

STATE OF MICHIGAN  
COURT OF APPEALS

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GERALD YEIDER,

MAY 14 1990

Plaintiff/Counter-Defendant-  
Appellant,

v

No. 114564

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant/Counter-Plaintiff-  
Appellee.

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Before: Weaver, P.J., and Gillis and Cavanagh, JJ.

PER CURIAM.

Plaintiff/counter-defendant appeals by right from a November 21, 1988 judgment of \$55,917.40, plus interest, awarded to the defendant/counter-plaintiff on its counterclaim for reimbursement of certain no-fault benefits paid to plaintiff. Plaintiff's motion for new trial was also denied. We affirm.

The sole issue raised concerns the trial court's ruling that plaintiff was not entitled to work-loss benefits under MCL 500.3107; MSA 24.13107. Because a bench trial was held, we have reviewed the trial court's factual findings under the clearly erroneous standard. MCR 2.613(C). We find no clear error in the trial court's finding that plaintiff was unable to work as a result of a work-related lower back condition that existed on the date of the motor vehicle accident. Consequently, it cannot be said that plaintiff would not have lost income from work had the accident not occurred.

Given this finding, plaintiff is not eligible for work-loss benefits under the no-fault act. MacDonald v State Farm Mutual Ins Co, 419 Mich 146, 152; 350 NW2d 233 (1984); Williams v DAIE, 169 Mich App 301; 425 NW2d 534 (1988). Since

plaintiff is not entitled to work-loss benefits, his argument concerning the question of setoff under MCL 500.3109(1); MSA 24.13109(1) is moot.

Affirmed.

/s/ Elizabeth A. Weaver  
/s/ John H. Gillis  
/s/ Mark J. Cavanagh