

[J-85-1998]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

KENNETH WASHINGTON,	:	No. 4 M.D. Appeal Docket 1998
	:	
Appellant	:	Appeal from the judgment entered by
	:	the Superior Court on March 5, 1997, at
	:	No. 3064 PHL 1996, affirming the order
v.	:	of the Court of Common Pleas of
	:	Lancaster County, dated July 29, 1996
	:	at No. 5648-1994
	:	
ROBERT L. BAXTER, JR.,	:	___ A.2d ___ (Pa.Super. 1997)
	:	
Appellee	:	SUBMITTED: April 22, 1998

CONCURRING OPINION

MR. CHIEF JUSTICE FLAHERTY

DECIDED: October 29, 1998

It is initially for the trial court, not the jury, to decide whether a plaintiff has suffered a "serious injury" which, for purposes of 75 Pa.C.S. § 1705(d), allows suit to be maintained for noneconomic damages, such as pain and suffering, where limited tort coverage has been elected under an auto insurance policy. Section 1705(d) states in pertinent part: "Unless the injury sustained is a serious injury, each person who is bound by the limited tort election shall be precluded from maintaining an action for any noneconomic loss" In cases where there is no genuine issue of fact as to the nature and extent of the plaintiff's injury, the question of whether the action can be

maintained is one for the trial court. In providing the limited tort option, the legislature intended to reduce both litigation and the cost of insurance. To permit cases where plaintiffs claim serious injury to go to the jury without first having the court determine whether the injury is a serious one could prove as expensive as an unrestricted right to sue, and would not substantially rein in costs of insurance and litigation. Permitting the trial court to make the threshold determination as to the seriousness of an injury, where there is no issue of fact as to the nature and extent of the injury, much better serves the legislative goal.

The record in this case amply supports the trial court's conclusion that the injuries sustained by appellant were not severe enough to permit recovery of noneconomic damages. The summary judgment entered in favor of appellee was properly affirmed by Superior Court.

Mr. Justice Zappala and Mr. Justice Castille join in this concurring opinion.