PHILIP BIAZZO and SANDRA v. LOUIS PARKER

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO. A-0

PHILIP BIAZZO and SANDRA BIAZZO, h/w, Plaintiffs-Appellants,

v.

LOUIS PARKER, Defendant,

and

HOLLY O'REILLY and LIBERTY MUTUAL FIRE INSURANCE COMPANY, Defendants-Respondents.

July 15, 2014

Submitted May 13, 2014 – Decided

Before Judges Reisner and Ostrer.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Docket No. L-742-12.

Petrillo & Goldberg, P.C., attorneys for appellants (Jeffrey M. Thiel, on the brief).

Zirulnik, Sherlock & Demille, attorneys for respondent Holly O'Reilly (Denise L. Werner, on the brief).

Martin, Gunn & Martin, P.A., attorneys for respondent Liberty Mutual Fire Insurance Company (Elizabeth K. Merrill, on the brief).

PER CURIAM

Plaintiff Philip Biazzo was rear-ended twice in a single afternoon. In connection with the first incident, he sued his uninsured motorist carrier, defendant Liberty Mutual Fire Insurance Company (Liberty), as well as defendant Louis Parker, an uninsured driver, who caused the collision. He also sued defendant Holly O'Reilly, the driver in the second collision.

Plaintiff claimed that as a result of each collision, he suffered injuries to his neck, back, and shoulder. Although he had suffered previous back and shoulder injuries, he claimed he was asymptomatic for several years. He did not plead aggravation of his prior injuries. Plaintiff's expert opined that as a result of one or both of the recent collisions, plaintiff suffered permanent injury to the neck, back and shoulder, although the back and shoulder injuries aggravated prior injuries to those areas. Plaintiff did not apportion the respective damage caused by the two collisions, nor did he apportion damage between the prior and new injuries.

On the basis of that failure, the court dismissed plaintiff's complaint on summary judgment in response to motions by Liberty and O'Reilly.[1] The court also denied plaintiff's motion for reconsideration. In support of that motion, plaintiff presented for the first time his expert's opinion that it was impossible to apportion the injuries between the two collisions.

In considering plaintiff's appeal from the trial court's orders, we exercise de novo review, and apply the same standard as the trial court. Henry v. N.J. Dep't of Human Servs., 204 N.J. 320, 330 (2010). We determine whether there exists a genuine issue of material fact, and, if not, whether the motion judge correctly applied the law. Ibid. Having done so, we reverse.

I.

We discern the following facts from the record, affording plaintiff, as the non-movant, all favorable inferences.[2] Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

Plaintiff happened to be on his way to his primary care physician for a routine physical when the first collision occurred. At 1:25 p.m. on July 1, 2010, Parker rear-ended a van, propelling it into plaintiff's automobile which was stopped on Route 70 in Cherry Hill. The collision caused only minor bumper damage to plaintiff's car. Plaintiff refused medical treatment on the scene, and proceeded to his doctor's appointment.

Plaintiff maintains that he suffered neck, back and shoulder pain after the first collision, although the record evidence is contradictory. At the physician's office, plaintiff complained only of back pain, according to the doctor's notes. In his interrogatory answers, he indicated that he had "symptomatology of the neck and low back." A specialist who treated plaintiff six weeks later, Dr. Barry Gleimer, reported that "patient states that following the first accident he had pain in his neck and low back." However, plaintiff asserted in his deposition that he was experiencing pain to his shoulder, as well as his lower back and neck, after the first accident.

Plaintiff's primary care physician told him that, for insurance reasons, he could treat him for the motor vehicle incident, or conduct the physical, but not both. Plaintiff opted for the physical. Consequently, the physician conducted no diagnostic tests related to the automobile collision.

On plaintiff's way home from the doctor's office, while he was stopped in traffic on Route 130 in Gloucester City, O'Reilly struck the rear of plaintiff's vehicle. It was just after 3:30 p.m. Plaintiff immediately felt pain in his back, neck and shoulder.

Plaintiff drove himself to the emergency room after the second collision. He reported that he was rear-ended twice, and that he was experiencing extreme pain. He specified that he felt pain in his posterior cervical area, left trapezius, right trapezius, lumbar area, and right and left low back radiating to the left shoulder and triceps. X-rays showed that he had mid and lower cervical spine spondylosis,[3] lower lumbar spine degenerative changes, and mild compression of the T12 disc.

In his visit with Dr. Gleimer in mid-August, he complained of neck and low back pain, right shoulder pain, and pain from his neck into his right shoulder, radiating down the right arm. At that time, Dr. Gleimer's assessment was: "1. Posttraumatic cervical and lumbar strain/sprain. 2. Impingement, right shoulder – rule out rotator cuff tear. 3. Cervical radiculopathy, right, with probable double-crush syndrome – concurrent peripheral entrapment neuropathy – ulnar neuropathy, bilateral upper extremities."

In his interrogatory answers, plaintiff indicated that the effect of the second accident was more severe than the first. He asserted the second collision involved "a more severe impact with immediate acute exacerbation of symptomatology of the neck and low back as well as subsequent development of injuries attributable to the second of the two motor vehicle collisions."[4] Plaintiff appeared to isolate the injuries caused by the second accident, stating,

> To this effect, and attributable to the second vehicle collision . . . plaintiff avers the following injuries: acute, post-traumatic sprain/strain of the cervical spine region with myofascitis, straightening of the lordotic curve on x-ray, acute, post-traumatic herniation of the C3-4 level discs, acute, post-traumatic disc bulging/ protrusion pathology at the C4-5 through C7-T1 level discs with acute, post-traumatic bilateral cervical radiculitis (right greater than left) at C3-4, acute, post-traumatic bilateral cervical radiculopathy (right greater than left) at C4-5, acute, post-traumatic right-sided cervical radiculopathy at C5-6, acute, post-traumatic bilateral cervical radiculitis at C6-7 (right greater than left) superimposed upon degenerative changes present; acute, post-traumatic sprain/strain/contusion of the right shoulder with impingement and partial thickness rotator cuff tear; acute, post-traumatic sprain/strain of the thoracic spine region with myofascitis and acute, post-traumatic disc bulging pathology at the T1-2 and T2-3 levels; acute, post-traumatic ulnar neuropathy; acute, post-traumatic bilateral carpal tunnel syndrome and acute, post-traumatic sprain/strain of the lumbar spine region with myofascitis with acute, post-traumatic disc protrusion at the L1-2 level, acute, post-traumatic disc bulging pathology at the L3-4 and L4-5 levels, acute, post-traumatic disc bulging/ protrusion at the L5-S1 level with extruded disc fragment superimposed upon grade I spondylolisthesis with acute, post-traumatic left L5 lumbar radiculopathy and acute, post-traumatic bilateral S1 radiculitis and superimposed upon situs of prior laminectomy and degenerative changes present.

Plaintiff had a prior history of injuries and pain in his back, neck, and shoulder, which he disclosed to Dr. Gleimer, and discussed in discovery. In 1965, plaintiff suffered fractures of his pelvis, femur, skull, left upper extremity and left ribs when he was traveling in a vehicle that was lifted by a tornado and thrown into a pole. Plaintiff testified he also sustained injuries to his lower back and neck, but stated that movement of the lower back and neck returned to normal several years after the accident.

In 1995, plaintiff had a lumbar spine laminectomy[5] to relieve back and sciatic pain. He sought medical care for back pain again in 2003, and right shoulder pain in 2003, 2004, and 2005. A rheumatologist and physical therapist treated his right shoulder. He was also in a motor vehicle accident in 2005, but did not require medical attention. Plaintiff testified that he did not have any issues with his neck or lower back within the five years preceding the July 2010 collisions. He also stated that he did not experience any issues with his shoulders, other than those related to his visit with the rheumatologist.

Although plaintiff's interrogatory answers appeared to attribute symptoms to the second accident, the attribution was not supported by plaintiff's expert. In his July 2012 report, Dr. Gleimer referred to the two July 2010 collisions as a single event, which caused plaintiff's injuries and symptoms. Dr. Gleimer opined that plaintiff suffered a permanent injury to his neck. He stated, "Historically, the patient had no prior complaints referable to his neck.[6] Accordingly, it is my opinion that his cervical disc injury, accompanying nerve injury is causally related to his accident of July 1, 2010 and these injuries are permanent."

Dr. Gleimer also opined that plaintiff had permanent injuries to his back, but indicated those were related to his previous back condition.

> [T]hough the patient had a prior back surgery with satisfactory response it is my opinion he has sustained both recurrent disc protrusion as well as additional/new levels of disc bulging/protrusion with recurrent, intermittent sciatic pain and back pain which has occurred as a consequence of this accident of July 1, 2010. These injuries and ongoing complaints . . . will be permanent in nature and related to the above accident of July 2010.

Dr. Gleimer also opined that plaintiff's shoulder injury was an aggravation of his prior condition.

> [T]here is some degree of prior rotator cuff tear noted and I cannot discern any discreet [sic] any [sic] new pathology about the shoulder joint and, in my opinion, his shoulder has undergone aggravation but I cannot define new or worsening injury referable to his shoulder as being the cause [sic] of his accident of July 1, 2010.

Lastly, Dr. Gleimer stated that plaintiff had "some ongoing spondylolysis, [which had] clearly undergone posttraumatic exacerbation and has become symptomatic."

In granting summary judgment, the trial court was persuaded by defendants' argument that plaintiff was required to prove "what portion of the injuries were caused by the first accident and what portion of the injuries were caused by the second accident." The court held that plaintiff was required to link the objective medical evidence to a specific accident. The court relied on its interpretation of Davidson v. Slater, 189 N.J. 166 (2007). Also, although plaintiff did not plead aggravation, the court concluded, in light of evidence of previous injuries, that plaintiff was required to differentiate between the prior injuries and the injuries caused by the new incidents.

In support of a reconsideration motion, plaintiff provided a brief supplemental report from Dr. Gleimer dated April 17, 2013, stating that it was not possible to differentiate between the two accidents:

> Due to the proximity of the two accidents on July 1, 2010, I am unable to determine within a reasonable degree of medical probability which injuries resulted from which accident. This is based on my review of diagnostic studies and examinations. The patient states that subjectively he had worsening of his complaints following his second accident.

The court denied the motion. The court held that the report was new material that could have been provided initially. However, even considering the report, the court held that plaintiff was required to provide a comparative medical analysis.

Plaintiff appeals and presents the following points and subpoints for our consideration:

I. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT WHEN THE PLAINTIFF MET HIS BURDEN OF PRODUCING EVIDENCE ON ALL THE BASIC ELEMENTS OF HIS PLED TORT ACTION.

A: THE PLAINTIFF WAS NOT AT FAULT FOR EITHER ACCIDENT OF 7/1/10.

B: THE PLAINTIFF'S CERVICAL HERNIATION AT C3-4 BREACHED THE VERBAL THRESHOLD.

C: THE TRIAL COURT ERRED WHEN IT REQUIRED THE PLAINTIFF TO PRODUCE A COMPARATIVE MEDICAL ANALYSIS OF THE PLAINTIFF'S NECK INJURY CONTRARY TO THE HOLDING IN DAVIDSON V. SLATER.

II. SINCE THE PLAINTIFF'S DAMAGES COULD NOT BE APPORTIONED BETWEEN THE TWO ACCIDENTS WITHIN A REASONABLE DEGREE OF MEDICAL PROBABILITY, THE TRIAL COURT ERRED WHEN IT DECLINED TO FOLLOW THE PROCEDURE SET FORTH IN CAMPIONE V. SODEN FOR APPORTIONMENT OF DAMAGES IN SUCCESSIVE IMPACT CASES.

II.

A tort plaintiff who opts for the verbal threshold is generally confronted with two burdens. In order to seek non-economic damages under the New Jersey Automobile Insurance Cost Reduction Act (AICRA), N.J.S.A. 39:6A-1.1 to -35, a plaintiff is required to show that "as a result of bodily injury, arising out of [defendants'] . . . operation, . . . or use of . . . [their] automobile[s] . . . in this State . . . [the plaintiff suffered] a permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement."[7] N.J.S.A. 39:6A-8(a). A "permanent injury" is one that "has not healed to function normally and will not heal to function normally with further medical treatment." Ibid.

An auto accident plaintiff also bears the burden of showing that his or her injuries were proximately caused by defendants' negligence. "[T]he issue of a defendant's liability cannot be presented to the jury simply because there is some evidence of negligence. There must be evidence or reasonable inferences therefrom showing a proximate causal relation between defendant's negligence, if found by the jury, and the resulting injury." Davidson, supra, 189 N.J. at 185 (internal quotation marks and citations omitted). Once a plaintiff proves permanent injury as to one body part, the verbal threshold imposes no impediment to recovery for non-economic damages caused by injuries to other body parts, regardless of whether those injuries are permanent. Johnson v. Scaccetti, 192 N.J. 256, 261-62 (2007) (stating "that once a plaintiff suffers a single bodily injury that satisfies a threshold category, the jury may consider all other injuries in determining noneconomic damages").

However, defendants argue plaintiff was required to present proof as to which collision caused plaintiff's injuries. They also argue that, notwithstanding plaintiff's failure to plead aggravation of past injuries, plaintiff was required to differentiate between the past and current injuries, because Dr. Gleimer observed that plaintiff suffered an aggravation or exacerbation of his prior back and shoulder conditions. We disagree, and conclude that (1) inasmuch as plaintiff did not plead aggravation, he was not required to offer a medical analysis comparing his past and current injuries; and (2) defendants, as opposed to plaintiff, should have been assigned the burden to differentiate the causative effect of the respective collisions.

The Court in Davidson addressed the evidentiary burdens of a plaintiff who had a history of prior injuries, but did not plead aggravation in seeking damages for injuries allegedly caused by a single recent automobile collision. The trial court had dismissed plaintiff's complaint on summary judgment, holding that the plaintiff was required to distinguish between the prior injuries and those caused by the new accident. The Court held that the trial court erred:

> When a plaintiff alleges aggravation of pre-existing injuries as the animating theory for the claim, then plaintiff must produce comparative evidence to move forward with the causation element of that tort action. When a plaintiff does not plead aggravation of pre-existing injuries, a comparative analysis is not required to make that demonstration. AICRA does not impose on plaintiff any special

> requirement for a comparative-medical analysis in respect of causation in order to vault the verbal threshold.
>
> [Id. at 170.]

The Court grounded its holding in "basic tort principles of causation and burden allocation as between plaintiffs and defendants." Ibid. The need for a comparative analysis depends "on traditional principles of causation and burden allocation applicable to tort cases generally." Id. at 184. The Court recognized that a plaintiff who does not provide a comparative analysis may be caught flat-footed, if a defendant on summary judgment offers evidence "that no reasonable fact-finder could conclude that the defendant's negligence caused plaintiff's alleged permanent injury." Id. at 187-88.

Unlike in Davidson, where a defense expert questioned the causative effect of the plaintiff's recent accident, the motion record in this case includes no expert report from defendants suggesting that plaintiff's current injuries were caused by his prior collisions and conditions. See id. at 187 (citing with approval McCray v. Chrucky, 66 N.J. Super. 124, 128-29 (App. Div. 1961) for the proposition that a "defendant must persuade [the] jury that damages were due to [a] preexisting condition"). With respect to plaintiff's back injuries, Dr. Gleimer's observation of aggravation or exacerbation is not the functional equivalent of pleading aggravation. Dr. Gleimer noted that plaintiff had recurrent disc protrusion, apparently pre-existing, but opined that plaintiff suffered "additional/new levels of disc bulging/protrusion with recurrent, intermittent sciatic pain and back pain" caused by the "accident of July 1, 2010." Plaintiff seeks compensation for those latter injuries.

We acknowledge that plaintiff's claim regarding injury to the shoulder is undermined by Dr. Gleimer's finding that he "cannot define new or worsening injury" caused by the accident. With respect to the shoulder injury, based on plaintiff's own expert, "no reasonable fact-finder could conclude" that either defendant's negligence caused the injury.

In sum, plaintiff was not obliged to provide a comparative analysis of the past and present injuries for purposes of satisfying AICRA. See Davidson, supra, 189 N.J. at 186. Nor, applying basic principles of tort law and burden allocation, was plaintiff required as part of his prima facie case, to provide such a comparative analysis, because plaintiff did not plead aggravation of a pre-existing injury. Id. at 187; see also Johnson, supra, 192 N.J. at 284.

We consider next whether plaintiff was required to differentiate between the relative causative effects of the two collisions. "Although rare, a case may arise where damages cannot be apportioned between two or more accidents." Campione v. Soden, 150 N.J. 163, 175 (1997). In such a case, we have held that the innocent plaintiff should not be barred from recovery. Id. at 184-85.

Before adoption of the Comparative Negligence Act (Act), N.J.S.A. 2A:15-5.1 to -5.3, we addressed a case involving the claims of plaintiffs who were occupants of a vehicle that was struck in a head-on collision, and then a few minutes later, struck by a second vehicle. Hill v. Macomber, 103 N.J. Super. 127, 131-32 (App. Div. 1968). Those plaintiffs offered no proofs that would have enabled the jury to allocate their damages among the tortfeasors. We held that the tortfeasors would be jointly and severally liable. We relied on "[t]he majority view in our country . . . [that] where there are collisions in rapid succession producing a single end result, and no proof as to what damage was separately caused by each collision, . . . both tortfeasors [shall be] jointly and severally responsible." Id. at 136. We explained that "it is better that a plaintiff, injured through no fault of his own, should be compensated by both tortfeasors, even though one of them may pay more than his theoretical share of the damage which his wrong has helped to create, than that the injured party have no recovery." Id. at 137.

However, the Act severely limited joint and several liability, and the viability of the Hill result, which imposed joint and several liability. Campione, supra, 150 N.J. at 175. The Court inferred that "the legislative objective would be achieved by requiring juries to apportion damages between the successive accidents and to apportion fault among the parties responsible for each accident." Id. at 184. However, if the trial court determines that apportionment by the jury is simply not possible, the Court held, the Act would not bar recovery by a plaintiff; instead, the trial court would be required to apportion damages equally among multiple tortfeasors.

> At the conclusion of a trial where allocation of damages among multiple tortfeasors is an issue, the trial court is to determine, as a matter of law, whether the jury is capable of apportioning damages. The absence of conclusive

> evidence concerning allocation of damages will not preclude apportionment by the jury, but will necessarily result in a less precise allocation than that afforded by a clearer record. If the court establishes as a matter of law that a jury would be incapable of apportioning damages, the court is to apportion damages equally among the various causative events. If the court concludes that the jury would be capable of apportioning damages, the jury should be instructed to do so.
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> [Campione, supra, 150 N.J. at 184-85 (citations omitted).]

While the joint-and-several liability approach to the successive accident case is no longer viable, the Act as interpreted by Campione does not impose on a plaintiff the burden of proving apportionment in a successive accident case. Hill held that the absence of such proofs by the plaintiffs in that case was not essential to their right to recover. Likewise, the absence of such proofs after the Act, as construed by the Court in Campione, is not necessarily fatal to a plaintiff's claim. Rather, the defendants may present evidence to enable the jury to allocate damages among them. If such evidence is unavailable, then the court shall equally allocate damages.

This allocation of burdens is consistent with the Restatement (Second) of Torts § 433B(2) (1965):

> Where the tortious conduct of two or more actors has combined to bring about harm to the plaintiff, and one or more of the actors seeks to limit his liability on the ground that the harm is capable of apportionment among them, the burden of proof is upon each such actor.

If there is a failure of proof by defendants, liability remains upon them. Id., § 433B, comment d. The rule is based on the same rationale enunciated in Hill: "As between the proved tortfeasor who has clearly caused some harm, and the entirely innocent plaintiff, any hardship due to lack of evidence as to the extent of the harm caused should fall upon the former." Ibid. The illustration cited by the Restatement is comparable to the case here.

> Two automobiles negligently driven by A and B collide, and in the collision C, a passenger in A's car, suffers an injury to his right shoulder. Almost immediately afterward a car negligently driven by D drives into the wreckage, and in this second collision C's shoulder is further injured. As a result of one injury or the other, or both, C's arm becomes paralyzed. The burden is upon D to prove that the injury inflicted by him did not cause the paralysis.
>
> [Id., comment d, illustration 8.]

Applying these principles, we conclude that plaintiff was not obliged to present proof apportioning the damage between the two collisions, as an essential element of his claim. We recognize that the accidents in this case were separated by a couple of hours, as opposed to a couple of minutes as in Hill. But, the similarity of the type of accident — rear-end collision with minor property damage, and the similarity of plaintiff's body areas affected by both collisions, warrant excusing plaintiff of the burden, otherwise borne by a tort plaintiff, to prove the damages caused by the respective defendants.

Our decision in Reichert v. Vegholm, 366 N.J. Super. 209 (App. Div. 2004), cited by defendants, does not compel a different result. In that case, the plaintiff sustained injuries to her neck, arms, and knee after a fall. Id. at 212. Almost a month later, the plaintiff suffered injuries to the same body areas in an automobile collision. Ibid. Plaintiff's medical expert was unable to apportion the plaintiff's damages. Id. at 212. The jury returned a no cause verdict on the plaintiff's claim against the tortfeasor in the automobile incident, finding that the plaintiff "did not sustain either an injury or an aggravation of any injury as a proximate cause of the automobile accident." Ibid. On appeal, the plaintiff argued that defendants should have borne the burden of apportioning damages. Ibid. We reviewed our case law in which the apportionment burden, generally imposed on a tort plaintiff, had been allocated to defendants. Id. at 214-15. We noted that these exceptional cases usually involved both an innocent plaintiff, and defendants better suited than the plaintiff to marshal evidence regarding apportionment. Id. at 216.

However, we do not view both elements as an ironclad prerequisite to relieving a plaintiff of the burden of apportioning damages. See O'Brien (Newark) Cogeneration, Inc. v. Automatic Sprinkler Corp. of Am., 361 N.J. Super. 264, 275 (App. Div. 2003) (stating that the burden is "[o]ften . . . shifted to defendants with more

expertise or better access to relevant apportionment proofs"), certif. denied, 178 N.J. 452 (2004). The Campione formulation allows equal allocation among defendants in order to secure a recovery for innocent plaintiffs where neither side has access to apportionment proofs. Supra, 150 N.J. at 184-85.

Also, in Reichert, we held that the plaintiff's injuries were neither unitary nor so entwined that they were incapable of apportionment. "Her own testimony, even if unsupported by her medical expert, demonstrated that her injuries were apportionable." Supra, 366 N.J. Super. at 224-25. We do not reach the same conclusion here, nor must we rely on Dr. Gleimer's supplemental report to reach that conclusion. The clear implication of Dr. Gleimer's pre-motion report was that plaintiff suffered an indivisible injury caused by both July 1 collisions. At that point, the burden should have shifted to defendants to attempt to demonstrate the injury was divisible.

In sum, we conclude that plaintiff did not bear the burden of allocating his damages between the two collisions. At trial, if defendants do not, or cannot, present proofs sufficient to enable a jury to allocate plaintiff's damages, then the trial court shall allocate them equally.

Reversed and remanded.

1 We refer hereafter to Liberty and O'Reilly as "defendants."

2 Our determination of what facts are genuinely disputed is hampered by the absence from the record of statements of material facts by defendants, or a responding statement by plaintiff. See R. 4:46-2(a) (requiring statement by movant); R. 4:46-2(b) (requiring responsive statement by respondent).

3 Cervical spondylosis is a "degenerative disease of the vertebrae of the neck affecting the joints (between the vertebrae), the disks between the vertebrae, and the surrounding ligaments and connective tissue." 1 J.E. Schmidt, Attorneys' Dictionary of Medicine C-22818 (2009). Spondylolysis is the "[d]egeneration or deficient development of a portion of the vertebra." Stedman's Medical Dictionary 1813 (28th ed. 2006). Spondylolisthesis is the "[f]orward movement of the body of one of the lower lumbar vertebrae on the vertebra below it." Ibid.

4 By "severe impact," plaintiff apparently referred to the effect on him, as opposed to damage to the vehicle. Neither accident apparently involved significant property damage. Plaintiff testified that his rear bumper displayed spidery cracks after the first collision. After the second, his bumper had two "bullet holes" left from the screws that attached O'Reilly's front license plate. Plaintiff stated that repairs to his bumper and related parts cost $1100.

5 "A surgical operation in which the posterior arch of a vertebra is removed." 3 J.E. Schmidt, Attorneys' Dictionary of Medicine L-65776 (2009).

6 As noted above, this statement appears to be inaccurate, as plaintiff admitted in his deposition that the 1965 tornado-related accident caused neck pain, which ultimately resolved.

7 Alternatively, a plaintiff may show he or she has "sustained a bodily injury which results in death; dismemberment; significant disfigurement or significant scarring; displaced fractures; [or] loss of a fetus . . . ." N.J.S.A. 39:6A-8(a).