The Macomb Daily

High court makes it easier for injured to collect

August 02, 2010

By Jameson Cook, Macomb Daily Staff Writer

Standard eased for plaintiffs in auto injury cases to be awarded for pain and suffering

A Michigan Supreme Court opinion issued in the quiet of a Sunday night will have a voluminous impact on auto negligence law and possibly auto insurance rates for years to come.

The 4-3 decision overturns the 2004 ruling that made it much more difficult for those seriously injured in an automobile crash to collect damages for pain and suffering. The plaintiff had to prove "death, serious impairment of body function" or "permanent serious disfigurement."

The existing court Sunday lowered the threshold by opining that a man who suffered a fractured ankle and missed 18 months of work due to a vehicular accident could recover pain and suffering damages.

Steven Gursten, a plaintiff attorney, applauded the McCormick vs. Carrier opinion, saying the prior case law under Kreiner vs. Fischer required injuries to be extreme in order for a plaintiff to collect pain and suffering damages.

"People who have been completely innocent who have suffered huge injuries have been getting their cases thrown out of court," said Gursten, who is based in Farmington Hills and practices in Oakland and Macomb counties.

The auto insurance industry decried the ruling, contending the ruling will kick up rates for motorists due to higher jury awards to injured crash victims. Many attorneys ñ including Chief Judge Mark Switalski of Macomb County Circuit Court -- agreed it will cause an increase in auto negligence lawsuits.

"You can be sure it will lead to what we think will be an explosion of lawsuits, and that's going to cost. It cost money to defend," said Pete Kuhnmuench, executive director of the Insurance Institute of Michigan, which represents more than 90 property/casualty companies and related organizations in the state.

Kuhnmuench said the ruling "upsets the balance" between Michigan's no-fault law, which he called the most generous in the country for injured plaintiffs for collecting compensation for

medical expenses, and the more restrictive damages for noneconomic damages. Due to that 1973 law, plaintiffs can gain lifetime compensation for medical expenses and up to three years for wage loss.

Gursten challenged Kuhnmuench's claim about rates, arguing that auto insurance rates have increased despite the 2004 ruling. At the same time, the average number of annual claims by motorists dropped by 54 percent from 1996 to 2008.

But Kuhnmuench said the average annual auto premium in Michigan has dropped from $1,128 in 2004 to $1,056 in 2007, according to the National Association of Insurance Commissioners. Meanwhile, the average cost of a paid claim has risen from $12,531 in 1999 to $32,778 in 2009.

Kuhnmuench said while Kreiner saved the company's money, they have face increases in health care costs, and the number of claims vary each year.

In Macomb County, the number of auto negligence cases has steadily dropped from 809 in 2002 to 521 in 2008. That increased to 605 in 2009, although some attorneys believe that occurred due to Hathaway's election and the anticipated overturn of Kreiner vs. Fischer. There is a three-year statute of limitations for auto negligence cases.

Cases that have already been filed and even at the state Court of Appeals could be affected by the McCormick decision, Gursten said.

In 1995, the Republican-dominated state Legislature passed a law that requires a "serious impairment of body function" in order to collect. That "means an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life," the law says.

In Kreiner in 2004, the top court toughened the standard. It required that if the "course or trajectory of a plaintiff's normal life has not been affected, then the plaintiff's 'general ability' to lead his normal life has not been affected and he does not meet the 'serious impairment of body function' threshold,'" the opinion says.

The ruling had been expected following Justice Diane Hathaway's ouster of Clifford Taylor in the November 2008 election. Chief Justice Micheal Cavanagh, wrote the majority opinion and was joined by justices Marilyn Kelly, Hathaway and Elizabeth Weaver. Dissenting were conservative justices Stephen Markman, Robert Young Jr. and Maura Corrigan.

This year, two justices, Robert Young and Elizabeth Weaver, are running for re-election for two seats. Young, expected to be the Republican nominee, was in the minority in Sunday's ruling, while Weaver, who is running as an independent, was in the majority.

The decision was among five delivered by the court Sunday night on its last day of its term.

The McCormick vs. Carrier case was accepted last August and argued in January.

Gursten noted that while McCormick will make it easier for plaintiffs to garner awards for pain and suffering, the exact level has not been determined. The court determined Sunday it will be on a "case by case basis," he said. The definition will narrow as cases are decided, he said.

But the standard should be at least that of the McCormick case. In the case, Rodney McCormick was injured when co-worker Larry backed over McCormick's ankle with a truck while they worked at a General Motors plant. McCormick under went two surgeries to repair his ankle. He missed about 18 months of work and was assigned to a job with physical requirements. He sued Carrier and General Motors Corp., which was replaced by Allied Automotive Group Inc.