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IN THE COURT OF APPEALS OF IOWA

NORMADGE PLUMMER and GORDON PLUMMER,

Plaintiffs-Appellants,

vs.

CONTROL-O-FAX and JEFFERY HANSON,

Defendants-Appellees.

Filed March 31, 1980

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2-62983

Appeal from Black Hawk District Court - Roger F. Peterson, Judge.

Plaintiffs appeal jury verdict denying them damages against defendants in a negligence action, arising out of an automobile collision, alleging the jury's verdict is not supported by the evidence and they should be granted a new trial. AFFIRMED.

James L. Wagner of Evans, Gartelos & Wagner, Waterloo, Iowa, for plaintiffs-appellants.

David J. Dutton of Mosier, Thomas, Beatty, Dutton, Braun & Staack, Walterloo, Iowa, for defendants-appellees.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Plaintiffs, Normadge and Gordon Plummer, appeal jury verdict denying them damages against defendants, Control-O-Fax Corp. and Jeffery Hanson, in a negligence action arising out of an automobile collision. Plaintiffs allege the jury verdict is not supported by the evidence and they should be granted a new trial. We affirm.

I. The Facts. The collision occurred at approximately 3:30 p.m. on August 15, 1974, at the intersection of First and Franklin Streets in Waterloo, Iowa. Plaintiff Normadge Plummer was operating a 1968 Chevelle automobile owned by her husband, Gordon Plummer.[1] She was stopped in the lefthand lane on First Street due to a red light, when her car was struck from behind by a 1974 Ford van owned by defendant Control-O-Fax and driven by defendant Hanson. Upon determining no one appeared injured and property damage was minimal, plaintiff and defendant exchanged names, insurers, and departed the scene. Later that evening, however, plaintiff began experiencing headaches, a stiff neck, and back pains for which she subsequently was treated by an orthopedic surgeon. Plaintiffs consequently brought this action to recover damages for medical expenses, permanent physical disability and loss of consortium.

At trial, plaintiff Normadge Plummer testified the Control-O-Fax van was traveling 15-20 miles per hour when it struck her car. She further stated, as a result of the collision, she was prescribed valium and pain killers, underwent x-rays, wore a surgical collar, was hospitalized, went through physical therapy, was put in a body cast, and placed in traction. The orthopedic surgeon, through deposition, supported this testimony, concluding, as a result of his August 26, 1974 examination, plaintiff had suffered a sprain of the lumbodorsal region, superimposed on a pre-existing spondylosis of the spine and degenerative disc problems. He further testified plaintiff will suffer a 5% permanent disability. Plaintiff Gordon Plummer also testified, as a result of the accident, he has experienced a decrease in his wife's social and sexual companionship and has observed his wife can no longer perform many heavy household chores, necessitating the hiring of help.

In rebuttal, however, defendant Jeffery Hanson testified he had come to a complete stop before making contact with the Plummer vehicle. He stated the brake

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[1] Two of plaintiffs' children also were in the car. They were not injured seriously, however, and are not parties to this action.

pedal of the van required application of a greater than normal pressure and, while he was waiting for the light to turn, the van crept forward without his realizing it. In support of his contention, evidence was introduced the van sustained no damage, plaintiff's auto received only a $71 dent to the bumper, and an automobile repairman testified, in light of the minimal property damage, defendant's van could have been traveling no faster than walking speed. Defendants also introduced evidence Normadge Plummer, slightly over a year prior to the accident, in May and June 1973, had been hospitalized at University Hospitals in Iowa City for scapular region pain, numbness in the hand, radiation pain in her arm, dizziness, and temporal region headaches. It was admitted by plaintiff she had not told the doctor who treated her after the accident about these previous problems or her prior hospitalizations and treatment.

Based on this evidence, the jury concluded plaintiffs were not entitled to recover against defendants. It is from this determination, and trial court's subsequent denial of their motion for new trial, plaintiffs appeal.

II. Review of Jury's Verdict. The purpose of allowing damages is to return the injured party to his or her position prior to infliction of the wrong. Dealers Hobby, Inc. v. Marie Ann Linn Realty Co., 255 N.W.2d 131, 134 (Iowa 1977). Assessment of the damages is a jury function. Haumersen v. Ford Motor Co., 257 N.W.2d 7, 16 (Iowa 1977). We will interfere only for the most compelling reasons. Pagitt v. City of Keokuk, 206 N.W.2d 700, 704 (Iowa 1973).

Although courts must assure a verdict fairly and adequately compensates a plaintiff for the damages suffered, Waddell v. Peet's Feeds, Inc., 266 N.W.2d 29, 32 (Iowa 1978), the question is whether the verdict affects substantial justice between the parties. Kautman v. Mar-Mac Community School District, 255 N.W.2d 146, 148 (Iowa 1977). We will not alter the verdict unless it is 1) flagrantly excessive or inadequate, 2) so out of reason as to shock the conscience, 3) raises a presumption it is the result of passion, prejudice or other ulterior motive, or 4) is lacking in evidentiary support. Holmquist v. Volkswagon of America, Inc., 261 N.W.2d 516, 524 (Iowa 1977). This determination must be made on review of the peculiar facts of each individual case. Waddell, 266 N.W.2d at 32; Householder v. Town of Clayton, 221 N.W.2d 488, 493 (Iowa 1974).

Applying these standards, we conclude the jury did not abuse its discretion. The jury is not required to accept any evidence as true, even if uncontradicted. Moser v.

Brown, 249 N.W.2d 612, 616 (Iowa 1977). While a jury is not warranted in arbitrarily or capriciously rejecting testimony of a witness, it is not mandated to accept and give effect to testimony which it finds unreliable. Kaiser v. Stathas, 263 N.W.2d 522, 526 (Iowa 1978). As the evidence at trial disclosed, plaintiff erred in her estimation of the magnitude of the impact of the two vehicles. More significant, however, is her failure to notify her doctor of her pre-existing condition. The jury properly took note of these discrepancies in reaching its verdict. An intentional suppression of material facts by a witness may be considered by the jury as affecting his or her credibility. Lee v. Town of Cresco, 47 Iowa 499, 500 (1877).

Even though plaintiff has suffered pain and incurred significant medical expense due to her back problems, and will probably continue to do so in the future, we cannot say the jury's verdict is without support in the evidence. Defendants have shown plaintiff's injuries existed prior to the accident. The jury could reasonably have concluded plaintiff attempted to suppress evidence of her pre-existing condition. In view of these circumstances, the jury's verdict effects substantial justice between the parties.

Trial court, therefore, properly denied plaintiffs' motion for new trial. Kautman, 255 N.W.2d at 148.

AFFIRMED.