

FOR PUBLICATION

S T A T E   O F   M I C H I G A N

IN THE COURT OF APPEALS

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ALEX WASHINGTON and KATIE  
WASHINGTON,

OCT 20 1986

Plaintiffs-Appellants,

vs

File No. 90213

VAN BUREN COUNTY ROAD COMMISSION,

Defendant-Appellee.

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BEFORE: H. Hood, P.J., D. E. Holbrook, Jr., W. R. Peterson\*, JJ

PER CURIAM

Plaintiff appeals from an order of summary disposition in a third party automobile negligence case. The motion raised the threshold question of Cassidy v McGovern, 415 Mich 483; 330 NW 2d 22 (1982), whether plaintiff had suffered a serious impairment of body function.

Plaintiff, age 61, sustained a number of serious bruises, primarily to the left leg and left hip, in an automobile collision on May 11, 1984. He began to develop low back pain, which worsened, and led him to seek medical treatment. Medical depositions and records were submitted to the court by stipulation. The treating orthopedic surgeons found that plaintiff, at the time of his injuries, had a pre-existing degenerative disc disease and osteoarthritis of the lower spine. Those conditions, which had been asymptomatic until the accident, were aggravated by the injuries to plaintiff. It also appeared that there was a bulging of the disc between the 4th and 5th lumbar vertebrae which was considered to have been caused by the collision, and a CAT scan provided objective evidence of that condition. Plaintiff demonstrated physical sequelae of such an injury in limitation of motion and flexion extension. Complaints of extreme pain have continued, and plaintiff has been under continuous medical care with a supportive brace/corset, traction, physical therapy, a T.E.N.S. electrical treatment unit, and various medications. He was considered by his physician as being disabled from working, although the physician said that some ten months

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

after the accident plaintiff could do some work on his farm. The treating physician believed that the prognosis for plaintiff was fair to good over the next year (i.e., into 1986). He said that he did not feel that surgery was indicated, although it was possible that the bulging disc might worsen and herniate instead of resolving itself. It thus appears that under the most favorable progression of his case, it would still be approximately 22 months from the time of the accident before plaintiff would be recovered from the injury.

Plaintiff by deposition and affidavit said that he had been unable to work, to lift things, to walk on uneven ground, to sit on his tractor, to drive his truck, to sleep, to have a normal sexual relationship with his wife, or to be free of pain, and that acute episodes of pain followed from any exertion.

After reviewing the medical evidence, but without discussing plaintiff's claims as to how his life had been affected, the trial granted the motion for summary disposition in these words:

"While this Court believes that the plaintiff is suffering some pain and suffering in his lower back, groin, pelvis and legs, the level of that pain and suffering does not meet the threshold required by the Cassidy case, supra."

There is no dispute but that the plaintiff's injury is objectively manifested and that the use of the back is an important body function. The issue which is argued is whether the impairment is serious, defined by Cassidy in terms of the effect of an injury on the person's general ability to live a normal life.

Considering the injury, the treatment required, the duration of plaintiff's disability, the prognosis as to the future course of the disability, and the impact on plaintiff's life, we believe that plaintiff has shown that the impairment of body function is serious. Harris v Lemicex, \_\_\_ Mich App \_\_\_ (No. 78710, rel'd April 23, 1986).

Reversed and remanded.

/s/ Harold Hood  
/s/ Donald E. Holbrook, Jr.  
/s/ William R. Peterson