STATE OF MICHIGAN

COURT OF APPEALS

HILERY WELCH,

Plaintiff-Appellant,

v

SECURA INSURANCE COMPANY,

Defendant-Appellee.

April 6, 1994

No. 145014
LC No. 90-02335-NI

Before: Jansen, P.J., and McDonald and G.M. Hocking,* JJ.

PER CURIAM.

Plaintiff appeals from orders dated September 6, 1991, entering judgment on a jury verdict and denying plaintiff's motion for judgment notwithstanding the verdict, new trial or additur, in this action to recover personal insurance protection and work loss benefits. We affirm.

The trial court did not abuse its discretion in denying plaintiff's motion. Michigan Microtech v Federated Publications, 187 Mich App 178; 466 NW2d 717 (1991); Arrington v Detroit Osteopathic Hospital (On Remand), 196 Mich App 544; 493 NW2d 492 (1992); Burtka v Allied Integrated Diagnostic Services, 175 Mich App 777; 438 NW2d 342 (1989). The verdict was neither against the great weight of the evidence nor inconsistent. There existed a legitimate conflict of fact regarding whether plaintiff suffered a closed head injury and the jury could have determined plaintiff had already received the work loss benefits to which he was entitled. Work loss compensation under the no-fault automobile insurance law, MCL 500.3107(1)(b); MSA 24.13107(1)(b) is available only if the injuries can be attributed to a single identifiable event or accident. Williams v Detroit Auto Inter-Ins Exchange, 169 Mich App 301; 425 NW2d 534 (1988). Here, there was evidence presented to support a conclusion that plaintiff's disability did not arise out of the accident.

We also find no abuse of discretion in the court's ruling admissible the testimony of Doctors Godley and Liu or the evidence revealing the existence of plaintiff's lawsuit against his employer. People v Long Realty, 199 Mich App 461; 502 NW2d 337 (1993). The probative value of the evidence outweighed any claim of prejudicial effect.

Plaintiff's claim for attorney fees, not having been decided below, is not properly before the Court. Detroit v Dept of Social Services, 197 Mich App 146; 494 NW2d 805 (1992). Additionally, plaintiff's claim for statutory judgment interest is moot because the order of judgment provided for the payment of such interest. However, we do find plaintiff is entitled to penalty interest on the $800 claim made for plaintiff's evaluation by Dr. Weiss. MCL 500.3142; MSA 24.13142, provides that an insurer who fails to pay a claim within thirty days of receipt of reasonable proof of a plaintiff's injury and loss, must pay penalty interest on the benefit. Grossheim v Assoc Truck Lines, 181 Mich App 712; 450 NW2d 40 (1989). Although the record reveals conflicting testimony regarding defendant's receipt of bills for the plaintiff's $188 and $40 medical claims, the record is clear that defendant received the $800 bill on or about January 10, 1990. Because the jury found defendant responsible for this bill, defendant is required to pay penalty interest on the amount.

Finally, mediation sanctions were properly assessed. Plaintiff rejected a mediation evaluation of $19,000 and obtained a verdict of only $1,028. MCR 2.403.

Affirmed but remanded for calculation of penalty interest consistent with this opinion. We do not retain jurisdiction.

/s/Kathleen Jansen
/s/Gary R. McDonald
/s/G. Michael Hocking

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