

STATE OF MICHIGAN
COURT OF APPEALS

ADEL SASEEN,

Plaintiff-Appellant,

v

No. 109609

TODD WARRINGTON,

Defendant-Appellee.

Before: Hood, P.J., and Cavanagh and J.W. Fitzgerald,* JJ.

PER CURIAM.

Plaintiff appeals as of right a jury finding of no serious impairment in a no-fault action brought against defendant. Plaintiff raises two issues on appeal which do not require reversal.

On February 7, 1985, the parties were involved in an auto accident. As a result, plaintiff suffered a fracture to her right ring finger and bruises on the left side of her face and on her left knee. Defendant admitted negligence and, therefore, the only issue before the jury was whether plaintiff's injuries met the threshold for recovery of non-economic losses under the no-fault act, MCL 500.3135(1); MSA 24.13135(1).

Plaintiff contends that the trial court's admonishing her for being tardy and finding her in contempt of court, immediately before she was to take the stand, denied her a fair trial. Plaintiff failed to cite any authority in support of her claim of error. She also failed to raise this issue below by way of a motion for a new trial. Therefore, absent manifest injustice, we need not review her claim. Leitch v Switchenko, 169 Mich App 761, 764; 426 NW2d 804 (1988); Attorney General v Blue Cross and Blue Shield of Michigan, 168 Mich App 372, 383; 424 NW2d 54 (1988), lv den 432 Mich 887 (1989). We believe that no manifest injustice will result from our refusal to review

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plaintiff's claim. A careful review of the record does not reflect any prejudice suffered by plaintiff. Nor does the record reflect any deficiency in plaintiff's testimony as a result of the court's contempt ruling. Her testimony was responsive and coherent. Accordingly, the trial court's conduct did not deny plaintiff a fair trial.

Plaintiff also claims that the jury's verdict of no cause of action was against the great weight of the evidence. We disagree.

Michigan's no-fault act provides that a person is liable for non-economic losses caused by his operation of a motor vehicle only if the injured person has suffered death, serious impairment of a body function or permanent or serious disfiguration. MCL 500.3135(1); MSA 24.13135(1). Our Supreme Court in DiFranco v Pickard, 427 Mich 32, 58; 398 NW2d 896 (1986) ruled that the question whether a plaintiff has suffered a serious impairment of body function should be submitted to the jury whenever reasonable minds could differ on the resolution on the question. The inquiry should focus on what function is impaired and whether the impairment is serious. Id., p 67. Factors which the jury should consider are the extent of the impairment, the function impaired, the length of time the impairment lasts, and the treatment required. Id., pp 67-68. In Richards v Pierce, 162 Mich App 308, 315; 412 NW2d 725 (1987), a panel of this Court held that where reasonable minds could differ as to whether or what extent the plaintiff's back problems were caused by previous injuries, the trial court did not err in submitting the impairment issue to the jury.

In the present case, plaintiff's main health complaint stemming from the accident was pain and stiffness in her hands, shoulders, hips and knees. She complained that she was unable to perform activities as cooking, crocheting, sewing, knitting, housework or walking. The evidence presented at trial clearly

established that plaintiff had a preexisting condition of degenerative arthritis and that she suffered from diabetes, and osteoporosis. Her complaints regarding pain, stiffness and immobility dated back into the 1970s and the testimony established that plaintiff was involved in at least one previous accident in June of 1983 which also left her complaining of pain in the neck and back. On our review of the record, we determine that the jury's finding was not contrary to the great weight of the evidence.

Affirmed.

/s/ Harold Hood
/s/ Mark J. Cavanagh
/s/ John W. Fitzgerald