STATE OF MICHIGAN

COURT OF APPEALS

JOHN C. KRONNICH, Plaintiff-Appellee,	UNPUBLISHED March 21, 2000
v	No. 213918 St. Clair Circuit Court
JASON THOMAS HALE, Defendant-Appellant.	LC No. 96-000956-NF

Before: Murphy, P.J., and Hood and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right from a corrected judgment entered for plaintiff following a bench trial. We affirm.

Plaintiff suffered injuries when he drove his pickup truck off a road to avoid a collision with defendant, who fell asleep at the wheel of his car. The trial court, finding that defendant breached his duty to plaintiff and that plaintiff suffered a serious impairment of a body function, entered a judgment awarding plaintiff $9,975 in past damages and a lump sum of $71,250 in future damages, plus interest, costs, and mediation sanctions.

Defendant argues that the trial court erred by finding that plaintiff suffered a serious impairment of a body function. We disagree. We review the findings of fact made by a trial judge sitting as the trier of fact for clear error. MCR 2.613(C); *Mazur v Blendea*, 409 Mich 858; 294 NW2d 827 (1980); *HJ Tucker & Associates, Inc v Allied Chucker & Engineering Co*, 234 Mich App 550, 563; 595 NW2d 176 (1999). Such error exists if, although there is evidence to support the court's findings of fact, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Tuttle v Dep't of State Highways*, 397 Mich 44, 46; 243 NW2d 244 (1976); *Traxler v Ford Motor Co*, 227 Mich App 276, 282; 576 NW2d 398 (1998). We give special deference to the findings of a trial court based on the credibility of the witnesses. *Tucker*, *supra* at 563.

The no-fault insurance act, MCL 500.3101 *et seq.*; MSA 24.13101 *et seq.*, limits tort liability for noneconomic loss to instances in which the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement. MCL 500.3135(1); MSA 24.13135(1); *Stephens*

v Dixon, 449 Mich 531, 539; 536 NW2d 755 (1995). The "serious impairment of body function" threshold is a significant, but not extraordinarily high, threshold. *DiFranco v Pickard*, 427 Mich 32, 39, 67; 398 NW2d 896 (1986). Plaintiff's injuries occurred on June 20, 1994, and he filed his complaint on March 21, 1996, before the effective date of the current version of MCL 500.3135; MSA 24.13135. The version of MCL 500.3135; MSA 24.13135 that applies to plaintiff's claim stated in pertinent part:

> (1) A person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.

Whether plaintiff met the serious impairment of body function threshold under this statute depends on two inquiries: (1) what body function, if any, was impaired as a result of the motor vehicle collision, and (2) was the impairment serious? *DiFranco, supra* at 39, 67. The focus of these inquiries is on how the injury affected a particular body function and not on the injuries themselves. *Id.* at 67. In determining whether an impairment of body function is serious, relevant considerations include the extent of the impairment, the particular body function impaired, the duration of the impairment, the treatment required to correct the impairment, as well as any other relevant factors. *Id.* at 39-40, 69-70; *Owens v Detroit*, 163 Mich App 134, 138; 413 NW2d 679 (1987). Furthermore, plaintiff must have produced evidence that established a physical basis for subjective complaints of pain and suffering. *DiFranco, supra* at 74; *Richards v Pierce*, 162 Mich App 308, 315; 412 NW2d 725 (1987). Additionally, in cases such as plaintiff's that were filed before July 26, 1996, the question of a plaintiff's satisfaction of the no-fault threshold is ordinarily one for the trier of fact. The issue of serious impairment of body function is submitted to the trier of fact whenever the evidence would cause reasonable minds to differ as to the answer, even if there is no factual dispute as to the nature and extent of the plaintiff's injuries. *DiFranco, supra* at 38, 58; *Beasley v Washington*, 169 Mich App 650, 659; 427 NW2d 177 (1988).

The trial court in this case found that defendant was negligent, that defendant's negligence caused plaintiff's injuries, and that plaintiff suffered a serious impairment of a body function because he had impaired ability to move his back and resulting pain, exacerbated night tremors in his legs, and headaches. The court found that plaintiff's initial impairment was substantial and that his residual impairment will be permanent, with the prospect of increasing difficulties with back movements. At trial, plaintiff presented testimony and deposition testimony of his physicians that illustrated a serious initial injury to his back, with resulting muscle spasms, and continuing impairment of his range of motion and strength. Although plaintiff returned to work several months after the accident, he was ordered to observe specific weight restrictions for several months more, and then encouraged to lift only within a weight range that he could tolerate. Also, based on plaintiff's head striking his windshield and reported symptoms, a neurologist diagnosed plaintiff as having suffered a closed head injury. Plaintiff and his family testified extensively regarding his diminished capacity and endurance since the accident, and his substantial pain that one doctor termed chronic. In light of the evidence presented at trial, we conclude that the trial court did not clearly err in determining that plaintiff suffered a serious impairment of a body function. *DiFranco, supra* at 59.

Defendant also contends that the trial court's failure to comply with MCL 600.6305; MSA 27A.6305,[1] when setting the award of future damages to plaintiff, requires remand to the trial court for revision of the award. We again disagree.

The trial court's original opinion awarded plaintiff damages, reduced to present value, in the amount of $85,500, to be further reduced by five percent as required by law on the parties stipulation that plaintiff was not wearing his seat belt at the time of the accident. The court also awarded plaintiff the sum of $2,634.71 for damage to his vehicle. The court entered a judgment effectuating this opinion which reflected damages, as reduced by five percent, in the amount of $81,225. The court also ordered interest on this total damage award, calculated at $13,238.91. This judgment did not indicate the award for damage to plaintiff's vehicle. Defendant moved for a new trial, based in part on the court's failure to indicate what amount of the total $85,500 damage award was for past damages and what amount for future damages. Defendant indicated that without such division, interest could not be properly calculated. Defendant's motion also argued that the award for damage to plaintiff's car was inappropriate.

At a hearing on defendant's motion, the court acknowledged its error in awarding the amount for damage to plaintiff's vehicle and struck that award from the opinion. The court further indicated that the total damage award of $85,500 included past damages of $10,500 and future damages of $75,000. The court denied the motion for new trial. Although such a request was absent from defendant's motion, at the conclusion of the hearing defendant asked the court to break down the future damages over the number of years intended to be covered. The court stated that it had utilized a table for its calculation and indicated that it would attempt to find a copy of the calculation to send to defendant. A corrected judgment was subsequently entered indicating the past and future damage breakdown of $10,500 and $75,000 respectively, and indicating that the future damages had been reduced to their present value as of the date of the filing of the complaint. This judgment further noted that the damage award was reduced by five percent for plaintiff's failure to wear his seat belt. The judgment ordered past damages in the amount of $9,975, future damages in the amount of $71,250, and interest on the past damages in the amount of $1,777.43.

Having reviewed the record of this bench trial, we are satisfied that the court, sitting as trier of fact, appropriately determined future damages as required by § 6305. Notwithstanding the absence of a specific annual breakdown in the corrected judgment, the court did indicate during the motion hearing that it had determined the $75,000 amount by referencing a table (presumably a life expectancy table). Moreover, the corrected judgment did appropriately address the pressing concern, raised in defendant's motion, of interest valuation. By indicating the separate amounts of past and future damages, the court thus allowed for the proper valuation of interest on only the past damage award. See MCL 600.6013; MSA 27A.6013. Defendant has suffered no prejudice and we conclude that it would be futile to remand this action for further correction of the written judgment. The interests of judicial economy dictate that we afford this judgment finality.

Affirmed.

/s/ William B. Murphy
/s/ Harold Hood
/s/ E. Thomas Fitzgerald

[1] MCL 600.6305; MSA 27A.6305, in pertinent part, provides:

> (1) Any verdict or judgment rendered by a trier of fact in a personal injury action subject to this chapter shall include specific findings of the following:
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> * * *
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> (b) Any future damages and the periods over which they will accrue, on an annual basis, for each of the following types of future damages:
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> * * *
>
> (iii) Noneconomic loss.
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> (2) The calculation of future damages for types of future damages described in subsection (1)(b) shall be based on the costs and losses during the period of time the plaintiff will sustain those costs and losses. In the event of death, the calculation of future damages shall be based on the losses during the period of time the plaintiff would have lived but for the injury upon which the claim is based.