STATE OF MICHIGAN

COURT OF APPEALS

MARY HELEN GRIER, MARCUS GRIER, and DARYL GRIER,

Plaintiffs-Appellees,

v

DETROIT AUTOMOBILE INTER-INSURANCE EXCHANGE and AUTO CLUB INSURANCE ASSOCIATION, Jointly and Severally,

Defendants-Appellants.

APR 15 1987

No. 88737

BEFORE: D.F. Walsh, P.J., M.J. Kelly and C.W. Simon*, JJ

PER CURIAM

Defendants Detroit Automobile Inter-Insurance Exchange and Auto Club Insurance Association appeal from a judgment awarding plaintiffs $21,660 in principal as no-fault insurance survivor's loss benefits. Trial was conducted on stipulated facts, and the sole issue at trial and on appeal is the manner in which plaintiffs' benefits are to be calculated under MCL 500.3108; MSA 24.13108. The parties' dispute focuses upon whether the earnings of plaintiffs' decedent, who was temporarily unemployed at the time of his death, should be calculated according to the amount he earned during his last month of employment, or by proofs of what he would have earned in the future if he had lived. The trial court ruled that plaintiffs' benefits should be based upon the decedent's last month of employment. We reverse.

Survivor's loss benefits are provided for in MCL 500.3108(1); MSA 24.13108(1), which states in pertinent part:

Determining what plaintiffs "would have received" from decedent requires the trial court to predict the future. This task was complicated here, where plaintiffs' decedent was temporarily unemployed at the time of his death. Thus, plaintiffs urge the trial court to adopt by analogy the formula applicable to work loss benefits for injured persons set forth in MCL 500.3107a; MSA 24.13107(1). That section provides:

> "Subject to the provisions of section 3107(b), work loss for an injured person who is temporarily unemployed at the time of the accident or during the period of disability shall be based on earned income for the last month employed full time preceding the accident."

Section 3107(b) of the no-fault act, MCL 500.3107(b); MSA 24.13107(b), in turn defines work loss to include lost income that an injured worker "would have performed" had he not been injured. It also specifies that such work loss does not include any loss after the date on which the injured person dies. Thus, by the act's own terms, the artificial formula for determining work loss set forth in §3107a does not apply when the injured person dies.

We agree with the plaintiffs and the trial court that the no-fault act was intended in part to lessen administrative delays and factual disputes that would interfere with expeditious compensation. Miller v State Farm Mutual Automobile Insurance Co, 410 Mich 538, 568; 302 NW2d 537 reh den 411 Mich 1154 (1981). However, that goal cannot be relied upon to ignore the plain and explicit language of the act, which specifies that the formula set forth in §3107a does not apply when an injured person dies. The plain meaning of the statute controls and must be applied as written. Merat v Swacker, 150 Mich App 61, 64; 388 NW2d 305 (1986).

We also find plaintiffs' argument of analogy

to replace the contributions the survivors "would have received" but for the decedent's death. Similar language employed by the Legislature regarding work loss benefits, in MCL 500.3107(b), confers benefits only for actual loss of income. Ouelette v Kenealy, 424 Mich 83, 86-87; 378 NW2d 470 (1984); Lenart v DAIIE, ___ Mich App ___; ___ NW2d ___ (Docket No. 87790, rel'd 12/15/86). To what extent wages would have been received but for the injury is a question of fact upon which proofs must be submitted. Swartout v State Farm Mutual Automobile Ins Co, ___ Mich App ___; ___ NW2d ___ (Docket No. 86547, rel'd 11/18/86).

Thus, we agree with Cole v DAIIE, 137 Mich App 603, 608; 357 NW2d 898 (1984) that survivor's loss benefits are not payable during periods for which the decedent would not have earned income even if he had not been involved in the automobile collision. The formula of §3107a does not apply. Gobler v Auto-Owners Insurance Co, 139 Mich App 768, 776 fn 1; 362 NW2d 881 (1984) lv gtd 424 Mich 876 (1986). Rather, benefits must be confined to those the survivors "would have received" if the decedent had not died. Cole, supra.

In the instant case, the trial court erred in imposing an artificial measurement of survivor's loss benefits, as the formula set forth in §3107a is applicable only to work loss benefits. Plaintiffs' recovery must be confined to what they would have received absent the automobile collision involving decedent. Accordingly, the trial court is reversed and this case remanded for proceedings consistent with this opinion.

/s/ Daniel F. Walsh
/s/ Michael J. Kelly
/s/ Charles W. Simon, Jr.