

STATE OF MICHIGAN  
COURT OF APPEALS

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HERSHEL CALDWELL,

Plaintiff-Appellee,

v

AUTOMOBILE CLUB ASSOCIATION, f/k/a  
DETROIT AUTOMOBILE INTER-INSURANCE  
EXCHANGE,

Defendant-Appellant.

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UNPUBLISHED  
February 23, 1996

No. 164138  
LC No. 91-041590

Before: Doctoroff, C.J., and Michael J. Kelly and Markey, JJ.

PER CURIAM.

A jury awarded \$74,542.72 in damages to plaintiff in this suit pursuant to the no-fault act. MCL 500.3101 *et seq*; MSA 24.13101 *et seq*. Defendant appeals as of right. We reverse and remand for a new trial.

Plaintiff, an employee of Ford Motor Company since 1965, was receiving worker's compensation for an earlier back injury when he was involved in an automobile accident in December 1988. Pursuant to the no-fault act, plaintiff filed a claim for benefits with defendant. Plaintiff requested medical benefits, wage-loss benefits, and replacement service benefits. When defendant offered a much smaller amount than plaintiff requested, plaintiff filed suit.

At trial, defendant argued that plaintiff was not entitled to work-loss benefits because, even if the automobile accident had not occurred, plaintiff's prior back injury prevented him from working. Plaintiff testified that he injured his back in February 1988. This injury caused him to miss several weeks of work. In June 1988, plaintiff's back problems began to get worse. A physician initiated a treatment program and ordered plaintiff to stay home from work. Plaintiff began to receive worker's compensation in June 1988. In December 1988, plaintiff was involved in the automobile accident which he alleged caused his current injury. Plaintiff testified that his previous back injuries had healed and, but for the automobile accident, he would have returned to work in January 1989. Plaintiff attempted to return to work in May 1989 but his injuries prevented him from performing his job without pain. In June 1989, plaintiff retired due to disability. Both parties introduced expert testimony from physicians who had examined plaintiff both before and after his automobile accident.

On appeal, defendant argues that several errors occurred at trial. Because we find that the erroneous jury instructions necessitate reversal of the verdict, we will not address defendant's other claims of error.

The trial court read the following instruction to the jury regarding entitlement to work-loss benefits:

Plaintiff is not entitled to receive work-loss benefits if the automobile accident would not have caused him to lose income from work. If you decide the plaintiff's loss of income

was due *solely* to the a [sic] work related injury, he is not entitled to work-loss benefits under the no-fault statute. [emphasis added].

The trial court also read a modified version of two negligence instructions to the jury. SJI 2d 50.10; SJI2d 50.11. The trial court instructed the jury that "the defendant takes the plaintiff as he finds him." Then, the trial court informed the jury:

You must separate the damages caused by the automobile collision from the condition which was pre-existing if it is possible to do so; however, if after careful consideration you are unable to separate the damages caused by the automobile collision from those which were pre-existing, then the entire amount of plaintiff's no-fault benefits must be assessed against its insurance company.

Work-loss benefits are available to compensate only for that amount that the injured person would have received had his automobile accident not occurred. *MacDonald v State Farm Ins Co*, 419 Mich 146, 152; 350 NW2d 233 (1984). Numerous provisions of the no-fault act refer to an accident which occurred at an identifiable time and place. See *Wheeler v Tucker Freight*, 125 Mich App 123; 336 NW2d 14 (1983). While the jury should determine the extent of the injuries caused by the automobile accident and award damages for those injuries, the jury was not entitled to award damages for injuries that it did not determine were caused by the automobile accident. *Williams v DAIE*, 169 Mich App 301, 304; 425 NW2d 534 (1988).

Instead of instructing the jury that it could only award damages for injuries which were caused by the automobile accident, the trial court instructed the jury that defendant was required to pay for any injuries which were not a result of plaintiff's pre-existing injury. In other words, the trial court instructed the jury that, even if it could not attribute part of plaintiff's injury to the automobile accident, defendant was responsible for work-loss benefits as long as the jury did not find that the damages were solely attributable to a pre-existing injury. Because injuries which cannot be attributed to a single identifiable event or accident are excluded from coverage, the trial court's instructions were contrary to law. *Id.*

While we recognize that no-fault benefits are intended to provide benefits for injuries caused by automobile accidents that would otherwise be recoverable in a tort action, a trial court should not read jury instructions based on tort law when those instructions are contrary to the no-fault statute. Because the applicable law was not fairly and adequately presented to the jury, we reverse and remand this case for a new trial. *Wiegerink v Mitts & Merrill*, 182 Mich App 546, 548; 452 NW2d 872 (1990).

Reversed. We do not retain jurisdiction.

/s/ Martin M. Doctoroff  
/s/ Michael J. Kelly  
/s/ Jane E. Markey