

FOR PUBLICATION

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

DOUGLAS FREEL,

Plaintiff-Appellant,

OCT 20 1986

-v-

No. 87947

GARY LEE DEHAAN,

Defendant-Appellee.

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BEFORE: D.E. Holbrook, Jr., P.J., and J.H. Shepherd and M.E.  
Dodge\*, JJ.

PER CURIAM

Plaintiff appeals by right from the circuit court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10), based upon a finding that plaintiff had failed to show that his injuries met the no-fault threshold requirement of a serious impairment of a body function under MCL 500.3135; MSA 24.13135. We reverse.

On December 24, 1983, plaintiff was a passenger in a pickup truck driven by his father-in-law when it was struck head-on by a car driven by the defendant. The plaintiff saw the defendant's car cross the center line of the road. Anticipating the collision, the plaintiff assumed a fetal position on the front seat of the pickup so he would not be thrown into the windshield. On impact, the plaintiff was thrown forward and his buttocks struck the dashboard. After the collision, plaintiff attempted to approach the defendant's car to render aid, but experienced severe pain in his back forcing him to lie down in a snow bank. Plaintiff was taken to the hospital and diagnosed as having compression fractures of the first and second lumbar vertebrae, jamming of the first metatarsophalangeal joint of his left foot, bruises and contusions. Plaintiff suffered a 10 to 15% loss in height in the L-1 vertebrae, and was hospitalized for

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

five days. Upon discharge from the hospital, plaintiff was required to wear a back brace for three months and was unable to return to work for three months. Plaintiff saw Dr. T.L. Couden on three occasions and received injections for pain and inflammation in his back, which plaintiff claims were unsuccessful.

At the time of the accident, plaintiff was a student at the Illinois College of Podiatric Medicine in Chicago. As a result of the accident, plaintiff was ineligible to apply for two positions with the Air Force for podiatric physicians in February, 1984. In April, 1984, plaintiff obtained a position in a podiatry practice in Macomb, Illinois. Plaintiff does not claim that his injury significantly impaired his ability to practice podiatry, but does claim that he experiences pain bending down to examine his patients' feet.

Plaintiff claims that his injuries have curtailed his participation in sports including tennis, racquetball, and golf. In addition, he experiences extreme discomfort when attempting activities like lifting his daughter, lifting groceries, walking long distances, and standing or lying down for long periods of time.

The question of serious impairment of a body function is determined on a case-by-case basis. Where there is no material factual dispute regarding the nature and extent of the plaintiff's injuries, the trial court may determine as a matter of law that there has been a serious impairment of a body function when it finds the following three criteria have been met: (1) the body function impaired must be an important one; (2) the impairment must be serious; and (3) the injuries must be objectively manifested. Cassidy v McGovern, 415 Mich 483, 502-505; 330 NW2d 22 (1982); Williams v Payne, 131 Mich App 403, 409; 346 NW2d 564 (1984).

The movement of one's back is an important body function. Harris v Lemicex, \_\_\_ Mich App \_\_\_ (Docket No. 78710, dec 4/23/86). In addition, here the x-rays of the plaintiff's back reveal the compression fractures; thus, satisfying the requirement of objective manifestation of the injury. The final question to be decided is whether the impairment is sufficiently serious to impact upon plaintiff's ability to lead a normal life. Plaintiff presented evidence indicating that although his compression fractures have healed, scarring of the ligaments remains ultimately causing extreme discomfort when plaintiff attempts to perform normal activities such as lifting groceries, lifting his daughter, walking long distances, or standing or lying down for extended periods of time.

Here, as in Harris v Lemicex, supra, we find that the evidence presented, although not overwhelming, was sufficient to establish a serious impairment of a body function. The trial court erred in granting defendant's motion for summary disposition.

REVERSED and REMANDED.

/s/ Donald E. Holbrook, Jr.  
/s/ John H. Shepherd  
/s/ Michael E. Dodge