FILED
AUG 17 1995
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 5-172 / 94-1053

ESTATE OF TOMMY FRED BUCHANAN, Deceased,

Appellant.

vs.

SCOTT BUZZARD,

Appellee.

Appeal from the Iowa District Court for Linn County, Lynne E. Brady, Judge.

The Estate of Tommy Buchanan appeals a district court order denying the estate's motions for additur or a new trial following a jury verdict in an action for damages for injuries suffered by Tommy in an altercation with Scott Buzzard. **REVERSED AND REMANDED FOR RETRIAL ON DAMAGES ONLY.**

Benjamin W. Blackstock and Jon C. Tack of Blackstock Law Offices, Cedar Rapids, for appellant.

Jack C. Paige of Elderkin & Pirnie, P.L.C., Cedar Rapids, for appellee.

Considered by Donielson, C.J., and Hayden and Huitink, JJ.

HAYDEN, J.

On October 15, 1992, Tommy Buchanan filed a petition at law against defendants Scott Buzzard and Toddville Legion Hall. The petition sought damages for injuries Buchanan suffered on March 16, 1991, during an altercation with Buzzard following a wedding reception at the legion hall. The petition sought compensatory and punitive damages from Buzzard alleging Buzzard struck Buchanan in the face and stomped on his ankle. The petition also sought compensatory damages from the legion hall on a premises liability theory. Buchanan later died of a heart attack, and his estate was substituted as plaintiff.

The case proceeded to a jury trial. The estate dismissed the legion hall as a defendant prior to the beginning of testimony. The parties submitted the deposition of Dr. David Hart, an orthopedic surgeon, into evidence. Dr. Hart's deposition indicated he treated Buchanan on the night of the incident at St. Luke's Hospital in Cedar Rapids. Dr. Hart believed Buchanan's most severe injury was a compound right ankle fracture in which the bone was broken in three places and sticking through the skin. Buchanan also had a contusion on his left shoulder and a small cut near his left eye.

Dr. Hart cleaned the ankle wound and operated to repair the bone fragments. He installed a metal plate for the injured ankle and secured it with screws. The doctor stated the ankle injury was severely painful and Buchanan probably still experienced some pain at the time of his death in August 1993. The doctor said he assigned

Buchanan an eleven percent impairment rating to his right lower extremity and noted a loss of some range of motion.

Dr. Hart further indicated Dr. Stewart had originally seen Buchanan in the emergency room. Dr. Stewart's notes revealed Buchanan was intoxicated and had initially stated he stepped into a hole. Buchanan's blood alcohol concentration was .313. Although Buchanan was intoxicated, Dr. Hart believed Buchanan was not uncooperative.

The estate introduced several exhibits, including medical bills totaling $7805.94. The jury returned a verdict in favor of the estate and awarded $6903 in damages. The verdict form did not contain a breakdown of the damages award.

The estate filed a motion for new trial on damages only, or additur. The estate maintained the damage award was inadequate as a matter of law given Buchanan's uncontested medical bills and the testimony on pain and suffering. Buzzard filed a resistance maintaining the verdict did not shock the conscience, and the jury had the right to reject evidence on causation, medical bills, lost earnings, and pain and suffering. The district court overruled the motions, and the estate appealed.

I. Scope of Review.

Review is for abuse of discretion. *Matthess v. State Farm Mut. Auto. Ins. Co.*, 521 N.W 2d 699, 702 (Iowa 1994).

II. Adequacy of Jury Award as Basis for New Trial.

On appeal, Buchanan argues the jury award was inadequate as a matter of law. He contends the verdict was insufficient because it bears no reasonable relationship to the loss suffered. We agree.

In a proper case, the inadequacy of damages may be cause for setting aside a jury verdict and granting a new trial. *Householder v. Town of Clayton*, 221 N.W.2d 488, 492 (Iowa 1974). Under the Iowa Rules of Civil Procedure, an injured party may be granted a new trial where the jury awarded excessive or inadequate damages. *Ward v. Loomis Bros.*, 532 N.W.2d 807, --- (Iowa App. 1995); *Matthess*, 521 N.W.2d at 702; *Cowan v. Flannery*, 461 N.W.2d 155, 157 (Iowa 1990); *Witte v. Vogt*, 443 N.W.2d 715, 716 (Iowa 1989). A verdict will be set aside as inadequate where the uncontroverted evidence reveals the amount of the verdict bears no reasonable relationship to the loss suffered by the plaintiff. *Witte*, 443 N.W.2d at 716; *Thacker v. Eldred*, 388 N.W.2d 665, 672 (Iowa App. 1986).

> The test for adequacy is for the court to determine what will fairly and reasonably compensate an injured party for the injury sustained. . . . [A] verdict will be set aside as inadequate where it appears clearly from uncontroverted evidence that the amount of the verdict bears no reasonable relationship to the loss suffered by the plaintiff.

Yoch v. City of Cedar Rapids, 353 N.W.2d 95, 99 (Iowa App. 1984) (citing *Householder*, 221 N.W.2d at 493).

The trial court has considerable discretion when ruling on a motion for new trial based on the inadequacy of a verdict. *Householder*, 221 N.W.2d at 493. The trial court's decision is not disturbed unless there is an abuse of discretion. *Id.* Courts, however, ought to grant a new trial whenever a verdict fails to administer substantial justice. *Witte*, 443 N.W.2d at 717. The court must assure a verdict fairly and adequately compensates a plaintiff for the damages suffered. *Yoch*, 353 N.W.2d at 99. Consequently, the court will set aside a jury award if it: (1) is flagrantly excessive or inadequate; (2) is so out of reason as to shock the conscience or sense of justice; (3) raises a presumption it is a result of passion, prejudice, or other ulterior motive; or (4) is lacking in evidentiary support. *Cowan*, 461 N.W.2d at 158; *Yoch*, 353 N.W.2d at 98.

Our courts are more inclined to interfere with the denial of a new trial than a grant of a new trial. *Ward*, 532 N.W.2d at ---; *Cowan*, 461 N.W.2d at 157. On several occasions the court has reversed the trial court's denial of a new trial based on the inadequacy of the damages awarded. For instance, the facts in *Householder* reveal the minimum loss to plaintiff was $9805.22. *Householder*, 221 N.W.2d at 493. The $8000 jury verdict was held inadequate, and the court reversed the trial court's denial of plaintiff's motion for a new trial. *Id.*

In *Yoch*, 353 N.W.2d at 95, the plaintiff appealed from a jury verdict in an action for false arrest and malicious prosecution on the ground the verdict was inadequate as

a matter of law. Plaintiff was awarded $1088.98, the exact amount of attorney fees incurred in defending the prior criminal action brought against plaintiff. *Id.* at 99. Plaintiff, however, was arrested near her place of employment, handcuffed and taken to jail, confined in jail for several hours, and subsequently tried on a charge of theft in the fifth degree. *Id.* Upon a finding of liability, plaintiff was entitled to compensation for mental anguish and suffering from the wrongful charge and arrest. *Id.* at 99-100. Therefore, we held the trial court abused its discretion in denying plaintiff's motion for new trial on the basis of an inadequate award. *Id.* at 97.

Additionally, in *Witte*, 443 N.W.2d at 716, plaintiff's out-of-pocket expenses for medical services and lost wages totaled $11,191.55. After payment of these expenses, the verdict left only $808.45 for all other elements of damages such as past and future pain and suffering, past disability, disfigurement, and future medical expenses. *Id.* The Iowa Supreme Court held the verdict was inadequate. *Id.* Because the district court abused its discretion and committed reversible error in denying plaintiff's motion for a new trial, the supreme court reversed and remanded for a new trial on the issue of damages only. *Id.* at 717.

When applying the above principles to the case at bar, it is clear the $6903 verdict fell substantially short of adequately compensating Buchanan. The uncontroverted facts of the case show Buchanan's out-of-pocket medical expenses totaled $7805.94. Buchanan, however, was awarded only $6903. In addition to the

jury's failure to award an amount sufficient to cover medical expenses, the jury also failed to award damages for pain and suffering despite testimony indicating Buchanan's injuries remained painful until his death. Buchanan's loss of bodily function was also overlooked even though an expert testified there was eleven percent impairment to the right lower extremity.

In our view, the jury's verdict of $6903 bears no reasonable relationship to the damages suffered by Buchanan. Considering the severity of Buchanan's injuries, the jury's failure to award damages for the actual cost of medical services along with the jury's award of nothing for pain, suffering, and impairment was a failure to do substantial justice. Because we have determined that the verdict here was inadequate, we conclude the district court abused its discretion and committed reversible error in denying Buchanan's motion for a new trial.

III. Motion for New Trial on Damages Alone.

Buzzard argues if this case is remanded, it should be retried on all issues including liability. He contends there is no way of knowing whether or not the verdict was the result of the jury trading off liability for reduced damages. As such, Buzzard believes the issue of liability must also be retried.

A new trial should be granted on all issues where it appears the jury award was the result of a liability compromise. *Householder*, 221 N.W.2d at 494. The general rule in this regard is stated in *Householder*

> A new trial should never be ordered on the question of damages alone when there is ground for a strong suspicion or inference that the jury awarded the excessive or inadequate damages to plaintiff as a result of a compromise involving the question of liability

Id.

Buzzard presents several scenarios in an attempt to explain the jury's verdict as a result of compromise. These include (1) The jury thought the parking lot conditions contributed to the plaintiff's injuries; (2) The jury thought Buchanan's intoxicated state contributed to the injuries; and (3) The jury thought Buchanan's injuries were a result of Buchanan continuing the altercation in question.

The possibilities set forth by Buzzard do not rise to the level of a "strong suspicion or inference" necessary to justify use of judicial resources to determine an issue previously litigated. *See Householder*, 221 N.W.2d at 494. These scenarios are merely conjecture unsupported by evidence. Furthermore, as pointed out in Buchanan's reply brief, the case was not presented as a comparative fault case. Thus, any inference the award was based on an apportionment of fault is incorrect.

Although a new trial is seldom allowed on the issue of damages alone, such a trial is granted where liability is definitely established. *Witte*, 443 N.W.2d at 717 (citing *Householder*, 221 N.W.2d at 493). Our supreme court has found liability definitely established and allowed a new trial on the issues of damages alone where the jury assigned one hundred percent fault to the defendant. *Witte*, 443 N.W.2d at 717. Although comparative fault is not applicable in this case, the jury has nonetheless found

Buzzard liable for Buchanan's injuries. Because the jury rejected Buzzard's claim of self-defense, his liability has been definitely established. Therefore, granting a new trial on the issue of damages alone is appropriate.

We reverse the trial court's order and remand for a new trial solely on the issue of damages.

REVERSED AND REMANDED FOR RETRIAL ON DAMAGES ONLY.