

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM SHULL and ROSEMARY SHULL,

Plaintiffs-Appellees,

v
MARK STEUVER,

Defendant-Appellant.

October 21, 1992

No. 124659

UNPUBLISHED

Before: Jansen, P.J., and Michael J. Kelly and Griffin, JJ.

PER CURIAM.

This appeal involves a third-party no-fault liability claim arising out of an automobile/motorcycle collision. After a three day jury trial in St. Clair Circuit Court, the trial judge sua sponte directed a verdict in favor of plaintiffs on the threshold issue of whether the accident resulted in a serious impairment of body function to plaintiff, William Shull. We agree with defendant that pursuant to DiFranco v Pickard, 427 Mich 32; 398 NW2d 896 (1986), the court erred in failing to submit the threshold issue to the jury. Accordingly, we reverse the October 17, 1989, judgment in favor of plaintiffs and remand for a new trial.

The essential holding of DiFranco is that the issue of serious impairment of body function is a question of fact to be submitted to the trier of fact whenever reasonable minds could differ:

With these goals in mind, we have reviewed § 3135(1), Cassidy, and the cases interpreting them, and hold as follows:

1) The question whether the plaintiff suffered a serious impairment of body function must be submitted to the trier of fact whenever the evidence would cause reasonable minds to differ as to the answer. This is true even where there is no material factual dispute as to the nature and extent of the plaintiff's injuries.

2) In deciding motions for, and reviewing orders granting or denying, summary disposition, directed verdict and judgment notwithstanding the verdict, the court must view the evidence in the light most favorable to the nonmoving party and determine:

a) whether a material factual dispute exists as to the nature and extent of the plaintiff's injuries, and

b) whether reasonable minds could differ regarding whether the plaintiff had sustained a serious impairment of body function. [Id. at 38-39.]

In the present case, material factual disputes exist as to the nature and extent of plaintiff's alleged injuries arising from the July 16, 1982, motorcycle accident. Whether plaintiff's complaints are manifestations of real injuries, whether such injuries were proximately caused by the accident at issue, and whether such injuries constitute a serious impairment of body function are matters that must be submitted to the trier of fact. In deciding such issues sua sponte, the trial judge usurped the function of the jury and misapplied the holding of DiFranco.

Reversed and remanded for a new trial.

/s/ Michael J. Kelly
/s/ Richard Allen Griffin

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM SHULL and ROSEMARY SHULL,

Plaintiffs-Appellees,

October 21, 1992

v

No. 124659

MARK STEUVER,

Defendant-Appellant.

Before: Jansen, P.J., and Michael J. Kelly and Griffin, JJ.

JANSEN, J. (Dissenting)

Defendant, Mark Steuver, appeals as of right from an October 17, 1989, judgment entered by the St. Clair Circuit Court in favor of plaintiffs, William Shull and Rosemary Shull. Following a jury trial in this negligence action arising from an automobile/motorcycle accident, the jury returned a verdict of \$37,734.74 in favor of plaintiffs. We affirm.

On appeal, defendant first contends that the issue of serious impairment of body function should have been submitted to the jury pursuant to DiFranco v Pickard, 427 Mich 32; 398 NW2d 896 (1986). Defendant asserts that there existed a material factual dispute regarding the nature and extent of William Shull's injuries, as well as a question as to whether reasonable minds could differ regarding whether William Shull sustained a serious impairment of body function. The trial court decided as a matter of law that William Shull had sustained a serious impairment of a body function and, therefore, this issue was not submitted to the jury. We find no reversible error.

Under Michigan's no-fault automobile insurance law, a person injured in a motor vehicle accident is entitled to recover damages for noneconomic loss from an owner or operator of a motor vehicle only if the person suffered death, serious impairment of a body function, or permanent serious disfigurement. MCL 500.3135(1); MSA 24.13135(1). To recover noneconomic-loss damages, the plaintiff must prove that the injuries he sustained in the motor vehicle accident impaired one or more body functions, and that the impairment of body function was serious. DiFranco, p 69; Gagliardi v Flak, 180 Mich App 62, 68; 446 NW2d 858 (1989), lv den 433 Mich 923 (1989). In determining whether an impairment of a body function is serious, a number of factors should be considered, including the extent of the impairment, the particular body function impaired, the length of time the impairment lasted, the treatment required to correct the impairment, and any other relevant factors. DiFranco, pp 69-70; Gagliardi, p 68. An impairment need not be permanent to be serious. DiFranco, p 70; Gagliardi, p 68.

The question whether the plaintiff suffered a serious impairment of body function must be submitted to the trier of fact whenever the evidence would cause reasonable minds to differ as to the answer. DiFranco, p 38. This is true even where there is no material factual dispute as to the nature and extent of the plaintiff's injuries. Id. However, where reasonable minds could not differ as to the seriousness or nonseriousness of the injury, the threshold issue is a question of law for the court to decide. Gagliardi, p 69. If the injury was "so minor" or of a "clearly superficial nature," summary judgment should be granted to defendant. DiFranco, pp 51-52. Conversely, if the injury was so serious that no reasonable minds could differ as to whether the plaintiff had sustained a serious impairment of body function, the plaintiff should be granted summary judgment. Id., p 52. Because the Legislature did not intend to limit recovery of noneconomic damages to the catastrophically injured, the serious impairment of body function threshold is a significant, but not extraordinarily high, obstacle to recovery. Id., p 39.

In the present case, we agree with the trial court that reasonable minds could not differ as to the serious nature of William Shull's injuries and, therefore, the threshold issue was properly decided by the court as a question of law. The evidence produced at trial indicated that William Shull, age 67 at the time of the accident, has had grossly limited use of his neck and left arm/shoulder since the accident on July 16, 1982. As acknowledged by defendant in his brief on appeal, and as supported by record evidence, William Shull suffered a neck injury which continuously aches, a painful left knee, two broken ribs (which eventually healed), a severe hip bruise, occasional headaches and dizziness, and a bruised shoulder which causes him pain when he attempts to reach or pull.

It was unrefuted that Shull had full use of his left arm prior to the 1982 accident; however, Shull never regained full use of his arm, and he cannot raise the arm to the horizontal position without assistance. Some two years after the accident, Shull's doctor noted that his problem with his left shoulder continued, stating that Shull could not extend his arm up to eighty degrees. Additionally, as late as 1989, Shull had a limited range of motion in his neck. In fact, Shull could not turn his head to look behind himself.

Treatment for the injuries sustained by Shull included the use of a clavicle strap, a sling, a cervical collar and a rib belt. Shull has also been involved with physiotherapy as a result of the injuries. Shull's ability to climb stairs is impaired, he has restricted mobility in his torso which limits his movements, and he experiences bouts of dizziness. Furthermore, Shull has been restricted in moving his neck and using his left shoulder. The above injuries and the resulting impairments are serious in nature, particularly when coupled with another relevant factor, namely, the age of Shull. In particular, the neck and shoulder functions were impaired as a result of the accident, and such impairments were, as found by the trial court, serious in nature.

We note that, while Dr. Norbert Conrad's testimony that Shull's bilateral carpal tunnel syndrome was not caused by the accident conflicted with Shull's belief to the contrary,

Shull's attorney specifically repudiated Shull's speculation about this injury, stating that Shull was not seeking damages for bilateral carpal tunnel syndrome. In view of the above facts, we agree with the trial court that reasonable minds could not differ as to the seriousness of Shull's injuries. Therefore, the court was correct in not submitting this issue to the jury.

Defendant next contends that the trial court erred in instructing the jury regarding alleged statutory violations when the statutes were inapposite and were not implicated by any liability facts as presented by the evidence. We disagree. A review of the contested jury instructions indicates that sufficient evidence was presented to warrant the instructions. Wiegerink v Mitts & Merrill, 182 Mich App 546, 548; 452 NW2d 872 (1990), lv den 437 Mich 884 (1991). The instructions were applicable and accurately stated the law, and the court did not abuse its discretion in instructing the jury as it did. Id. We find no error requiring reversal.

Affirmed.

/s/ Kathleen Jansen

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM SHULL and ROSEMARY SHULL,

Plaintiffs-Appellees,

v
MARK STEUVER,

Defendant-Appellant

October 21, 1992

No. 124659

UNPUBLISHED

Before: Jansen, P.J., and Michael J. Kelly and Griffin, JJ.

PER CURIAM.

This appeal involves a third-party no-fault liability claim arising out of an automobile/motorcycle collision. After a three day jury trial in St. Clair Circuit Court, the trial judge sua sponte directed a verdict in favor of plaintiffs on the threshold issue of whether the accident resulted in a serious impairment of body function to plaintiff, William Shull. We agree with defendant that pursuant to DiFranco v Pickard, 427 Mich 32; 398 NW2d 896 (1986), the court erred in failing to submit the threshold issue to the jury. Accordingly, we reverse the October 17, 1989, judgment in favor of plaintiffs and remand for a new trial.

The essential holding of DiFranco is that the issue of serious impairment of body function is a question of fact to be submitted to the trier of fact whenever reasonable minds could differ:

With these goals in mind, we have reviewed § 3135(1), Cassidy, and the cases interpreting them, and hold as follows:

1) The question whether the plaintiff suffered a serious impairment of body function must be submitted to the trier of fact whenever the evidence would cause reasonable minds to differ as to the answer. This is true even where there is no material factual dispute as to the nature and extent of the plaintiff's injuries.

2) In deciding motions for, and reviewing orders granting or denying, summary disposition, directed verdict and judgment notwithstanding the verdict, the court must view the evidence in the light most favorable to the nonmoving party and determine:

a) whether a material factual dispute exists as to the nature and extent of the plaintiff's injuries, and

b) whether reasonable minds could differ regarding whether the plaintiff had sustained a serious impairment of body function. [Id. at 38-39.]

In the present case, material factual disputes exist as to the nature and extent of plaintiff's alleged injuries arising from the July 16, 1982, motorcycle accident. Whether plaintiff's complaints are manifestations of real injuries, whether such injuries were proximately caused by the accident at issue, and whether such injuries constitute a serious impairment of body function are matters that must be submitted to the trier of fact. In deciding such issues sua sponte, the trial judge usurped the function of the jury and misapplied the holding of DiFranco.

Reversed and remanded for a new trial.

/s/ Michael J. Kelly
/s/ Richard Allen Griffin

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM SHULL and ROSEMARY SHULL,

Plaintiffs-Appellees,

October 21, 1992

v

No. 124659

MARK STEUVER,

Defendant-Appellant.

Before: Jansen, P.J., and Michael J. Kelly and Griffin, JJ.

JANSEN, J. (Dissenting)

Defendant, Mark Steuver, appeals as of right from an October 17, 1989, judgment entered by the St. Clair Circuit Court in favor of plaintiffs, William Shull and Rosemary Shull. Following a jury trial in this negligence action arising from an automobile/motorcycle accident, the jury returned a verdict of \$37,734.74 in favor of plaintiffs. We affirm.

On appeal, defendant first contends that the issue of serious impairment of body function should have been submitted to the jury pursuant to DiFranco v Pickard, 427 Mich 32; 398 NW2d 896 (1986). Defendant asserts that there existed a material factual dispute regarding the nature and extent of William Shull's injuries, as well as a question as to whether reasonable minds could differ regarding whether William Shull sustained a serious impairment of body function. The trial court decided as a matter of law that William Shull had sustained a serious impairment of a body function and, therefore, this issue was not submitted to the jury. We find no reversible error.

Under Michigan's no-fault automobile insurance law, a person injured in a motor vehicle accident is entitled to recover damages for noneconomic loss from an owner or operator of a motor vehicle only if the person suffered death, serious impairment of a body function, or permanent serious disfigurement. MCL 500.3135(1); MSA 24.13135(1). To recover noneconomic-loss damages, the plaintiff must prove that the injuries he sustained in the motor vehicle accident impaired one or more body functions, and that the impairment of body function was serious. DiFranco, p 69; Gagliardi v Flak, 180 Mich App 62, 68; 446 NW2d 858 (1989), lv den 433 Mich 923 (1989). In determining whether an impairment of a body function is serious, a number of factors should be considered, including the extent of the impairment, the particular body function impaired, the length of time the impairment lasted, the treatment required to correct the impairment, and any other relevant factors. DiFranco, pp 69-70; Gagliardi, p 68. An impairment need not be permanent to be serious. DiFranco, p 70; Gagliardi, p 68.

The question whether the plaintiff suffered a serious impairment of body function must be submitted to the trier of fact whenever the evidence would cause reasonable minds to differ as to the answer. DiFranco, p 38. This is true even where there is no material factual dispute as to the nature and extent of the plaintiff's injuries. Id. However, where reasonable minds could not differ as to the seriousness or nonseriousness of the injury, the threshold issue is a question of law for the court to decide. Gagliardi, p 69. If the injury was "so minor" or of a "clearly superficial nature," summary judgment should be granted to defendant. DiFranco, pp 51-52. Conversely, if the injury was so serious that no reasonable minds could differ as to whether the plaintiff had sustained a serious impairment of body function, the plaintiff should be granted summary judgment. Id., p 52. Because the Legislature did not intend to limit recovery of noneconomic damages to the catastrophically injured, the serious impairment of body function threshold is a significant, but not extraordinarily high, obstacle to recovery. Id., p 39.

In the present case, we agree with the trial court that reasonable minds could not differ as to the serious nature of William Shull's injuries and, therefore, the threshold issue was properly decided by the court as a question of law. The evidence produced at trial indicated that William Shull, age 67 at the time of the accident, has had grossly limited use of his neck and left arm/shoulder since the accident on July 16, 1982. As acknowledged by defendant in his brief on appeal, and as supported by record evidence, William Shull suffered a neck injury which continuously aches, a painful left knee, two broken ribs (which eventually healed), a severe hip bruise, occasional headaches and dizziness, and a bruised shoulder which causes him pain when he attempts to reach or pull.

It was unrefuted that Shull had full use of his left arm prior to the 1982 accident; however, Shull never regained full use of his arm, and he cannot raise the arm to the horizontal position without assistance. Some two years after the accident, Shull's doctor noted that his problem with his left shoulder continued, stating that Shull could not extend his arm up to eighty degrees. Additionally, as late as 1989, Shull had a limited range of motion in his neck. In fact, Shull could not turn his head to look behind himself.

Treatment for the injuries sustained by Shull included the use of a clavicle strap, a sling, a cervical collar and a rib belt. Shull has also been involved with physiotherapy as a result of the injuries. Shull's ability to climb stairs is impaired, he has restricted mobility in his torso which limits his movements, and he experiences bouts of dizziness. Furthermore, Shull has been restricted in moving his neck and using his left shoulder. The above injuries and the resulting impairments are serious in nature, particularly when coupled with another relevant factor, namely, the age of Shull. In particular, the neck and shoulder functions were impaired as a result of the accident, and such impairments were, as found by the trial court, serious in nature.

We note that, while Dr. Norbert Conrad's testimony that Shull's bilateral carpal tunnel syndrome was not caused by the accident conflicted with Shull's belief to the contrary,

Shull's attorney specifically repudiated Shull's speculation about this injury, stating that Shull was not seeking damages for bilateral carpal tunnel syndrome. In view of the above facts, we agree with the trial court that reasonable minds could not differ as to the seriousness of Shull's injuries. Therefore, the court was correct in not submitting this issue to the jury.

Defendant next contends that the trial court erred in instructing the jury regarding alleged statutory violations when the statutes were inapposite and were not implicated by any liability facts as presented by the evidence. We disagree. A review of the contested jury instructions indicates that sufficient evidence was presented to warrant the instructions. Wiegerink v Mitts & Merrill, 182 Mich App 546, 548; 452 NW2d 872 (1990), lv den 437 Mich 884 (1991). The instructions were applicable and accurately stated the law, and the court did not abuse its discretion in instructing the jury as it did. Id. We find no error requiring reversal.

Affirmed.

/s/ Kathleen Jansen