APR 26 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

GARY D. BRAUCKMAN and BARBARA BRAUCKMAN, Appellees, vs. GERALD D. HALL, Appellant.	)	Filed April 26, 1979
	)	23
	)	2-61918

Appeal from Carroll District Court - James C. Smith, Judge.

Defendant appeals from judgment entered on a jury's award of damages to plaintiffs, alleging that the jury awards were excessive and that certain instructions to the jury were improper. - Affirmed.

G. A. Minnich, Carroll, for Appellant.

David E. Green, Carroll, for Appellees.

Heard by Oxberger, C. J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant appeals from judgment entered on a jury's award of damages for injuries suffered by plaintiff wife and husband in an automobile accident. Defendant claims that the jury awards were excessive and that the trial court erred in its instructions to the jury. We affirm.

I. Plaintiffs in this case sought recovery for past and future medical expenses, past and future pain and suffering, past and future disability, and the loss of the society and services of each other. Barbara Brauckman asked for a damage award of $82,500; the jury awarded her $28,750. Gary Brauckman asked for $55,000 and was awarded $5000. Defendant maintains that because Barbara's out-of-pocket expenses amounted to less than $2000 and are not likely to be more than minimal in the future and because Gary's expenses were approximately $150, the jury's awards to both plaintiffs were excessive. Defendant made a motion for a new trial which was overruled by the trial court.

The assessment of damages is traditionally a jury function. Olsen v. Drahos, 229 N.W.2d 741, 742 (Iowa 1975); Holmquist v. Volkswagen of America, 261 N.W.2d 516, 524 (Iowa Ct. App. 1977). A reviewing court may not disturb the jury's award unless it is 1) flagrantly excessive, 2) so unreasonable as to shock the conscience or sense of justice, 3) presumed to be the result of passion or prejudice, or 4) lacking in evidentiary support. Id. Furthermore, a trial court has considerable discretion in granting a new trial based upon the sufficiency of the verdict. Waddell v. Peet's Feeds, Inc., 266 N.W.2d 29, 32 (Iowa 1978); Kaiser v. Stathas, 263 N.W.2d 522, 524 (Iowa 1978); Iowa R. App. P. 14(f)(3).

To determine if an award is excessive, each case must be evaluated according to evidence peculiar to it alone. Waddell, 266 N.W.2d at 523; Kaiser, 263 N.W.2d at 32; Holmquist, 261 N.W.2d at 526. In this case, testimony indicates that Barbara has been hospitalized, has undergone physical therapy, has made several trips to a neurologist located approximately 125 miles from her home, and is presently seeing a chiropractor. She has suffered considerable pain and may continue to do so in the future. For an extended period of time she has been unable to perform certain household tasks, to care completely for her infant daughter, and to tend to all the needs of her beauty shop. There is evidence to indicate that she will suffer impairment of earnings as a result of

her injuries. Her disposition has changed, resulting in a sometimes strained relationship with her husband. Her sexual relationship with her husband has suffered.

Testimony further shows that Gary required medical attention and continues to suffer periodically from pain. Although he lost little time from work, he was unable to perform at full capacity and required the assistance of co-workers on certain tasks. He assumed many duties once performed by his wife in the care of the home, in tending to the needs of their child, and in the upkeep of the beauty shop. His marital and sexual relationship with his wife has suffered.

Based on this evidence, we agree with the trial court that while the jury awards may be high, they are not excessively flagrant and are supported by the evidence. The trial court did not abuse its discretion in overruling defendant's motion for a new trial.

II. Defendant also asserts that the trial court erred in its instructions to the jury by stating the amount of damages requested by the plaintiffs in their petition. The Iowa Supreme Court has said that while the inclusion in the instruction of a plaintiff's specific prayer for damages, which is normally exaggerated, may unnecessarily influence a jury, the instruction itself is not improper. Althof v. Benson, 259 Iowa 1254, 1259, 147 N.W.2d 875, 878 (1967). Even if error were demonstrated, defendant has failed to show prejudice. The verdict is significantly less than the amount prayed for and it is not, as we have concluded, excessive. Compare case at bar with Althof, 259 Iowa at 1260, 147 N.W.2d at 878.

AFFIRMED.