STATE OF MICHIGAN

COURT OF APPEALS

IRENE GREENE,

Plaintiff-Appellant,

v

LINCOLN-MERCURY DIVISION OF THE FORD MOTOR COMPANY and TRW, INC.,

Defendants-Appellees.

UNPUBLISHED
November 14, 1997

No. 183986
Wayne Circuit Court
LC No. 92-234244-NP

Before: MacKenzie, P.J., and Sawyer and Neff, JJ.

PER CURIAM.

In this products liability action, plaintiff, Irene Greene, appeals as of right from two orders granting summary disposition to defendants, Lincoln-Mercury Division of the Ford Motor Company and TRW, Inc., pursuant to MCR 2.116(C)(10). We reverse and remand for further proceedings.

At approximately 9:00 p.m. on December 15, 1989, plaintiff sustained depressed fractures of the zygomatic arch and zygoma when the vehicle in which she was riding slid through an icy, t-shaped intersection and struck a tree. Plaintiff was seated in the right front passenger seat of the vehicle. Plaintiff's former husband, Dale Greene, was driving the car and their son, Steven Greene, was seated in the right rear passenger seat. The vehicle, a 1989 Lincoln Continental leased by plaintiff's husband, was traveling between ten and fifteen miles per hour at the time of the crash and was equipped with a three-point active restraint system (hereinafter seat belt), as well as a dual air bag system, both of which were designed, manufactured, and sold by defendants. All three occupants were wearing their seat belts at the time of the accident and both air bags deployed. Plaintiff's husband was not injured in the crash, but plaintiff's son sustained two broken ribs. The vehicle was towed to the dealership for repair work. According to the repair order, the vehicle's right front seat belt assembly was replaced, tagged as "inoperative," and returned to the parts department.

Plaintiff filed suit against defendants, alleging negligence and breach of implied warranties. Plaintiff claimed that the right front seat belt failed to retract and that the right front air bag malfunctioned, thereby allowing plaintiff's face to strike the "vehicle's dash board with great force and

violence." Defendants filed separate motions for summary disposition, similarly arguing that plaintiff failed to create a material factual dispute regarding: (1) the defective nature of the right front seat belt and/or air bag and (2) the issue of causation. The trial court agreed, and granted defendants' motions for summary disposition.

On appeal, plaintiff claims that the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(10) because there was ample circumstantial evidence from which a jury could have reasonably inferred that the seat belt and air bag were defective and that these defects collectively caused her injuries. We agree.

A trial court's grant of summary disposition is reviewed de novo on appeal. *Boumelhem v BIC Corp*, 211 Mich App 175, 178; 535 NW2d 574 (1995). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim. *Mascarenas v Union Carbide Corp*, 196 Mich App 240, 243; 492 NW2d 512 (1992). The court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence available to it and, giving the benefit of any reasonable doubt to the nonmoving party, determine whether a record might be developed that will leave open an issue upon which reasonable minds could differ. *Id*.

A plaintiff bringing a products liability action must show that the defendant supplied a product that was defective and that the defect caused the plaintiff's injuries. *Lagalo v Allied Corp*, 218 Mich App 490, 493; 554 NW2d 352 (1996). A product is defective if it is not reasonably safe for its foreseeable uses. *Ghrist v Chrysler Corp*, 451 Mich 242, 249; 547 NW2d 272 (1996). A prima facie case of defect may be proven by way of direct or circumstantial evidence. *Holloway v General Motors (On Rehearing)*, 403 Mich 614, 621; 271 NW2d 777 (1978).

Upon review of the record, we conclude that plaintiff presented sufficient circumstantial evidence to survive defendants' motions for summary disposition. Plaintiff presented testimonial, as well as documentary, evidence that the right front seat belt and air bag were defective and that these defects collectively caused plaintiff's injuries. William Broadhead, an experienced accident reconstructionist, opined that the right front seat belt failed to lock upon impact, that, given the moderate speed of the vehicle, the right front air bag should not have deployed, and that these defects combined to cause plaintiff's injuries. Specifically, Broadhead theorized that, when the seat belt failed to lock, plaintiff's body translated forward into the path of the deploying air bag, the force of which fractured plaintiff's cheekbone. Broadhead based his opinion upon the nature of plaintiff's facial injuries, the nature of the collision, and the condition of the seat belt after the accident, each of which found factual support in the record. Because this evidence tended to prove, by way of permissible inference, that the right front seat belt and air bag were defective and that these defects caused plaintiff's injuries, we conclude that there was sufficient evidence to go to the jury. Accordingly, we reverse the trial court's orders granting summary disposition in favor of defendants and remand this case for further proceedings.

Reversed and remanded. We do not retain jurisdiction.

/s/ Barbara B. MacKenzie
/s/ David H. Sawyer
/s/ Janet T. Neff