

FOR PUBLICATION

S T A T E O F M I C H I G A N
C O U R T O F A P P E A L S

CHRISTOPHER KANAZIZ,

JUL 8 1986

Plaintiff-Appellant.

v

No. 83946

LOIS MAXINE ROUNDS,

Defendant-Appellee.

BEFORE: R.M. Maher, P.J., and T.M. Burns and R.H. Bell*, JJ.

PER CURIAM

Plaintiff appeals as of right from a trial court order granting defendant summary judgment and dismissing plaintiff's claims.

Plaintiff commenced this suit to obtain damages for injuries sustained in an automobile accident which occurred on April 26, 1983. Plaintiff alleged serious impairment of a body function and permanent serious disfigurement. Defendant moved for summary judgment on both issues. On February 8, 1985, the trial court filed a written opinion concluding that, as a matter of law, plaintiff had not suffered a serious impairment of a body function or a permanent serious disfigurement. Defendant submitted a proposed order of summary judgment dismissing plaintiff's claims. Plaintiff objected on the ground that the trial court's written opinion was not dispositive of plaintiff's \$400 mini-tort claim. Over plaintiff's objections, the trial court entered the order of summary judgment and dismissed all claims against defendant.

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

Plaintiff first argues that the trial court erred when it determined that he did not suffer a "serious impairment of body function". We disagree.

When there is no material factual dispute as to the nature and extent of a plaintiff's injuries, courts are to decide as a matter of law whether there has been a "serious impairment of body function" under Michigan's no-fault act, MCL 500.3135(1); MSA 24.13135(1). See Cassidy v McGovern, 415 Mich 483; 330 NW2d 22 (1982), reh den 417 Mich 1104 (1983). In reviewing the facts of the case, the benefit of any reasonable doubt must be given to the party opposing a motion for summary judgment. Garris v Vanderlaan, 146 Mich App 619; ___ NW2d ___ (1985).

Serious impairment of a body function is decided on a case-by-case basis under the following three-part test: (1) the impairment must be of an important body function; (2) the impairment must be serious; and (3) the injuries must be objectively manifested. Williams v Payne, 131 Mich App 403, 409; 346 NW2d 564 (1984). Whether an impairment is serious should be viewed in light of the other threshold requirements found in the no-fault act, namely death or permanent serious disfigurement. Id., 410. The threshold requirement of serious impairment of body function is a significant obstacle to tort recovery for non-economic loss. Franz v Woods, 145 Mich App 169; 377 NW2d 373 (1985). The legislative intent in creating thresholds for recovery was to allow the catastrophically injured victim to recover. Workman v DAIE, 404 Mich 477; 274 NW2d 373 (1979).

To determine whether an injury meets the threshold requirement of impairment of an important body function, the injured plaintiff's ability to lead a normal lifestyle must be considered. Simple difficulty or inconvenience in daily life does not meet the threshold. Morris v Levine, 146 Mich App 150; 379 NW2d 402 (1985). There must be a general inability to live what objectively can be determined to be a normal lifestyle.

Morris, supra. The injury must also be objectively manifested. Williams, supra. Medically unsubstantiated pain and suffering, always present in a tort action for pain and suffering, does not meet the no-fault threshold. Id.; Cassidy, supra, 505. Although permanence is relevant to a finding of serious impairment, an injury does not have to be permanent to be serious. Id., 505-506. See also, Sherrell v Bugaski, 140 Mich App 708, 710-711; 364 NW2d 684 (1984).

In the instant case, plaintiff suffered from a chest injury which was diagnosed immediately after the accident as a cardiac contusion. Following the accident, plaintiff had a mark from the steering wheel left on his chest by the force with which he struck the steering wheel. Plaintiff suffered lacerations, including a jagged cut to the right eyelid. Viewing the facts in a light most favorable to plaintiff, we believe he suffered at least a temporary impairment of an important body function. Immediately after the accident, plaintiff's electrocardiogram showed an increased intraventricular conduction time. We agree with plaintiff that the correct functioning of the heart is an important body function. Nevertheless, we believe that plaintiff failed to establish either of the other two threshold requirements: (1) that plaintiff suffered a "serious" impairment of body function; and (2) that plaintiff suffered an objectively manifested injury.

While plaintiff's injuries may have been temporarily measurable in the form of an irregular electrocardiogram and a mark on the chest, testimony given by Dr. Overy indicated that the results of the hospital electrocardiogram were "not of any significance" and that late "R waves and right precordia leads" were very common in young people. Further, electrocardiograms taken one and one-half months and one year after the accident were completely normal. Dr. Overy stated that there was no evidence that plaintiff suffered any permanent injuries as a

result of the automobile accident and that he thought plaintiff was "home clear with no worry about future cardiac damage."

Although plaintiff complained of chest discomfort following the accident, no medical evidence was submitted to show that the pain was tied to a heart condition caused by the accident. Medically unsubstantiated pain and suffering does not meet Michigan's no-fault threshold for recovery for non-economic loss. Cassidy, supra, 505.

In addition, plaintiff's injuries cannot be considered serious when viewed in light of the other no-fault thresholds, i.e., death and permanent serious disfigurement. Plaintiff's ability to lead a normal lifestyle does not appear to be seriously impaired by the injuries sustained in the accident. In order to sustain the impairment of an important body function, the plaintiff's ability to lead a normal lifestyle must be adversely affected. Morris, supra. In this case plaintiff testified that he was told to "take it easy" after the accident. Plaintiff did not take a summer job or involve himself in strenuous activity following his injury. No other testimony or evidence was given which would indicate that plaintiff's lifestyle was otherwise affected. Plaintiff was a student at Grand Valley State College before and after the accident.

We conclude that plaintiff failed to establish that the injuries he suffered were objectively manifested and that any impairment he suffered was serious when compared with the other no-fault thresholds, i.e., death or serious permanent disfigurement. Cassidy, supra, 503.

Plaintiff argues that the trial court erred in determining that he did not suffer a "permanent serious disfigurement." Again, we disagree.

Where there is no material factual dispute as to the nature and extent of a plaintiff's injuries, the threshold question of permanent serious disfigurement is a question of

statutory construction to be resolved by the court as a matter of law. Kosak v Moore, 144 Mich App 485; 375 NW2d 742 (1985). Whether an injury amounts to a permanent serious disfigurement depends on its physical characteristics. Id. Although the Supreme Court's decision in Cassidy deals only with serious impairment of body function, this Court has held that the Supreme Court's reasoning and analysis apply equally to the threshold issue of permanent serious disfigurement. Shortridge v Bailey, 145 Mich App 547; 378 NW2d 544 (1985).

This Court's review of the trial court's decision whether a plaintiff has suffered a permanent serious disfigurement was aptly stated in Williams v Payne, 131 Mich App at 411-412:

"Disfigurement goes to the physical characteristics of an injury rather than the injury's effect on the victim's lifestyle. Ascertaining the seriousness of disfigurement may often require physical observation by the trial court. * * * In disfigurement cases based on physical observation, the appellate courts must grant great deference to the observations of the trial court on what is, in effect, a factual conclusion about the severity of an injury. The victims cannot be expected to parade their maladies through an appellate courtroom. The trial court is expected to make adequate findings on the record. GCR 1963, 517.1. It will describe the injuries and reach a legal conclusion on whether they meet the threshold. We will review the trial court's determination, reversing only when the court has abused its discretion."

According to the surgeon who treated plaintiff, the right eyelid wound was just over one inch in length and "jagged" or "star shaped". The resulting scar was considered to be permanent. Plaintiff's physician recommended that he apply a sun screen to the area of the scar should he be exposed to significant, direct sunlight.

Although no photographs were included in the record now before this Court, from plaintiff's testimony and the trial court's conclusions in its opinion, we conclude that plaintiff's scar is not immediately and readily noticeable. Plaintiff admitted that people who did not know him would not "really notice" the scar. We agree with the trial court that plaintiff has not suffered a permanent serious disfigurement.

Plaintiff argues that the trial court erroneously dismissed his "mini-tort" claim brought pursuant to MCL 500.3135(2)(d); MSA 24.13135(2)(d). Under the statute, a person remains subject to tort liability arising from the ownership, maintenance or use of a motor vehicle, for damages up to \$400 to motor vehicles, to the extent that damages are not covered by insurance.

From our review of plaintiff's complaint, we conclude that he did not state a claim for damages under § 3135. Plaintiff's averment that he "claims all damages allowable under Michigan law as a consequence of the negligence of this defendant" is insufficient insofar as it purports to be an allegation of a cause of action under § 3135.

Affirmed.

/s/ Richard M. Maher
/s/ Thomas M. Burns
/s/ Robert Holmes Bell