IN THE COURT OF APPEALS OF IOWA

No. 0-56 / 89-1083

GORDON M. COWAN,

Plaintiff-Appellant,

vs.

TOMMY A. FLANNERY and **TOM FLANNERY, SR.,**

Defendants-Appellees.

FILED
MAR 27 1990
CLERK SUPREME COURT

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Appeal from the Iowa District Court for Plymouth County, Richard J. Vipond, Judge.

Plaintiff appeals the trial court's refusal to grant a new trial, following a jury verdict in his favor. **REVERSED.**

Edward J. Keane and Daniel L. Flaherty of Margolin, Gildemeister, Willia, Mugan & Keane, Sioux City, for the appellant.

Michael P. Jacobs of Kindig, Beebe, Rawlings, Nieland, Probasco & Killinger, Sioux City, for the appellees.

Considered by Oxberger, C.J., and Schlegel and Sackett, JJ.

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PER CURIAM

The issue in this appeal is whether the trial court abused its discretion in failing to grant a new trial to plaintiff-appellant Gordon M. Cowan in his suit for personal injuries following a motor vehicle accident with defendant Tommy A. Flannery. The jury returned the following verdict:

Past medical expenses	$ 4,000
Future medical expenses	17,220
Loss of future earning capac ty	-
Past loss of bodily function	-
Future loss of bodily function	-
Past pain and suffering	-
Future pain and suffering	-
Total	$21,220

The jury also found plaintiff's negligence to be thirty percent and reduced the verdict by this amount. It then reduced it by another three percent for plaintiff's failure to wear a seat belt.

Plaintiff contends the verdict was inadequate under the record because it awarded only medical expenses and made no award for pain and suffering. Plaintiff also contends the trial court abused its discretion in its failure to award a new trial.

Our review is for an abuse of discretion. Yoch v. City of Cedar Rapids, 353 N.W.2d 95, 98 (Iowa App. 1984). The question is whether the verdict fairly and reasonably compensated plaintiff for his injuries. Householder v.

Town of Clayton, 221 N.W.2d 488, 493 (Iowa 1974). We find the trial court abused its discretion.

The question is, given such a record, whether the itemization made by the jury defeats the verdict. Plaintiff contends it does because it shows the jury only awarded medical expenses, and an award of medical expenses only is a basis for a new trial. We agree with plaintiff that an award of special damages only or nearly special damages only is considered inadequate and is a basis for a new trial. See Shewry v. Heuer, 255 Iowa 147, 155, 121 N.W.2d 529, 534 (1963); Allbee v. Berry, 254 Iowa 712, 717-18, 119 N.W.2d 230, 233 (1963); Webster v. City of Colfax, 250 Iowa 181, 185, 93 N.W.2d 91, 93 (1958); Torrence v Sharp, 246 Iowa 460, 464-65, 68 N.W.2d 85, 88 (1955).

In Shewry, 255 Iowa at 150-153, 121 N.W.2d at 531-32, the jury awarded plaintiff a sum equal to the damage to his truck plus a $25.00 medical bill, and uncontroverted evidence showed plaintiff suffered some pain and discomfort. The court reversed the trial court's denial of a motion for new trial, finding no logical grounds on which the jury could refuse an award for pain and suffering.

The evidence was the bill for past chiropractic services was in the amount of $3,841.68. His bill to Dr. Youngblade was $123.00. The jury awarded $4,000.00 for past medical expenses. The evidence of future medical

expenses was that plaintiff would need a chiropractic adjustment costing $20 and ultrasound or electrical stimulation costing $15 every week or two.

We find the trial court abused its discretion.

REVERSED.

Oxberger, C.J., and Schlegel, J., concur; Sackett, J. dissents.

SACKETT, J. (dissenting)

I generally agree with the majority but find this to be an unusual case. The trial court determined the total damage award was reasonable and supported by the evidence. Upon my review of the record, I agree with the trial court's assessment that the total damage award is reasonable and supported by the record. A majority of plaintiff's past medical expenses and all of his projected future medical expenses are for treatments associated with his visits to a chiropractic clinic. The evidence of plaintiff's original treating physician, Dr. Youngblade, is that plaintiff had minimal expenses and will not have future problems. Therefore, I find there was a basis for the jury to reject a large portion of plaintiff's claimed damages and, because the award was reasonable, I would affirm.