

STATE OF MICHIGAN
COURT OF APPEALS

JUNETTA G. MAHONEY and
HAROLD L. MAHONEY,

AUG 13 1987

Plaintiffs-Appellants,

v

No. 92437

JACQUELYN J. PESTA,

Defendant-Appellee.

BEFORE: D.F. Walsh, P.J., J.H. Shepherd and M.M. Doctoroff, JJ.

PER CURIAM

This case involves an automobile accident on May 11, 1981. Plaintiff Junetta Mahoney sued on August 24, 1982, alleging a serious impairment of body function. The trial court determined that defendant was negligent as a matter of law in maintaining her brakes and that this negligence was a proximate cause of the accident. At the close of plaintiff's proofs, both plaintiff and defendant moved for a directed verdict on the serious impairment issue. The trial court denied both motions, finding a question of fact. The jury determined on February 24, 1986, that defendant's negligence was a proximate cause of plaintiff's injury, but that plaintiff's injury did not result in a serious impairment of body function. The court entered a judgment of no cause of action in defendant's favor. We affirm.

After plaintiffs filed their claim of appeal and both parties submitted briefs, the Supreme Court issued in its opinion in DiFranco v Pickard, 427 Mich 32; 398 NW2d 896 (1986), substantially altering prior serious impairment case law. On May 7, 1987, we granted plaintiffs' motion to amend their brief. No such amended brief was filed, however.

DiFranco applies to appeals pending on December 23, 1986, in which an issue concerning the proper interpretation of the statutory phrase "serious impairment of body function" has been raised. 427 Mich at 40, 75. DiFranco thus applies to this case.

DiFranco held that "[i]f reasonable minds can differ as to whether the plaintiff suffered a serious impairment of body function, the issue must be submitted to the jury, even if the evidentiary facts are undisputed." 427 Mich at 58. If the issue was properly submitted to a jury, the jury's findings of fact, as reflected in its verdict, must be affirmed unless they are against the great weight of the evidence. 427 Mich at 59. The "serious impairment of body function" threshold contains two inquiries: (1) what body function, if any, was impaired by injuries in the accident and (2) was the impairment of body function serious. When this threshold question is submitted to the jury, it should be instructed as to the twofold nature of the "serious impairment of body function" threshold and the factors to be considered in determining seriousness. 427 Mich at 39-40.

Three of the five cases decided in DiFranco involved jury verdicts of no serious impairment. In each case, the Supreme Court found that the verdict was not against the great weight of the evidence and affirmed. We have reviewed the record in the instant case and conclude, pursuant to DiFranco, that reasonable minds could differ as to whether plaintiff suffered a serious impairment of body function, and that the trial court properly denied plaintiffs' motion for a directed verdict. Moreover, the jury's verdict was not against the great weight of the evidence and should be affirmed. See also Beard v Detroit, 158 Mich App 441; 404 NW2d 770 (1987).

Plaintiffs also argue that the court erred in failing to instruct the jury sua sponte that plaintiffs may be compensated for non-economic damages for the period after the impairment was no longer serious. We need not reach this issue as the jury

found no serious impairment, thus never reaching the question of damages.

Affirmed.

/s/ Daniel F. Walsh
/s/ John H. Shepherd
/s/ Martin M. Doctoroff