

S T A T E O F M I C H I G A N
C O U R T O F A P P E A L S

CHARLES LINDSEY,

Plaintiff-Appellant,

v

No. 87672

SAMUEL MAYBERRY,

Defendant-Appellee.

BEFORE: R. S. Gribbs, P.J., H. Hood and R. Ferguson*, JJ.

PER CURIAM

Plaintiff appeals as of right from a circuit court order granting defendant's summary disposition motion on the ground that plaintiff's injuries failed as a matter of law to meet the threshold requirement to establish a serious impairment of bodily function under MCL 500.3135(1); MSA 24.13135(1). We affirm.

On appeal, defendant contends that there is a material factual dispute concerning the nature and extent of his injuries that precludes the entry of summary disposition. However, at the hearing on the motion, defendant simply argued that plaintiff's injuries were insufficient to meet the no-fault threshold requirement. Plaintiff claimed that his injuries did meet the threshold, arguing that he had muscle spasms, decreased reflexes and decreased range of motion, and that his activities were restricted to no heavy lifting, repeated bending, or standing for a long period of time. Furthermore, plaintiff argued that he is now restricted to a light-duty job. The trial court ruled that the factual dispute was not material to the determination and granted defendant's motion.

*Circuit judge, sitting on the Court of Appeals by assignment.

The seminal cases setting forth the standards by which serious impairment of body function under MCL 500.3135; MSA 24.13135 is measured are Cassidy v McGovern and Herman v Haney, 415 Mich 483 (1982); 330 NW2d 22, reh den 417 Mich 1104 (1983). In Cassidy, the Supreme Court stated that:

"[W]e conclude that the meaning of 'serious impairment of body function' is a matter to be determined by statutory construction. We hold that when there is no factual dispute regarding the nature and extent of a plaintiff's injuries, the question of serious impairment of body function shall be decided as a matter of law by the court. Likewise, if there is a factual dispute as to the nature and extent of a plaintiff's injuries, but the dispute is not material to the determination whether plaintiff has suffered a serious impairment of body function, the court shall rule as a matter of law whether the threshold requirement of MCL 500.3135; MSA 24.13135 has been met." 415 Mich 502.

The Supreme Court, in Cassidy, went on to state that the meaning of 'serious impairment of body function' will have to be developed on a case-by-case basis. Id. at 503. In Williams v Payne, 131 Mich App 403, 409; 346 NW2d 564 (1984), this Court suggested the use of the following standards:

"First, 'impairment of body function' actually means 'impairment of important body functions'. Cassidy v McGovern, 415 Mich 504. Second, by its own terms, the statute requires that any impairment be 'serious'. MCL 500.3135(1); MSA 24.13135(1); McKendrick v Petrucci, 71 Mich App 200, 210; 247 NW2d 349 (1976). Third, the section applies only to 'objectively manifested injuries'. Cassidy v McGovern, 415 Mich 505."

In the instant case, the medical evidence, defendant's own testimony, and the decisional law wholly support the trial court's conclusion that plaintiff did not suffer a serious impairment. Richard Brown, D. O., plaintiff's physician, diagnosed muscle spasms, decreased reflexes and decreased range of motion to the neck, shoulder, lower back and left leg. Furthermore, Dr. Brown recommended that plaintiff not perform acts of repetitive lifting, bending or prolonged standing. However, Robert H. Sturman, M. D., examined and diagnosed plaintiff as not suffering a disability from a neurological standpoint. John R. Glover, M. D., concluded there was no objective abnormality of the musculoskeletal system and that plaintiff could return to work without restriction from an orthopedic standpoint.

On deposition, defendant testified that the left side of his head and neck struck the driver's side door during the accident. Plaintiff immediately went to see Dr. Brown who advised him to go home and rest. In the fourteen months between the accident and his deposition, plaintiff was hospitalized for 28 days and received heat treatments and medication from the doctor at least two or three times a week. He missed seven months of work. When he returned to work he was given a lighter job. Plaintiff's injuries prevented him from mowing his lawn, doing yard work, or playing basketball.

Our review of this record reveals that no material factual dispute existed regarding the nature and extent of plaintiff's injuries. Even assuming that plaintiff's injuries were sufficiently "objectively manifested", cf. Harris v Lemicex, 152 Mich App 149, 153-154; ___ NW2d ___ (1986), they were not "serious". Thus, it is clear that the trial court could rule as a matter of law that plaintiff's injuries did not meet the threshold requirement for a serious impairment of body function. See Denson v Garrison, 145 Mich App 516, 519; 378 NW2d 532 (1985). Moreover, based on the prevailing caselaw, we agree with the trial court that plaintiff's injuries are insufficient physical impairments to satisfy the threshold requirements.

For example, in Franz v Woods, 145 Mich App 169; 377 NW2d 373 (1985), this Court held that the plaintiff failed to meet the threshold where she complained of back and neck pain with shooting pains radiating into her legs and occasional numbness in her left arm. Plaintiff also claimed that she had some disability with daily activities, including housework, and contended that prior to the accident she engaged in different types of athletic activities which she could no longer do. Additionally, plaintiff asserted that she had to quit her jobs as bowling center manager and waitress because of her injuries.

Similarly, in Morris v Levine, 146 Mich App 150; 379 NW2d 402 (1985), plaintiff suffered soft tissue back injuries. She was diagnosed for cervical and lumbosacral myositis. Her X-rays and electromyogram were normal. She had some disability with daily activities, but these were not permanent and did not interfere with her normal life-style. The Court held that these injuries were not sufficiently serious to meet the threshold requirement of MCL 500.3135. The Morris Court went on to state simple difficulty or inconvenience in daily life does not meet the threshold, and that the plaintiff's ability to lead a normal life-style must be considered. There must be a general inability to live what objectively can be determined to be a normal life-style.

On the evidence presented in this case the injuries alleged by plaintiff are not sufficiently serious to meet the threshold. Although plaintiff alleges that he had to change to a light-duty job, he still is able to continue employment. Plaintiff's deposition does not even hint that he cannot lead a normal life.

Since plaintiff has failed to meet the threshold requirements for recovery under the no-fault act, the trial court was correct in granting defendant's motion for summary disposition. The decision of the circuit court is affirmed.

/s/ Roman S. Gribbs
/s/ Harold Hood
/s/ Robert R. Ferguson