STATE OF MICHIGAN

COURT OF APPEALS

ARLENE K. CONLEY,

Plaintiff-Appellee,

v No. 103360

ASSOCIATED GENERAL INSURANCE COMPANY,

Defendant-Appellant.

BEFORE: Kelly, P.J., and Sullivan and M.J. Shamo*, JJ.

PER CURIAM

Defendant Associated General Insurance Company (AGI) appeals by right the circuit court's grant of summary disposition and award of $33,660 in no-fault work-loss benefits to plaintiff, Arlene K. Conley. We affirm.

This first-party no-fault case involves plaintiff's claim that she is entitled to be paid full work-loss benefits by her insurance carrier as a result of a minor automobile accident in which she was involved on June 2, 1983. Plaintiff's no-fault insurance carrier, AGI, paid for all medical expenses and wage loss from the date of the accident until September 14, 1984. Plaintiff's work-loss benefits were terminated as of September 14, 1984, and plaintiff filed suit on May 30, 1985, against Michigan Mutual Insurance Company for the balance of benefits due her. Thereafter, Michigan Mutual was dismissed and proper party defendant AGI was added. Plaintiff filed her first amended complaint on October 8, 1985, naming AGI as defendant. Plaintiff moved for summary disposition pursuant to MCR 2.116(C)(10). On September 2, 1987, judgment was entered in plaintiff's favor in the amount of $33,660, representing the balance of three years' benefits under §3107 of Michigan's no-fault insurance act, MCL 500.3101 et seq.; MSA 24.13101 et seq.

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

AGI contends that it is not responsible for plaintiff's work-loss benefits as plaintiff's personal physician released her to return to work. AGI argues that the employer's subsequent perfunctory examination, completed by its staff physician, does not guarantee plaintiff three years of work-loss benefits. Further, AGI claims plaintiff's move away from her former employer's work site renders her ineligible for such benefits.

Plaintiff's initial physician, Dr. Jack Buck, examined her the day after the accident and determined plaintiff was disabled from performing her work on her former employer's (Gibson's) assembly line. Buck referred plaintiff to outpatient physiotherapy and after X-rays showed degenerative changes between the C5 and C6 vertebrae, he referred plaintiff for an orthopedic examination. In a November 1, 1984 letter, Dr. Buck wrote that it was his opinion that plaintiff should "be considered permanently and totally disabled from doing her usual assembly line work at Gibson's."

Plaintiff was then referred by Dr. Buck to Dr. John DeBruin, an orthopedic specialist in the Lansing area, who in turn referred plaintiff to Dr. John Jerome, a psychiatrist, at the Ingham County pain clinic. In the spring of 1984, Dr. DeBruin informed plaintiff that he could not continue her on disability.

Plaintiff then moved north to Traverse City, where her parents lived, and contacted Dr. Oswald Clark. Dr. Clark examined plaintiff and found that she had half the normal range of motion in her neck when turning her head to the left or right and tipping it back and forward. Plaintiff's grip test responses were also less than normal for a 39-year-old female. Further testing revealed the presence of degeneration of the disks between the fifth and sixth cervical vertebrae. Dr. Clark was unable to determine whether plaintiff's disk degeneration was the result of the automobile accident or was merely the result of normal wear and tear.

On October 6, 1984, at plaintiff's request, Dr. Clark gave plaintiff authorization to return to work. Plaintiff then took Dr. Clark's release for work to her supervisor at Gibson's. He asked plaintiff if she was feeling better, and plaintiff told him that she was not. Plaintiff's supervisor then sent her to see the shop physician.

Dr. Ahmad Younis examined plaintiff on October 19, 1984 and, based upon plaintiff's complaints of continued numbness in her left upper extremity, the restrictions placed upon her activities, and the requirements of her job, he concluded that plaintiff should not return to her work handling equipment on the assembly line. He further advised the company that plaintiff should never return to line work.

In granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10), the circuit court determined that this Court's ruling in Lenart v DAIIE, 156 Mich App 669; 401 NW2d 900 (1986), lv den 428 Mich 914 (1987), was dispositive and required the court to award plaintiff the balance of unpaid work-loss benefits pursuant to Michigan's no-fault act, MCL 500.3107(b); MSA 24.13107(b). The circuit court agreed that there was an issue of fact as to the credibility of the various doctors, however, there was no dispute of fact that the company doctor told plaintiff she could not return to work. The circuit court went on to note that the disputed facts as to whether or not the doctor's recommendation was correct or whether or not he completed an adequate physical examination to come to that conclusion was irrelevant under Lenart, supra.

In Lenart v DAIIE, supra, plaintiff, a brakeman for Grand Trunk Western Railroad, was injured in an automobile accident. Following treatment, plaintiff's doctor prescribed pain medication and certified that plaintiff was able to return to work with restrictions. Plaintiff's employer, Grand Trunk, had rules requiring that an employee be able to work without restrictions and without pain medication and refused to allow plaintiff to return to work until he was off pain medication.

Lenart moved for summary disposition pursuant to MCR 2.116(C)(9) and (10) on his claim for continued work-loss benefits as provided by §3107(b) of the no-fault act.

One of DAIIE's deposed doctors opined that examination of Lenart revealed no objective finding of injury, and the pain medication Lenart was taking was not medically warranted treatment. The trial court granted plaintiff's motion for summary disposition, finding that §3107 speaks of work that a person would have performed had he not been injured and that plaintiff's medication kept plaintiff from being able to return to work. The trial court ruled that whether the doctors who testified for defendant thought plaintiff's medication was not appropriate was a collateral issue which did not affect the fact that plaintiff had followed his doctor's treatment after his work accident and was kept from returning to work, thereby incurring loss of income from work loss.

This Court agreed that DAIIE's doctors' depositions clearly raised a factual dispute as to the medical necessity of plaintiff's need for pain medication. However, it ruled that this issue was irrelevant as §3107 compensates the injured person for income he would have received but for the accident and not for loss of wage-earning capacity. Lenart, supra at 766, citing for support Ouellette v Kenealy, 424 Mich 83, 87; 378 NW2d 470 (1985). Applying this test, the Lenart Court reasoned that "but for" the automobile accident, Lenart would not have begun treatment by the doctor who prescribed pain medication, and "but for" that pain medication and his employer's rules, Lenart could have returned to work. Therefore, Lenart suffered work loss as a result of his injury. Lenart, supra at 667-678.

We believe Lenart, supra, is dispositive and was properly relied on by the circuit court. Here, as in Lenart, AGI has raised factual questions concerning plaintiff's capacity to work and the competence of the company physician's examination of plaintiff. However, these issues are not material under Lenart. AGI has raised no issue of fact concerning plaintiff's actual

loss of wages flowing from the accident. Therefore, summary disposition and judgment was properly granted pursuant to the judicial interpretation of §3107(b) set forth in Lenart, supra, and Ouellette, supra.

Contrary to AGI's contention, the record does not show that Dr. Younis' decision that plaintiff not return to work handling equipment on the line was based on plaintiff's desire not to go back to work or that Dr. Younis was even aware of such a desire. Further, AGI has not shown how plaintiff's relocation of residence affects her entitlement to benefits. Had Dr. Younis determined that plaintiff was fit to return to work but plaintiff refused to do so due to her relocation, our ruling might be different. However, as it stands, the fact that plaintiff moved some distance away from Gibson's is irrelevant to the question of plaintiff's entitlement to work-loss benefits.

The circuit court's grant of summary disposition and award of work-loss benefits to plaintiff is affirmed.

/s/ Michael J. Kelly
/s/ Joseph B. Sullivan
/s/ M. John Shamo