

STATE OF MICHIGAN
COURT OF APPEALS

DANIEL HUGHES,

Plaintiff-Appellant/
Cross-Appellee,

July 1, 1993

v

AUTOMOBILE CLUB INSURANCE ASSOCIATION,

Defendant-Appellee/
Cross-Appellant.

No. 134531
LC No. 89-63249 CK

Before: Holbrook, Jr., P.J., and Fitzgerald and D.A. Roberson,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order to reduce his work loss benefits he received from defendant, his no-fault insurance carrier, after being in an automobile accident. Defendant also cross-appeals as of right from the trial court's order, awarding attorney's fees to plaintiff because defendant unreasonably refused to pay benefits. We affirm.

Plaintiff was involved in an automobile accident on August 18, 1988, which left him unable to work. Until the accident, plaintiff was working full-time as a construction worker. Plaintiff received work loss and medical benefits from defendant until February 15, 1989. Plaintiff's benefits were discontinued based on the findings of an independent medical examination conducted by Dr. John DeBruin at defendant's request. Dr. DeBruin diagnosed plaintiff suffered from spondylolysis, which was a developmental problem unrelated to his accident.

Plaintiff filed a lawsuit, seeking to recover his PIP benefits and attorney's fees incurred from defendant's unreasonable refusal to pay the benefits. Defendant filed a cross-complaint to recover the amount it had overcompensated plaintiff from August 18, 1988 to February 15, 1988. At his deposition on December 11, 1989, Dr. DeBruin testified that although plaintiff suffered from a developmental problem, it was possible the condition was aggravated by the automobile accident. Two weeks after the deposition, defendant issued a check for the amount past due plaintiff since February of 1989.

Defendant, however, claimed that because defendant only worked eight or nine months of the year, his wage loss benefit should equal the amount earned per day during those months (\$85.13 per day). Defendant also claimed that the remaining three or four months of the year, his wage loss benefit should equal the amount earned from unemployment benefits during the nonworking months (\$52.60 per day). On October 15, 1990, the trial court issued an opinion, finding that defendant's calculation of wage loss benefits was correct, but awarded plaintiff his attorney's fees.

The first issue on appeal is whether the trial court correctly computed work loss benefits under the no-fault insurance act, MCL 500.3101 *et seq.*; MSA 24.13101 *et seq.* Work loss benefits are payable under MCL 500.3107(1); MSA 24.13107(1), and are defined under subsection (b) as:

Work loss consisting of loss of income from work an injured person would have performed during the first 3 years after the date of the accident if he or she had not been injured.

*Recorder's Court judge, sitting on the Court of Appeals by assignment.