

STATE OF MICHIGAN
COURT OF APPEALS

ELEUTERIA RODRIGUEZ,

Plaintiff-Appellant,

v

No. 89771

JOSEPH GREEN,

Defendant-Appellee.

Before: J.H. Gillis, P.J., and B.B. MacKenzie
and R. Robinson,* JJ.

PER CURIAM

Plaintiff sued defendant, claiming that she had suffered a serious impairment of an important body function and also a serious permanent disfigurement as the result of an automobile accident with defendant. MCL 500.3135(1); MSA 24.13135(1). Defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) was granted by the trial court. Plaintiff appeals as of right. We affirm.

Michigan's no-fault insurance law was enacted for the purposes of providing the victims of motor vehicle accidents with adequate and prompt reparation for loss and of reducing the number of tort claims resulting from automobile accidents, which often over-compensated minor injuries and under-compensated serious injuries. Shavers v Attorney General, 402 Mich 554, 578-579; 267 NW2d 72 (1978). Thus, tort liability will be imposed only in the limited circumstances expressed in MCL 500.3135(1); MSA 24.13135(1), which provides:

"A person remains subject to tort liability for non-economic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement."

Plaintiff in this case claims that she suffered a serious impairment of body function as well as a permanent serious disfigurement. We address her claims in that order.

* Retired circuit judge, sitting on the Court of Appeals by
assignment.

I. Serious Impairment of an Important Body Function

The injury alleged to be a serious impairment here is a severe, incapacitating weekly headache. When there is no material dispute as to the nature and extent of a plaintiff's injuries, or where a dispute exists but is not material to the outcome, courts are to decide as a matter of law whether a threshold injury has been alleged. Cassidy v McGovern, 415 Mich 483, 488; 330 NW2d 22 (1982), reh den 417 Mich 1104 (1983). In this case there is a dispute as to the nature of plaintiff's injury. Specifically, plaintiff contends her headaches are caused by the accident while defendant argues they were pre-existing. Viewing the facts in the light most favorable to plaintiff for purposes of this appeal, we find the dispute is not material to the determination of whether plaintiff has alleged a sufficient claim under the statute.

Serious impairment of a body function must be determined on a case-by-case basis. Cassidy, supra, 503. The Cassidy Court, nevertheless, established guidelines to define the threshold limit. It held the injury must be objectively manifested, serious, and impair an important body function. Cassidy, supra, 504-505. We consider it obvious that thinking is an important body function and thus we accept plaintiff's contention that an important body function was impaired. However, plaintiff has not shown that her injuries were objectively manifested or serious.

This Court has held that to be objectively manifested, an injury must be capable of medical measurement because medically unsubstantiated pain will always be present in a tort action for pain and suffering. Cassidy, supra, 505. Hence, pain and suffering is not recoverable per se, but it is recoverable when it arises out of an injury that affects the functioning of the body. Cassidy, supra, 505.

In support of her claim that her headaches are objectively manifested, plaintiff contends that there is a calcification of the falx and meninges and also a blackening of her four-centimeter scar at each headache's onset. First, we find that plaintiff's scar in and of itself is not an objective manifestation of a headache underneath. Second, although the blackening may conceivably constitute an objective manifestation of plaintiff's headache, she has not supported her claim that it blackens with even an affidavit. Finally, although the alleged calcification may constitute objective manifestation, plaintiff did not allege that the calcification caused the headaches nor that the calcification arose from the accident. Indeed, we consider it highly unlikely that the calcification arose from the accident since X-rays taken at the hospital on the night of the accident revealed its presence.

Even if we found that plaintiff's injury was objectively manifested, we find that it was not serious. Seriousness is measured by an objective standard which looks to the effect of the injury on a person's general ability to lead a normal life. Cassidy, supra, 505; Braden v Lee, 133 Mich App 215-218; 348 NW2d 63 (1984). Moreover, the seriousness of an injury must be considered in light of the other statutory requirements, namely, disfigurement and death. Cassidy, supra, 503. We hold that plaintiff's injury was not serious because it did not impair her ability to lead a normal life. Id. Plaintiff can work and perform common day-to-day activities and has even returned to her job. Hence, we hold that the trial court did not err in ruling that plaintiff did not suffer a serious impairment of body function as a matter of law.

II. Permanent Serious Disfigurement

The disfigurement alleged in this case is a four-centimeter scar on plaintiff's forehead just below the hairline. The rule under which serious impairment of body function is a

threshold question for the trial court has been extended by analogy to the threshold determination of disfigurement. Williams v Payne, 131 Mich App 403, 412; 346 NW2d 564 (1984), Shortridge v Bailey, 145 Mich App 547, 549-550; 378 NW2d 554 (1985). For this allegation, however, there is no material dispute as to the nature and extent of the scar.

Like serious impairment, disfigurement must also be determined on a case-by-case basis. Cassidy, supra, 503. Unlike serious impairment, however, the seriousness of the disfigurement depends on the physical characteristics of the scar rather than its effect on plaintiff's ability to lead a normal life. Williams, supra, 411; Kosack v Moore, 144 Mich App 485, 491; 375 NW2d 742 (1985). It is not plaintiff's subjective reaction to the scar which is relevant; instead, the scar must be evaluated on its objective physical characteristics. Kosack, supra, 491.

In this case, a photograph of plaintiff's forehead was included in the record on appeal. Dr. Chauncey, a plastic surgeon testifying for defendant, claimed that plaintiff's scar was cosmetically acceptable, in that it was not noticeable within a conversational distance of three to four feet. He concluded that plaintiff's scar could not be improved by plastic surgery. Viewing the photograph provided, we find that the scar in question is rendered virtually indiscernible by a smaller, yet more prominent, scar in the middle of plaintiff's forehead, and by other readily-visible wrinkles on her forehead. These more noticeable imperfections, however, were not caused by the accident. Accordingly, we hold that the trial court did not err when it found that plaintiff had not suffered a permanent serious disfigurement.

Affirmed.

/s/ John H. Gillis
/s/ Barbara B. MacKenzie
/s/ Richard Robinson