IN THE COURT OF APPEALS OF IOWA

No. 1-309 / 00-1915
Filed September 26, 2001

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CLERK SUPREME COURT

JENNIFER MICHELLE WHEELER,
Plaintiff-Appellant,

vs.

PRIORITY EXPRESS, INC., and RANDY ALVIN ROBINSON,
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Jennifer Wheeler appeals from a jury verdict in a personal injury action.

AFFIRMED.

Marc S. Harding, Des Moines, and Patrick W. O'Bryan, Des Moines, for appellant.

Michael F. Lacey, Jr. and Michael S. Jones of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker, & Ordway, L.L.P., Des Moines, for appellees.

Considered by Huitink, P.J., and Miller and Hecht, JJ.

HUITINK, P.J.

Jennifer Wheeler appeals from a district court order denying her motion for new trial. We affirm.

I. Background Facts and Proceedings.

On July 10, 1998, Jennifer Wheeler was involved in an automobile accident with a vehicle driven by Randy Robinson on behalf of Priority Express, Inc. Wheeler brought a tort action alleging Robinson's negligence caused the collision and resulting damages. Following trial, the jury returned a special verdict awarding Wheeler $630 for lost wages, $22,673.98 for past medical expenses, $9000 for past pain and suffering, and $9000 for past loss of bodily function. Wheeler's subsequent motion for new trial, alleging the damages awarded failed to effect substantial justice between the parties, was denied by the district court. On appeal Wheeler argues that it was error for the trial court to deny her motion for new trial because the jury award was inadequate.

II. Motion for New Trial.

The district court has considerable discretion in ruling upon a motion for new trial based upon the ground that the verdict was inadequate. *Fisher v. Davis*, 601 N.W.2d 54, 57 (Iowa 1999). Whether damages are so inadequate to warrant a new trial is for the district court to decide. *Id.* We will not ordinarily disturb its discretion to grant or deny the motion unless an abuse of discretion is shown. *Id.*

Our case law shows that we have been loath to interfere with a jury verdict. Fixing the amount of damages is a function for the jury. *Sallis v.*

Lamansky, 420 N.W.2d 795, 799 (Iowa 1988). The court should interfere only when the damage award is "flagrantly excessive or inadequate, so out of reason so as to shock the conscience, the result of passion or prejudice, or lacking in evidentiary support." *Harsha v. State Sav. Bank*, 346 N.W.2d 791, 799 (Iowa 1984). Although the evidence may have justified a higher award, such is not controlling. *Cowan v. Flannery*, 461 N.W.2d 155, 158 (Iowa 1990). The determinative question posed is whether under the record, giving the jury its right to accept or reject whatever portions of the conflicting evidence it chose, the verdict effects substantial justice between the parties. *Id.*

Wheeler asserts that the jury award was flagrantly inadequate in light of the seriousness of her injuries and the considerable pain endured. Our review of the record reveals that while Wheeler did sustain potentially life-threatening injuries, she was successfully treated and quickly recovered. Wheeler's injuries included a broken rib, collapsed lung, and lacerated spleen. However, after eight days in the hospital and several months of avoiding strenuous exercise, Wheeler has essentially made a complete recovery. We find nothing in the record to indicate that these injuries, or the pain resulting therefrom, were of such severity to merit the conclusion that substantial justice was not effected between the parties. We accordingly find the trial court did not abuse its discretion in denying Wheeler's motion for a new trial.

AFFIRMED.

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