

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

BEATRICE HOLLEY, individually and
as Conservator of the Estates of
ALNEIA ROUNDS, a minor, and
MARIEO CROUTHERS, a minor,

Plaintiff-Appellant,

v

No. 89372

AUTO CLUB INSURANCE ASSOCIATION,
formerly known as Detroit Auto-
mobile Inter-Insurance Exchange,

Defendant-Appellee.

BEFORE: MacKenzie, P.J., E.A. Weaver, and J.E. Roberts*, JJ.

PER CURIAM

Plaintiff, individually and as conservator of the estates of Alneia Rounds and Marieo Crouthers, minors, appeals as of right from a circuit court order denying her motion to vacate or modify an arbitration award.

Plaintiff, Rounds, and Crouthers (collectively referred to as "claimants") were injured by an uninsured motorist in an automobile accident on February 2, 1984. They filed a claim under the uninsured motorist clause of plaintiff's insurance policy with defendant. An arbitration hearing was held on May 24, 1985. A split arbitration panel denied claimants compensation for noneconomic loss, MCL 500.3135; MSA 24.13135, because they failed to meet the threshold of serious impairment of body function. The circuit court refused to vacate the arbitration decision.

Plaintiff argues that the arbitrators exceeded their powers under GCR 1963, 769.9(1)(c), by requiring claimants to make a threshold showing of a serious impairment of a body function, under MCL 500.3135(1); MSA 24.13135(1), in order to recover for noneconomic loss caused by an uninsured motorist. There is presently a split of authority on this issue in this

*Recorder's court judge, sitting on the Court of Appeals by assignment.

Court. Compare Caplan v Detroit Automobile Inter-Ins Exchange, 102 Mich App 354; 301 NW2d 471 (1980) (insured must make threshold showing of a serious impairment of a body function to recover for noneconomic loss under uninsured motorist insurance provision), with Jones v Detroit Automobile Inter-Ins Exchange, 124 Mich App 363; 335 NW2d 39 (1983), lv den 418 Mich 878 (1983), and Stephenson v Associated General Ins Co, 148 Mich App 1; 384 NW2d 62 (1985), cons den 424 Mich 1206 (1986) (Holbrook, J, dissenting), (insured need not prove serious impairment to recover for noneconomic loss under uninsured motorist insurance).

In Detroit Automobile Inter-Ins Exchange v Gavin, 416 Mich 407, 443; 331 NW2d 418 (1982), the Supreme Court held that an appellate court has the power to set aside an arbitration award if "[t]he arbitrators through an error in law have been led to a wrong conclusion, and that, but for such error, a substantially different award must have been made." Since there is presently conflicting authority in this Court on the issue presented to the arbitrators, we cannot conclude that the arbitrators reached a wrong conclusion in requiring claimants to make a threshold showing of serious impairment of a body function. See Detroit Automobile Inter-Ins Exchange v Neequaye, 99 Mich App 187; 297 NW2d 602 (1980)..

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Elizabeth A. Weaver
/s/ James E. Roberts