

STATE OF MICHIGAN
COURT OF APPEALS

SHELLEY R. SPIVACK,

Plaintiff-Appellee,

v

PAUL J. KOEPPEN,

Defendant-Appellant.

UNPUBLISHED

June 25, 2002

No. 229408

Genesee Circuit Court

LC No. 98-063145-NI

Before: Zahra, P.J., and Neff and Saad, JJ.

PER CURIAM.

I. Nature of the Case

In this automobile negligence action, plaintiff sued defendant after he rear-ended plaintiff's car. Defendant conceded negligence and the legal question on appeal is whether plaintiff suffered a "serious impairment of a body function" under MCL 500.3135(1). As both parties acknowledge, the legal precondition for plaintiff to maintain a tort action in an automobile negligence case under Michigan's "no fault" law is a legal finding by the trial court that plaintiff suffers a "serious impairment of a body function" caused by defendant's negligence (commonly referred to as the "tort threshold" under MCL 500.3135(1)). Because we find that the trial court wrongly denied defendant's motion to dismiss plaintiff's tort action because she failed to meet the tort threshold, we reverse the jury award and enter judgment for defendant.

II. Facts and Proceedings

On September 7, 1995, as plaintiff sat in her car at a red traffic light, defendant struck the rear-end of plaintiff's vehicle and caused her car to hit the rear end of the vehicle in front of her. Plaintiff filed a complaint and alleged that, as a result of the accident, she suffered injuries to her neck and back which amounted to a "serious impairment of body function" under MCL 500.3135(1). Defendant brought a motion for a directed verdict and contended that plaintiff failed to meet the tort threshold requirements of MCL 500.3135(1). The trial court took defendant's motion under advisement, but denied defendant's motion after the jury returned a verdict in favor of plaintiff.

III. Analysis

This Court reviews the trial court's denial of a motion for a directed verdict de novo. *Smith v Jones*, 246 Mich App 270, 273; 632 NW2d 509 (2001). As this Court explained in *Smith*:

In reviewing a denied motion for a directed verdict, this Court must determine whether the party opposing the motion offered evidence on which reasonable minds could differ. The test is whether, viewing the evidence in the light most favorable to the adverse party, reasonable persons could reach a different conclusion. If so, the case is properly left to the jury to decide. [*Id.* (citations omitted).]

After reviewing the record evidence in the light most favorable to plaintiff, as we stated above, we find that the trial court erred in denying defendant's motion for a directed verdict.

As noted, in her complaint, plaintiff alleged that she suffered a serious impairment of body function under MCL 500.3135(1), which provides that "[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 disfigurement." "This statutory threshold is designed to eliminate suits based on clearly minor injuries and those that do not seriously affect the ability of the body to function." *May v Sommerfield*, 239 Mich App 197, 200; 607 NW2d 422 (1999).

Following the enactment of 1995 PA 222, this Court held that the determination of a threshold injury (serious impairment of body function or permanent serious disfigurement) is an issue of law, not fact. *Kern v Blethen-Coluni*, 240 Mich App 333, 338; 612 NW2d 838 (2000). In *Kern*, this Court further held that, to meet the injury threshold for "serious impairment of body function," there must be an objectively manifested impairment of body function, which affects a person's general ability to live a normal life. *Id.* at 340-341. Accordingly, unless there is an outcome-determinative genuine factual dispute, the issue whether there a threshold injury exists is a question of law for the trial court. *Id.* at 341.

Under MCL 500.3135(2)(a), the determination whether an injured person has suffered a serious impairment of body function is a question of law for the trial court if the trial court finds either "(i) [t]here is no factual dispute concerning the nature and extent of the person's injuries," or "(ii) [t]here 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" To determine if factual disputes exist, this Court established the following framework:

"In determining the 'nature' of plaintiff's injuries, the trial court should make appropriate findings concerning whether there is a factual dispute with respect to whether plaintiff has an 'objectively manifested' impairment and, if so, whether 'an important body function' is impaired. In determining the 'extent' of plaintiff's injuries, the trial court should make appropriate findings concerning whether there is a factual dispute with respect to whether the impairment affects plaintiff's 'general ability to lead his [or her] . . . normal life.'" [*Miller v Purcell*, 246 Mich App 244, 247; 631 NW2d 760 (2001), quoting *May*, *supra* at 203.]

On the basis of her medical records, plaintiff showed an objective manifestation of her neck injuries. Therefore, the dispositive question is: Do plaintiff's injuries constitute a serious impairment of a body function?

There is no dispute that some activities in plaintiff's life have changed; the legal question is whether these changes are sufficiently severe, as a matter of law, that plaintiff is prevented from living a "normal life." We find that plaintiff's injury cannot be classified as a serious impairment of body function. Plaintiff did not experience severe, gripping pains until the incident at her karate class on January 26, 1996. Additionally, though plaintiff received medical treatment several times after the automobile accident, but before January 26, 1996, those treatments related to plaintiff's asthma, not her neck injuries. Plaintiff testified that she missed two to three days of work after the automobile accident, and refrained from engaging in physical activity for one week. Two weeks after the accident, plaintiff was again participating in her karate class, working, exercising and, in brief, leading a "normal life."

Ample evidence showed that plaintiff remained very active as she continued to work, travel, and exercise. Further, her prognosis for recovery has been very favorable. Although plaintiff complains that she must alternate her swimming strokes and that she has pain in her neck when turning her neck to drive and when sitting for long periods of time, nothing indicates that plaintiff's general ability to lead a normal life has been significantly altered by any injury received as a result of the automobile accident. Therefore, we hold that plaintiff is unable to meet the threshold of MCL 500.3135(1), and the trial court erred in denying defendant's motion for a directed verdict on this basis.

Accordingly, we reverse the trial court's order denying defendant's motion for a directed verdict and grant judgment in favor of defendant.

/s/ Brian K. Zahra
/s/ Janet T. Neff
/s/ Henry William Saad