STATE OF MICHIGAN

COURT OF APPEALS

DAVID SPEARS,

Plaintiff-Appellant,

v

ENTERPRISE LEASING COMPANY OF DETROIT,

Defendant-Appellee.

UNPUBLISHED
April 15, 1997

No. 192225
Wayne Circuit
LC No. 94-420550-NF

Before: Markey, P.J., and Bandstra and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's entry of an order following a jury verdict of no cause for action in favor of defendant in this action for first-party no-fault benefits arising out of an automobile accident that occurred while plaintiff was driving a pickup truck rented from defendant. We affirm.

Plaintiff first argues that the trial court abused its discretion in denying his motion for a new trial because the jury's verdict that the automobile accident was not the cause of plaintiff's closed-head and other injuries was against the great weight of the evidence. We disagree. There was sufficient, competent evidence that plaintiff's injuries could have resulted from another source. *McLean v Wolverine Moving & Storage Co,* 187 Mich App 393, 400; 468 NW2d 230 (1990); *Heshelman v Lombardi,* 183 Mich App 72, 76; 454 NW2d 603 (1990). Plaintiff had been hospitalized several times before the accident with neck and head injuries. These stemmed from a beating in August of 1986, a motorcycle accident in February of 1987, and an assault with a pipe in October of 1992. Plaintiff had also made two suicide attempts, and had been hospitalized in February of 1992 for drinking a gallon of bleach and a fifth of whiskey, as well as swallowing a number of drugs. Plaintiff also suffered from bipolar disorder before the accident, that caused him to have sharp mood swings including intense bouts of depression and violent anger.

Plaintiff also suffered an attack across the back of the head by a man wielding a tree branch, about the size and thickness of a baseball bat shortly after the automobile accident. The branch broke

across the back of plaintiff's head, and plaintiff began to bleed after he was hit. The evidence is contradictory as to where plaintiff began to bleed. A witness to the accident contended that plaintiff's right ear bled after he was hit with the tree branch, while his left ear had begun to bleed after the accident. Plaintiff's hospital records indicate only bleeding from the left ear, and suggest that this bleeding began after plaintiff was hit with the tree branch. Finally, the expert testimony adduced at trial supports an injury to the left side of plaintiff's head. Plaintiff showed sensory weakness on the left side of his body and physical weakness on the right side during physical response testing, which is consistent with a left-side brain injury. Plaintiff's expert conceded on cross-examination that this weakness could have been caused by an assault or a blow with a big stick or pipe. Plaintiff also showed some memory loss and physical weakness when tested by defendant's expert, but no sign of brain damage. Because competent evidence adduced at trial supports the jury's conclusion that the automobile accident was not the cause of plaintiff's injuries, we hold that the trial court did not abuse its discretion in denying plaintiff's motion for a new trial. *McLean, supra* at 400; *King v Taylor Chrysler-Plymouth, Inc,* 184 Mich App 204, 210; 457 NW2d 42 (1990); *Heshelman, supra* at 76.

Plaintiff also argues that the trial court erred in denying his motion for judgment notwithstanding the verdict because the evidence could only support the conclusion that plaintiff's closed-head and other injuries resulted from the automobile accident. We disagree. Given plaintiff's history of beatings, accidents and suicide attempts outlined *supra*, as well as the fact that plaintiff was attacked with a tree branch on the shortly after the accident, we conclude that the trial court did not err because reasonable jurors could have reached different conclusions about the source of plaintiff's injuries. *Severn v Sperry Corp,* 212 Mich App 406, 412; 538 NW2d 50 (1995).

Finally, plaintiff argues that the trial court deprived him of a fair trial when it exercised its discretion by overruling plaintiff's objections to defense counsel's references to plaintiff's and plaintiff's wife's involvement with Allstate Insurance Company, and to a subsequent automobile accident in which plaintiff was involved. Plaintiff also argues that the trial court abused its discretion in denying his motion for a new trial based on these references. We disagree.

We agree with the trial court that defense counsel's references to Allstate, which occurred during counsel's opening statement and during cross-examination of plaintiff's wife, made proper use of evidence that tended to impeach the credibility of plaintiff's wife. Specific instances of a witness' conduct may be inquired into on cross-examination where the evidence is probative of truthfulness or untruthfulness, and to inquire into that witness' or another witness' truthful character. MRE 608(b). *Heshelman, supra* at 84-85. Here, the cross-examination of plaintiff's wife tended to show her untruthfulness. Defendant contended that plaintiff and his wife deceived Allstate by insuring their own vehicle under the name of plaintiff's father-in-law and then attempting to make a claim on the policy when they did not live with plaintiff's father-in-law. Allstate was dismissed from plaintiff's suit on this basis. Plaintiff's wife admitted at trial that she had purchased and insured the vehicle through her father because she was unable to obtain credit.

Plaintiff was also not deprived of a fair trial by the trial court's decision to overrule plaintiff's objection to defense counsel's reference in his opening statement to a subsequent accident, or by the

trial court's refusal to grant a mistrial on this ground. Evidence was not presented regarding the subsequent accident. The jury heard only brief references to it during opening statement and during defense counsel's cross-examination of one of the witnesses. We conclude that defense counsel's reference to the subsequent accident was harmless. Therefore the trial court did not abuse its discretion in failing to grant plaintiff's motion for a new trial on this ground. *Phillips v Mazda Motor Mfg (USA) Corp*, 204 Mich App 401, 410-411; 516 NW2d 502 (1994).

Affirmed.

/s/ Jane E. Markey
/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra