§ 5104. Causes of action for personal injury. (a) Notwithstanding any other law, in any action by or on behalf of a covered person against another covered person for personal injuries arising out of negligence in the use or operation of a motor vehicle in this state, there shall be no right of recovery for non-economic loss, except in the case of a serious injury, or for basic economic loss. The owner, operator or occupant of a motorcycle which has in effect the financial security required by article six or eight of the vehicle and traffic law, or which is referred to in subdivision two of section three hundred twenty-one of such law, shall not be subject to an action by or on behalf of a covered person for recovery for non-economic loss, except in the case of a serious injury, or for basic economic loss. No liability for non-economic loss shall be fixed unless and until the trier of fact has determined the existence of a serious injury. In any action to recover non-economic loss pursuant to this article, the trier of fact shall not determine the question of whether an injury is a serious injury until the trier of fact has determined the party or parties at fault.

(b) In any action by or on behalf of a covered person, against a non-covered person, where damages for personal injuries arising out of the use or operation of a motor vehicle or a motorcycle may be recovered, an insurer which paid or is liable for first party benefits on account of such injuries has a lien against any recovery to the extent of benefits paid or payable by it to the covered person. No such action may be compromised by the covered person except with the written consent of the insurer, or with the approval of the court, or where the amount of such settlement exceeds fifty thousand dollars. The failure of such person to commence such action within two years after accrual gives the insurer a cause of action for the amount of first party benefits paid or payable against any person who may be liable to the covered person for his personal injuries. The insurer's cause of action shall be in addition to the cause of action of the covered person except that in any action subsequently commenced by the covered person for such injuries, the amount of his basic economic loss shall not be recoverable.

(c) Where there is no right of recovery for basic economic loss, such loss may nevertheless be pleaded and proved to the extent that it is relevant to the proof of non-economic loss.

(d) Notwithstanding the foregoing, and other than in an action for damages for injuries resulting in death, recovery for non-economic loss shall be limited to one hundred thousand dollars in the case of a serious injury in any action by or on behalf of an injured person who is at fault, is not barred from recovery by section fourteen hundred eleven of the civil practice law and rules, and was (1) operating an uninsured motor vehicle and responsible under article six of the vehicle and traffic law for insuring such motor vehicle, except if a lapse in motor vehicle insurance coverage occurs for a period of time less than thirty days; (2) operating a motor vehicle while impaired at the time of the accident and convicted of such; or (3) operating a motor vehicle in the commission of a felony, or immediate flight therefrom, at the time of the accident and has been convicted of such felony.