STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0236

Keiona Cook,
Appellant,

vs.

Eleanor Blades,
Respondent.

Filed August 11, 2009
Affirmed
Klaphake, Judge

Hennepin County District Court
File No. 27-CV-07-14254

Jamie A. Sonsteby, Terry, Slane & Ruohonen, 7760 France Avenue South, Suite 820, Bloomington, MN 55435 (for appellant)

Louise A. Behrendt, Richard C. Scattergood, Stich, Angell, Kreidler & Dodge, P.A., 250 Second Avenue South, Suite 120, Minneapolis, MN 55401 (for respondent)

Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Stauber, Judge.

U N P U B L I S H E D O P I N I O N

KLAPHAKE, Judge

Following an auto accident and recovery in a jury verdict of tort damages of $13,909.14 for past wage loss, appellant Keiona Cook claims that the district court erred in calculating statutory collateral source offsets provided for under Minn. Stat. § 65B.51,

subd. 1 (2008) of the Minnesota No-Fault Automobile Insurance Act (no-fault act), by deducting the full amount of the $13,909.14 jury award for past wage loss from the $20,000 paid to her for past wage loss by her no-fault insurer. The district court rejected appellant's argument that the offset for no-fault wage loss benefits should be limited to $5,250, which she claims represented the 21-week period of time reflecting her actual wage loss. We affirm because the district court's interpretation of the statute is consistent with case law and the language of the statute, which provides for only a simple offset deduction of "economic loss benefits paid" for "any recovery." *Id.*

D E C I S I O N

When a district court applies the no-fault insurance statute to undisputed facts, that determination is a legal conclusion which is subject to de novo review. *Marchio v. Western Nat'l Mut. Ins. Co.*, 747 N.W.2d 376, 380 (Minn. App. 2008); *see Houston v. Int'l Data Transfer Corp*, 645 N.W.2d 144, 149 (Minn. 2002) (stating that issues of statutory construction subject to de novo review).

The no-fault act limits the right of a person injured in a motor vehicle accident to recover damages from a tortfeasor when the injured person has received no-fault benefits from an insurer, as follows:

> With respect to a cause of action in negligence accruing as a result of injury arising out of the operation, ownership, maintenance or use of a motor vehicle with respect to which security has been provided as required by [the no-fault law], the court shall deduct from any recovery the value of basic or optional economic loss benefits paid or payable, or which would be payable but for any applicable deductible.

Minn. Stat. § 65B.51, subd. 1. Applying this statute, the district court deducted from the $20,000 paid by the no-fault insurer the $13,909.14 awarded by the jury.

Appellant claims that the statutory offset should be limited to $5,250. She arrives at this amount by claiming that the jury award of $13,909.14 represented her actual wage loss for a 21-week period from the time of her injury until the time of trial. On a weekly basis, this amounted to $662.33. As she was paid $250 per week in no-fault benefits, she argues that only $250 per week for 21 weeks, or a total amount of $5,250, constitutes a double recovery that should be offset in accordance with the statute.

We agree with the district court's conclusion that appellant's proposed offset calculation is not supported by the jury findings, the statute, or pertinent case law. First, because the total jury award for lost wages was $13,909.14, any suggestion about how the jury arrived at that amount is speculative. The special verdict asked the jury only to award a total amount for "past loss of earnings," and the jury's award does not reflect the amount of appellant's weekly wages. As the jury was not asked to determine appellant's past wages on a weekly basis, the jury, as fact finder, has not made this determination, and we decline to do so. *See* Minn. R. Civ. P. 49.01 (stating that special verdict questions reflect issues of fact). Second, the statute does not require a week-by-week comparison of damages to benefits; the statute requires only a simple offset deduction of "economic loss benefits paid" for "*any* recovery." Minn. Stat. § 65B.51, subd. 1 (emphasis added). Third, to date, Minnesota courts have rejected any exact comparison between the basis for a jury's award of damages and the basis for a no-fault insurer's payout of benefits. *See, e.g., Tuenge v. Konetski*, 320 N.W.2d 420, 422 n.2 (Minn. 1982) (noting "frequent"

disparity between paid-out no-fault benefits for wage loss and jury award for wage loss, and stating that such disparity "is a matter between plaintiff and her insurer and does not influence our construction of the [no-fault] Act"); *Fahy v. Templin*, 361 N.W.2d 158, 160 (Minn. App. 1985), *review denied* (Minn. Apr. 18, 1985) (declining to harmonize discrepancy between jury award and no-fault benefits payment for medical benefits, stating, "[r]educing the victim's recovery by the amount of medical benefits actually received would invade the jury award for other uncompensated items of damage"). For these reasons, we conclude that the district court's calculation of the no-fault offset of the past wage loss damages from the no-fault benefits appellant received was correct.

Affirmed.