STATE OF MICHIGAN

COURT OF APPEALS

DANIEL SCHATOW and VICTORIA SCHATOW,

Plaintiffs-Appellants/
Cross-Appellees,

v

WILLIAM COWLES,

Defendant-Appellee/
Cross-Appellant.

UNPUBLISHED
November 12, 1996

No. 181322
LC No. 92-015832-NI

Before: Michael J. Kelly, P.J., and Hood and H.D. Soet,* JJ.

PER CURIAM.

Plaintiffs appeal as of right from a judgment of no cause of action on their claim brought pursuant to MCL 500.3135; MSA 24.13135 (unamended by 1995 PA 222), the tort liability exception to the Michigan No-Fault Act. The jury found that plaintiff Daniel Schatow did not suffer a serious impairment of body function. Defendant cross-appeals the trial court's denial of his motion for a partial directed verdict. We affirm.

On May 26, 1991, defendant accidentally ran over Schatow's left foot. Schatow testified that he was unable to work on a regular basis after the accident and that he was unable to play the sports he had played prior to the accident. There was testimony that Schatow had played a vigorous game of basketball after the accident.

Plaintiffs first argue that the trial court erred in denying their motion for judgment notwithstanding the verdict (JNOV), or in the alternative, a new trial based on the court's finding that the jury's verdict that Schatow had not suffered a serious impairment of a body function was not against the great weight of the evidence. We disagree. The issue of serious impairment of body function is properly before the jury when reasonable minds could differ as to the seriousness of the injury, regardless of the nature or extent of the plaintiff's injuries. *DiFranco v Pickard*, 427 Mich 32, 77-78; 398 NW2d 896 (1986).

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

In this case, defendant presented evidence to show that Schatow's injuries were not serious because of the activities he engaged in, such as playing basketball. Defendant also established by cross-examination that Schatow's injuries may not impair his ability to work and that he had not followed his doctor's instructions. Thus, viewing the evidence in the light most favorable to the nonmoving party, the trial court did not abuse its discretion in denying plaintiffs' motion for JNOV. *Wilson v General Motors Corp*, 183 Mich App 21, 36; 454 NW2d 405 (1990); *McLemore v Detroit Receiving Hospital*, 196 Mich App 391, 395; 493 NW2d 441 (1992). Additionally, since the verdict was not against the great weight of the evidence, a new trial was not warranted. MCR 2.611(A)(1)(e).

Plaintiffs also argue that the trial court erred in not granting their motion for additur, maintaining that the award of no damages was grossly inadequate in light of all the testimony produced at trial. Plaintiffs were not entitled to any non-economic damages since the jury's finding that Schatow had not suffered from a serious impairment of body function was not against the great weight of the evidence. MCL 500.3135; MSA 24.13135, unamended. Regarding the issue of lost economic wages, the jury found that Schatow had not suffered any economic losses as the proximate result of the injuries caused by defendant. Defendant presented evidence to show that Schatow's lack of care after the injury caused his losses and that Schatow had no future employment prospects. Since there was evidence to support the jury's verdict, the trial court did not abuse its discretion by denying plaintiffs' motion for additur. *Palenkas v Beaumont Hospital*, 432 Mich 527, 532; 443 NW2d 354 (1989).

Plaintiffs next argue that the trial court should have granted their motion for a new trial because defense counsel intentionally interjected statements regarding the amount that Schatow received in no-fault benefits even though it was irrelevant and highly prejudicial information. Although it was error for defense counsel to mention the dollar amount that Schatow received because he could have impeached Schatow without referring to the dollar amount, there was no evidence that the jury verdict was not supported by the evidence. Thus, the trial court did not abuse its discretion by denying plaintiffs' motion for a new trial because of this harmless error. *Means v Jowa Security Services*, 176 Mich App 466, 475-476; 440 NW2d 23 (1989).

On cross-appeal, defendant argues that the trial court improperly instructed the jury on the issue of wage loss after it granted his motion for a directed verdict on the issue of excess wage loss. The trial court granted a directed verdict on the issue of wage loss in excess of payments made by the first-party insurer but not on the issue of future economic wage loss. In essence, defendant is arguing that the trial court erred in not granting a directed verdict on the issue of future economic losses. Shatow testified that he was working at Rose Hill Center until the accident and that, but for his injury, he would have been able to work there permanently. Viewing the evidence in the light most favorable to plaintiffs, there was evidence presented to support a prima facie case on the issue of future economic damages and thus, the trial court properly allowed the issue to go to the jury. *Locke v Pachtman*, 446 Mich 216, 223; 521 NW2d 786 (1994).

Affirmed.

/s/ Michael J. Kelly
/s/ Harold Hood
/s/ H. David Soet