference from the mildly positive tests preceding the accident. Doctors concluded that the tests were essentially normal. Where plaintiff failed to meet his burden of coming forward with evidence to show that there was an issue of fact, the trial court properly granted summary disposition to defendant.

Affirmed.

/s/ David H. Sawyer

/s/ Hilda R. Gage

/s/ Donald S. Owens