

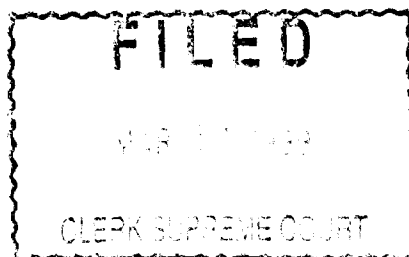
IN THE COURT OF APPEALS OF IOWA

No. 9-020 / 98-127
Filed March 31, 1999

RAYMOND E. SALVA, SR., DONNAN N. SALVA,
as Individuals and as Nest Friends of JOHN M. SALVA,
their minor child, ANN M. LEHANE-SALVA,
and RAYMOND E. SALVA, JR.,
Appellees,

vs.

FARMERS ELECTRIC COOPERRATIVE, INC.,
Appellant.



Appeal from the Iowa District Court for Madison County, Paul R. Huscher,
Judge.

Farmers Electric appeals entry of judgment by the district court, following a
jury trial, awarding plaintiffs damages on their claims. **REVERSED AND
REMANDED FOR NEW TRIAL.**

Jason D. Walke and Robert M. Holliday of Sullivan & Ward, P.C., Des
Moines, for appellant.

William G. Brewer of Cook, Gotsdiner, McEnroe & McCarthy, Des Moines,
for appellees.

Heard by Huitink, P.J., and Streit and Vogel, JJ.

STREIT, J.

Farmers Electric Cooperative, Inc. appeals from the trial court's denial of their motion for new trial alleging a jury verdict was excessive and inconsistent. The jury's verdict of \$611,000 was in favor of the plaintiff for loss of future bodily function and future lost-earning capacity. Because we find the verdict legally and logically inconsistent, we reverse the trial court and remand for a new trial on damages. Farmers Electric's objections to the court's denial of the jury request to view a video tape and the court's supplemental jury instruction have not been preserved for appellate review.

I. Background & Facts.

In November and December 1993, employees of Farmers Electric Cooperative, Inc., buried electrical cables on property owned by Raymond Salva. The employees dug a forty-two-inch deep trench, placed the electrical cable in the bottom of the trench, backfilled the trench by blading loose dirt back into the hole, and compacted it by running their four and one-half ton trenching vehicle over the top of it.

In July 1994, Salva went horseback riding on his property near the area where the trench had been dug. Salva's horse stepped into the area where the trench had been filled, fell, and rolled on top of him. Salva crawled to a neighbor's home who took him to the hospital for treatment of his injuries.

In June 1996, Salva filed a petition against Farmers Electric, claiming the company was negligent in its backfill of the trench, creating the conditions causing

his accident and injuries. Salva contends his sore neck, periodic numbness, and semi-paralysis in his left hand and arm were caused by the accident. Dr. Robert Hayne, Salva's expert, diagnosed him with secondary nerve-root irritation in the neck with moderate to severe degenerative changes. Dr. Hayne said the conditions were caused by the accident. Salva also claimed his conditions worsened after the accident and forced him to leave his employment with AAA because he could no longer perform his duties.

At trial, Salva sought to introduce a videotape of the accident scene to which Farmers Electric objected. The district court sustained the objection as to the audio part of the tape, but otherwise ruled the tape admissible. During deliberations, the jury requested to view the videotape. The district court denied the request.

After jury deliberations, the jury returned a verdict finding both Salva and Farmers Electric negligent; assessing Salva forty-nine percent fault and Farmers Electric fifty-one percent fault. The jury awarded Salva \$611,206 for future lost-earning capacity. The court found the damages portion of the verdict inconsistent, issued a supplemental instruction to the jury, and ordered the jury back to deliberations. The jury returned with a final verdict of \$138,206 for loss of future bodily function and \$473,000 for loss of future earning capacity.

Farmers Electric's motioned for new trial. The court denied the motion. Farmers Electric appeals.

II. Jury Request & Jury Instructions.

Farmers Electric argues the trial court erred in not allowing the jury to again view Salva's exhibit 1, a videotape of the accident scene, during jury deliberations. They also contend the trial court erred in submission of its supplemental instruction to the jury concerning the inconsistent verdicts. Salva argues neither of these issues have been preserved for appellate review.

Generally, failure to preserve error by making a proper objection bars appellate review of an issue. *See Sievers v. Iowa Mut. Ins. Co.*, 581 N.W.2d 633, 638 (Iowa 1998). This allows the court the opportunity to correct its error. *See id.* Objections to jury instructions must be made before the instructions are read to the jury. *See Iowa R. Civ. P. 196.* No other grounds or objections shall be asserted thereafter, or considered on appeal. *Midwest Home Distributor, Inc. v. Domco Industries Ltd.*, 585 N.W.2d 735, (Iowa 1998); *see also Grefe & Sidney v. Watters*, 525 N.W.2d 821, 824 (Iowa 1994) (holding that appellate court may only consider on appeal those objections to instructions previously raised with the trial court).

Farmers Electric did not object on the record to the court's ruling on the jury's request during deliberations. They have not alleged the court held proceedings regarding the jury's request outside their presence. Farmers Electric did not object to the court's supplemental instruction on the record. Neither of these issues were objected to until Farmers Electric's motion for new trial. For these reasons, neither of these issues have been preserved for our review.

III. New Trial Based on Excessive & Inconsistent Jury Verdict.

Farmers Electric argues the trial court erred in denying their request for a new trial based on the jury's verdict. They argue the verdict is inconsistent and excessive.

We review district court rulings on motions for new trials for abuse of discretion. Iowa R. App. P. 14(f)(3). The determinative question for the district court was whether the verdict effected substantial justice between the parties. *Kautman v. Mar-Mac Community School Dist.*, 255 N.W.2d 146, 147-48 (Iowa 1977).

A new trial may be granted if a jury verdict is inadequate or excessive in its damage award, Iowa R. Civ. P. 244(d) and (f), or when sufficient evidence does not support the jury verdict and the verdict fails to effectuate substantial justice. *Midwest Home Distributor, Inc. v. Domco Industries Ltd.*, 585 N.W.2d 735, 738 (Iowa 1998).

A new trial may be granted, and the jury verdict set aside, when the verdict is so logically and legally inconsistent it is irreconcilable in the context of the case. *See Blume v. Auer*, 576 N.W.2d 122, 125 (Iowa App. 1997). In assessing whether the jury verdict is inconsistent, we are mindful that a jury's verdict is to be liberally construed to give effect to the intentions of the jury and to harmonize the verdict if possible. *Id.* at 126. The test is whether the verdict can be reconciled in any reasonable manner consistent with the evidence, its fair inferences, and in light of the instructions of the court. *Hoffman v. Nat'l Medical Enterprises, Inc.*, 442 N.W.2d 123, 126-127 (Iowa 1989).

In this case, the special verdict form required the jury to itemize damages. As such, the jury's determination on each item constitutes a special finding of fact. *Cowan v. Flannery*, 461 N.W.2d 155, 158 (Iowa 1990). If the jury's findings are not supported by the evidence, a new trial must be granted. *Id.* (citations omitted).

The jury's verdict itemized Salva's damage award as follows: future lost-earning capacity - \$473,000; and loss of function of body future - \$138,206. The jury found Salva was entitled to no damages for past medical expenses, lost wages, loss of function of body past, or past pain and suffering. An attempt to give effect to the intent of the jury is frustrated by an illogical conclusion. The jury found Salva suffered no compensable injury from the date of his accident up to the date of the verdict, but would suffer in the future from a compensable injury.

There is no inflexible rule that every verdict awarding future damages must award past damages as a matter of law. However, such a finding must be supported by the evidence on the record. *Cowan v. Flannery*, 461 N.W.2d 155, 158 (Iowa 1990). This record does not support such a finding. Salva presented an abundant amount of evidence of the past effects his injuries had on his health, his family, and his career. His experts testified Salva suffers from a permanent nerve impingement and is unable to perform his work as an electrician. Both of these conditions were present prior to the jury's verdict. These were not conditions Salva alleged would occur only in the future. In the context of this case, a finding of future damages without a finding past damages have been suffered was illogical and the findings are

irreconcilable.¹ On this ground, the trial court should have granted new trial. The trial court is reversed and the case remanded for a new trial on damages only. Because we have granted the appellees a new trial based on this ground, we do not address their contention the damage award was excessive.

REVERSED AND REMANDED FOR NEW TRIAL.

¹ Other states faced with the similar issue have held as we do here. *See, i.e., Hendelman v. Lion Country Safari, Inc.*, 609 So.2d 766, 767 (Fl. Ct. App. 1992)(holding jury's verdict was inconsistent when it awarded future damages without awarding past damages); *State Farm County Mut. Ins. Co. v. Moran*, 809 S.W.2d 613, 619-20 (Tx. Ct. App. 1991)(holding the jury's findings of no past damages inconsistent with finding of future damages and required both findings be set aside).