IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 2-030 / 91-652

SHEILA D. MOSSMAN,

Appellant/Cross-Appellee,

vs.

AMANA SOCIETY and **CEDAR RAPIDS AND IOWA CITY RAILWAY COMPANY,**

Appellees/Cross-Appellants.

Appeal from the Iowa District Court for Iowa County, L. Vern Robinson, Judge.

Plaintiff appeals the district court's refusal to award her prejudgment interest on future damages. Defendants appeal the judgment against them. **AFFIRMED IN PART, REVERSED IN PART AND REMANDED.**

John L. Riccolo and David L. Baker of Riccolo & Baker, P.C., Cedar Rapids, for appellant.

James F. Pickens and Matthew G. Novak, Cedar Rapids, for appellee Amana Society.

Alfred E. Willett and Mark H. Rettig of Hines, Pence, Day & Powers, Cedar Rapids, for appellee Cedar Rapids and Iowa City Railway Company.

Considered by Schlegel, P.J., and Hayden and Habhab, JJ.

HAYDEN, J.

On October 7, 1986, at about 10 p.m., plaintiff Sheila Mossman was driving her automobile near Homestead, Iowa. Her car struck a black calf which had strayed onto the roadway. The calf was owned by defendant Amana Society. The calf was able to reach the roadway through a fence maintained by defendant Cedar Rapids and Iowa City Railway Company (CRANDIC). Mossman was injured in the collision.

Mossman filed the present tort suit against Amana on December 16, 1986. On March 19, 1987, the district court permitted Amana to file a cross-petition against CRANDIC. Mossman filed an amended petition on October 6, 1988, adding CRANDIC as a defendant.

The trial in this case was held in March 1991, and the jury returned its verdict on March 15, 1991. The jury assigned seventy-five percent of the fault to Amana and twenty-five percent to CRANDIC. Mossman was awarded total damages of $200,000. The award included $10,879 for past medical expenses, past lost wages, and loss of her vehicle. $189,121 of the award was for future medical expenses, future lost wages, future loss of function of the body, and future mental and physical pain and suffering.

The district court entered judgment on April 5, 1991. The court did not allow prejudgment interest on future damages. The court entered judgment for Mossman against Amana in the amount of $8,159 with interest at ten percent from the date of the filing of the petition, and $141,841

with interest at ten percent from March 15, 1991. Judgment was entered for Mossman against CRANDIC in the amount of $2,720 with interest at ten percent from the date of the filing of the petition and $47,280 with interest at ten percent from March 15, 1991. Mossman appealed. Both Amana and CRANDIC cross-appealed.

I. This action was filed at law; our review is for the correction of errors at law. Iowa R. App. P. 4. If supported by substantial evidence and justified as a matter of law, the judgment will not be disturbed on appeal. Moore's Builder & Contractor, Inc. v. Hoffman, 409 N.W.2d 191, 194 (Iowa App. 1987). The reviewing court is not bound by the trial court's determination of the law. Id.

II. We first note Iowa Code section 668.13 applies to all causes of action accruing on or after July 1, 1987; and those accruing before July 1, 1987, which are filed on or after September 15, 1987. The present case accrued before July 1, 1987. Mossman filed her petition against Amana prior to September 15, 1987, but filed her amended petition against CRANDIC after that date. Because the statute makes this distinction, we will address the two situations separately.

A. As noted above, section 668.13 does not apply to Mossman's judgment against Amana. The interest on the judgment is thus calculated based on section 535.3. See Mercy Hospital v. Hansen, Lind & Meyer, P.C., 456 N.W.2d 666, 673 (Iowa 1990). That section provides, "The interest

shall accrue from the date of the commencement of the action." In Mercy Hospital the supreme court held interest on future damages may be assessed from the commencement of suit. Id. at 674.

Amana argues the holding in Mercy Hospital should not apply here because it dealt with property damage, not personal injury expenses. Amana relies on Rowen v. LeMars Mutual Insurance Co., 347 N.W.2d 630, 641 (Iowa 1984), which specifically held prejudgment interest should not be assessed on amounts due on transactions which did not occur until after the litigation was commenced. However, Rowen apparently refers to financial transactions which occurred after the suit was commenced.

We determine the rule in Mercy Hospital applies to the present case. We note a recent case involving personal injury damages, Thornton v. Guthrie County Rural Electric Cooperative Association, 467 N.W.2d 574, 577 (Iowa 1991), reiterated the holding in Mercy Hospital. We hold Mossman be awarded interest on her judgment against Amana, including future damages, from the date the suit was filed, December 16, 1986. We reverse the district court on this issue and remand for entry of a judgment in conformity with our ruling.

B. We now address the interest on Mossman's judgment against CRANDIC. Mossman also claims she should be awarded prejudgment interest on her judgment for future damages against CRANDIC. In its cross-appeal, CRANDIC argues the

district court should have applied section 668.13 to the judgment against it. We note Mossman filed her amended petition against CRANDIC on October 6, 1988, and we determine her suit against CRANDIC should be deemed to have commenced on that date. See Coachmen Industries, Inc. v. Security Trust & Savings Bank, 329 N.W.2d 648, 651 (Iowa 1983) (Where amended petition sought recovery of additional damages, the portion of the judgment based on the amended petition was assessed interest from the date amended petition was filed).

We hold section 668.13 applies to Mossman's judgment against CRANDIC. Section 668.13(4) provides, "Interest awarded for future damages shall not begin to accrue until the date of the entry of the judgment." Therefore, we affirm the district court's ruling Mossman was not entitled to prejudgment interest against CRANDIC.

III. In their cross-appeal, the defendants contend Mossman failed to present sufficient, competent evidence to support the award for future medical and hospital expenses. Mossman was awarded $8,492 for future medical and hospital expenses.

At the trial Dr. Richard Neiman testified Mossman could improve her range of motion in her neck and shoulder by being placed under anesthesia and having soft tissue manipulation. This procedure would require about one and one-half weeks in the hospital and then about three months of physical therapy. Dr. Neiman testified to various

expenses associated with the procedure which added to about $3,000 before hospital charges.

A plaintiff seeking to recover the cost of future medical treatment must furnish legally adequate proof he or she will require such treatment and of its cost. Shover v. Iowa Lutheran Hospital, 252 Iowa 706, 723, 107 N.W.2d 85, 95 (1961). Generally, however, where a verdict is within a reasonable range as indicated by the evidence, the courts should not interfere with what is primarily a jury question. Cowan v. Flannery, 461 N.W.2d 155, 158 (Iowa 1990).

We hold the jury's award of damages for future medical and hospital expenses is supported by substantial evidence. Dr. Neiman testified the procedure had a success rate of about sixty percent and could be beneficial to Mossman. We also find he sufficiently detailed the expected costs of the procedure to allow the jury to make an award of damages. We affirm the award of damages for future medical and hospital expenses.

IV. In summary, we reverse the district court ruling which did not award prejudgment interest on Mossman's judgment against Amana for future damages. We remand on this issue and order the district court to amend the judgment to include prejudgment interest on those future damages. We affirm the district court's refusal to award prejudgment interest on Mossman's judgment against CRANDIC for future damages. We also affirm the jury's award of

damages for future medical and hospital expenses. Costs of this appeal are assessed twenty percent to Mossman, sixty percent to Amana, and twenty percent to CRANDIC.

AFFIRMED IN PART, REVERSED IN PART AND REMANDED.