IN THE COURT OF APPEALS OF IOWA

No. 2-344 / 91-1554

FILED
SEP 29 1992
CLERK SUPREME COURT

255

**PATRICIA JONES,**

Appellant,

**vs.**

**KEVIN L. SCHULTZ and ROBERT SCHULTZ, a/k/a KEVIN L. SCHULTZ and ROBERT W. SCHULTZ, d/b/a KENTUCKY FRIED CHICKEN,**

Appellees.

---

Appeal from the Iowa District Court for Polk County, Richard A. Strickler, Judge.

Jones appeals a district court ruling denying her motion for new trial concerning the jury's award of damages. **REVERSED AND REMANDED.**

Patrick W. Brick of Brick Gentry, Bowers, Swartz, Stoltze, Schuling & Levis, P.C., Des Moines, for appellant.

Paul Thune of Peddicord, Wharton, Thune & Spencer, Des Moines, for appellees.

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

**HAYDEN, J.**

On January 8, 1989, Patricia Jones fell and hit her head when she stepped on snow and ice in the parking lot of a Kentucky Fried Chicken restaurant in Des Moines. Following the accident, Jones began to experience increasing pain in her head, neck, shoulders, back, arms, and hands. Since the accident, Jones has undergone several sessions of physical therapy which have required her to be absent from work at the Windsor Heights Styling Salon.

In August of 1990 Jones filed this petition alleging the defendants were negligent for failing to remove snow and ice from the restaurant's premises. The case proceeded to trial. Following trial, the jury returned its decision in a special verdict form. The jury first determined Jones and the defendants were each fifty percent at fault. The jury then assessed Jones's damages as follows:

> Question No. 6: What is the total amount of damages, if any, sustained by plaintiff, Patricia A. Jones, for each of the following items listed below, without taking into consideration any reduction of damages due to plaintiff's fault, if any?
>
> | | |
> |---|---|
> | a. Past hospital charges, doctor charges, prescriptions, and other medical services . . . . . | $4500.00 |
> | b. Past loss of wages . . . . . | $1000.00 |
> | c. Past loss of function of mind and body . . . . . | $ 0 |
> | d. Past physical and mental pain and suffering . . . . . | $ 0 |
> | g. Future physical and mental pain and suffering . . . . . | $ 0 |
> | TOTAL | $5500.00 |

As a result of the verdict, Jones filed a motion for new trial. Iowa R. Civ. P. 244. The appellant claimed the

verdict was inconsistent because it awarded medical expenses and lost wages but awarded nothing for pain and suffering. Jones cited Cowan v. Flannery, 461 N.W.2d 155 (Iowa 1990), in support of her case. The trial court denied this motion. Jones appeals and requests a new trial on the issues of damages and comparative fault.

Our scope of review is for the correction of errors at law. Iowa R. App. P. 4. When ruling upon motions for a new trial the trial court has broad but not unlimited discretion in determining whether the verdict effectuates substantial justice between the parties. Iowa R. App. P. 14(f)(3); Cowan, 461 N.W.2d at 157 (citing Kautman v. Mar-Mac Community School Dist., 255 N.W.2d 146, 147-48 (Iowa 1977)). We are more willing to interfere with the denial of a new trial than with the granting of a new trial. Iowa R. App. P. 14(f)(4).

I. The issue preserved for appeal is whether the damages award for past medical costs and lost wages is inconsistent with the refusal to award any recovery for past and future pain and suffering. In Cowan the Iowa Supreme Court held the jury's verdict was inconsistent for failing to award past and future damages for pain and suffering when the jury awarded past and future medical expenses. Cowan, 461 N.W.2d at 160. We do not follow the rule "every verdict awarding only damages for medical expenses in a personal injury action is inadequate as a matter of law." Id. at 159. However, the supreme court stated in Cowan:

> It is illogical to award past and future medical expenses incurred to relieve headache, neck and back pain and then allow nothing for such physical and mental pain and suffering. Having determined that these medical expenses were recoverable, there seems no way for the jury to disallow recovery for the Appellant's pain and suffering for the same injuries. Although the award may be adequate, a special verdict award of nothing for pain and suffering is inconsistent and unsupported by evidence.

Id. at 160.

In the instant case, Jones testified she continues to experience pain and discomfort as a result of the fall. Dr. Reel examined Jones two days after the accident and prescribed physical therapy and medication. Although Jones was not examined by a doctor from November 28, 1989, until February of 1991, she testified her problems continued during that period. Since March of 1991 Jones has been taking a nonsteroidal anti-inflammatory drug prescribed by Dr. Reel. In addition to Jones's testimony, the deposition of Dr. Reel was played to the jury. Dr. Reel testified as to the nature and severity of Jones's injuries from the fall. Other witnesses also testified to the pain suffered by Jones.

We conclude Cowan is the controlling case on this issue. The jury awarded damages for medical expenses and lost wages only, which was inadequate under the record. The jury's failure to award damages for pain and suffering justifies the granting of a new trial. We hold the jury's verdict was inconsistent for failing to award damages for

physical and mental pain and suffering when it awarded past medical expenses. We reverse and remand for a new trial on this issue.

II. Jones contends the jury erred in apportioning comparative fault and therefore the issue of comparative fault should be subject to a new trial. On appeal we usually do not consider issues which are raised for the first time on appeal. Connor v. State, 362 N.W.2d 449, 457 (Iowa 1985). We consider only those issues on damages which were properly preserved by objections to the instruction when it was submitted, Woods v. Schmitt, 439 N.W.2d 855, 866 (Iowa 1989), or raised by a motion for new trial, Vinson v. Linn-Mar Community School Dist., 360 N.W.2d 108, 121 (Iowa 1984). The appellant failed to object to the instruction or raise the issue in a motion for a new trial. This issue was not preserved for appeal.

We reverse the trial court and remand for a new trial upon the issue of damages only.

**REVERSED AND REMANDED.**