

STATE OF MICHIGAN
COURT OF APPEALS

SAED THALJI,

Plaintiff-Appellee,

v

THE DETROIT EDISON COMPANY and
HARVEY KENT GREEN,

Defendants-Appellants.

UNPUBLISHED

March 26, 2002

No. 226426

Wayne Circuit Court

LC No. 98-829390-NI

Before: Neff, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendants appeal as of right the trial court's order entering judgment for plaintiff following a jury trial. We affirm.

I

This is a third-party auto no-fault case. Defendant Green, an employee of defendant Detroit Edison, turned his company-owned truck in front of plaintiff's auto. Plaintiff could not stop, a collision resulted and plaintiff was injured. The jury allocated negligence at eighty-five percent to Green¹ and fifteen percent to plaintiff and found that plaintiff's injuries amounted to serious impairment of bodily injury. The jury determined plaintiff's damages to be \$121,850 which, when reduced by the fifteen percent fault attributed to plaintiff resulted in a net verdict of \$103,572.50.

On appeal, defendants do not contest the jury's findings with regard to negligence.

II

Defendants first argue that the trial court erred in failing to grant defendants' motion for directed verdict on the basis that plaintiff had not sustained a serious impairment of body function. We disagree.

¹ Green died before trial of injuries not related to this accident.

A

We review motions for a directed verdict de novo. *Smith v Jones*, 246 Mich App 270, 273; 632 NW2d 509 (2001). In reviewing a denial of a motion for a directed verdict, this Court must determine whether the party opposing the motion offered evidence on which reasonable minds could differ. *Id.* This Court must view the evidence in the light most favorable to the adverse party and determine whether reasonable persons could reach different conclusions. *Id.* Defendants also implicate an issue of statutory construction which is a question of law this Court reviews de novo. *Churchman v Rickerson*, 240 Mich App 223, 227; 611 NW2d 333 (2000). The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature. *Id.* at 228. In order to determine legislative intent, this Court must look to the specific language of the statute, and give effect to every phrase, clause, and word. *Id.*

Because plaintiff initiated this case in 1998, the no-fault act amendments, enacted as part of 1995 PA 222, apply to this case. *Miller v Purcell*, 246 Mich App 244, 246; 631 NW2d 760 (2001). Plaintiff brought suit under MCL 500.3135(1), which provides:

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.

As part of the no-fault amendments, the Legislature amended MCL 500.3135(a)(i) and (ii), to read:

(a) The issues of whether an injured person has suffered serious impairment of body function or permanent serious disfigurement are questions of law for the court if the court finds either of the following:

(i) There is no factual dispute concerning the nature and extent of the person's injuries.

(ii) There is a factual dispute concerning the nature and extent of the person's injuries, but the dispute is not material to the determination as to whether the person has suffered a serious impairment of body function or permanent serious disfigurement. However, for a closed-head injury, a question of fact for the jury is created if a licensed allopathic or osteopathic physician who regularly diagnoses or treats closed-head injuries testifies under oath that there may be a serious neurological injury.

By enacting these amendments, the Legislature has returned the determination of a threshold injury to the trial court. *Miller, supra* at 247. Thus, the issue of whether a plaintiff suffered a serious impairment of body function should be submitted to the jury only when the trial court determines that there is an outcome-determinative genuine factual dispute. *Id.* In this case, the trial court denied defendants' motion for a directed verdict, and determined there was an outcome-determinative factual dispute concerning the nature and extent of plaintiff's injuries, a determination clearly evidenced by the competing testimony of the plaintiff's treating physicians and that of defendants' consulting physicians, as well as the testimony of plaintiff.

B

A serious impairment of body function is defined as “an objectively manifested impairment of an important body function that affects the person’s general ability to lead his or her normal life.” MCL 500.3135(7). This Court has established a nonexhaustive list of factors that should be considered in determining whether the impairment of the important body function is serious, which include: the extent of the injury, the treatment required, the duration of the disability, and the extent of residual impairment and prognosis for eventual recovery. *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000). Although the injury threshold is a significant obstacle to tort recovery, the injury need not be permanent in order to be serious. *Id.*

We find, viewing the evidence in the light most favorable to plaintiff, that there were objective manifestations of plaintiff’s injuries. One of plaintiff’s treating physicians found a disc bulge in plaintiff’s lower back, and a central disc displacement in plaintiff’s neck. A second treating physician indicated that plaintiff’s electromyelogram report tested positive, which revealed irritation of the nerve roots in the lower lumbosacral spine, and that these injuries related to disc bulging.

We also find that plaintiff presented evidence that his injuries affected his general ability to lead a normal life. After the accident, plaintiff missed ten weeks of work, and required approximately two years of medical treatment. Additionally, once plaintiff returned to work, his work schedule was reduced, and his job performance was limited because of his injuries. Further, after the accident, plaintiff was no longer able to engage in activities he previously performed, such as jogging, tennis, and playing with his children. Thus, we hold that plaintiff met the threshold, in regard to his back and neck injuries, required to submit this case to the jury.

C

Defendants also argue that the trial court erred in denying their motion for directed verdict on plaintiff’s closed-head injury claim. The jury was not instructed to consider whether plaintiff’s closed-head injury amounted to a serious impairment of body function, and was instructed to consider only the evidence that related to plaintiff’s back and neck injuries in determining whether those injuries amounted to a serious impairment of body function. Thus, defendants’ argument, as it relates to the trial court’s denial of the directed verdict based on the closed-head injury, is misplaced, as this claim was not submitted to the jury.

In essence, plaintiff did not present a “closed-head injury claim” as a separate claim of serious impairment of bodily injury. Rather, he presented evidence that he sustained an injury to his head in the accident which caused symptoms. In fact, even defendant’s consulting physician, Dr. Furgison, testified that plaintiff likely sustained a grade one closed-head injury, in other words, a concussion.

III

Defendants’ next argue that the trial court erred in admitting testimony relating to plaintiff’s head injury. We disagree. A trial court’s decision to admit or exclude evidence is generally reviewed for an abuse of discretion. *Barrett v Kirtland Comm Coll*, 245 Mich App 306, 325; 628 NW2d 63 (2001). In this case, defendant argues that the evidence should have

been excluded pursuant to MCL 500.3135. Statutory interpretation is a question of law that this Court reviews de novo. *Churchman, supra* at 227.

Defendants brought a motion in limine asking the trial court to “strike any reference to a closed head injury claim” based on plaintiff’s failure to comply with the requirements of MCL 500.3135(2)(a)(ii), which the trial court granted. The trial court later allowed plaintiff to testify that he suffered from headaches after the accident. Additionally, other evidence relating to a closed-head injury was admitted at trial.

In order for the closed-head injury provision of MCL 500.3135(2)(a)(ii) to apply, there must be testimony from a licensed allopathic or osteopathic physician who regularly diagnoses or treats closed-head injuries, and there must be testimony that there may be a serious neurological injury. Testimony relating to a head injury must indicate the degree of the injury in order to determine the seriousness of the neurological injury. *Churchman, supra* at 230-231.

MCL 500.3135 does not, however, indicate that the closed-head injury exception provides the exclusive manner in which a plaintiff who has suffered a closed-head injury may establish a factual dispute. *Churchman, supra* at 232. If a plaintiff is unable to meet the requirements necessary to demonstrate there was a closed-head injury, MCL 500.3135(2)(a)(i) and (ii) provide that whether an injured person has suffered a serious impairment of body function is a question for the court unless the court finds that “[t]here is no factual dispute concerning the nature and extent of the person’s injuries,” or, if the court finds that there is such a factual dispute, that “dispute is not material to the determination as to whether the person has suffered a serious impairment of body function. . . .” *Churchman, supra* at 232.

MCL 500.3135(2)(a)(ii) does not attempt to limit the admissibility of evidence relating to a closed-head injury. Rather, this section provides an exception that allows a plaintiff to automatically create a jury question by providing testimony of a licensed allopathic or osteopathic physician that there may be a serious neurological injury. Thus, regardless of whether a plaintiff has met the requirements under the closed-head injury exception, plaintiff could still prove he suffered from a closed-head injury through other evidence. We hold that the trial court did not err in admitting testimony that related to plaintiff’s closed-head injury.

Affirmed.

/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot