

IN THE COURT OF APPEALS OF IOWA

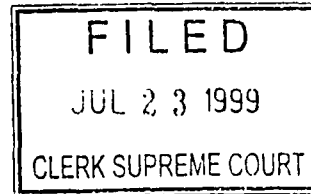
No. 1999-133 (9-349) / 98-1565

Filed July 23, 1999

JANET ALLGOOD BERRY,
Appellee,

vs.

**DAVID WILLIAM PATRICK
CLAYTON, PAUL CLAYTON,
and LUANN CLAYTON,**
Appellants.



Appeal from the Iowa District Court for Buena Vista County, Joseph J. Straub,
Judge.

Defendants appeal from a district court ruling granting plaintiff a new trial in
her tort action arising out of a motor vehicle accident. **REVERSED AND
REMANDED.**

Richard A. Cook of Herrick, Ary, Cook, Cook, Cook, & Cook, Cherokee, for
appellants.

Steven D. Hamilton of the Hamilton Law Firm, P.C., Storm Lake, for appellee.

Heard by Huitink, P.J., and Streit and Vogel, JJ.

HUITINK, P.J.

The Claytons appeal from a district court ruling granting Janet Berry a new trial in her tort action arising out of a motor vehicle accident. We reverse and remand for entry of judgment in accordance with the jury verdict.

I. Background Facts and Procedure.

On May 28, 1995, Janet Berry was involved in an automobile accident with a vehicle driven by David Clayton.¹ She subsequently brought a tort action against the Claytons, and they admitted liability. Following a trial on damages only, the jury awarded Berry damages for past medical expenses, past loss of function of body, and past pain and suffering, but denied her recovery for future loss of function of body, future pain and suffering, and loss of future earning capacity. The court entered judgment on the jury verdict.

Berry filed a motion for a new trial, alleging the jury's failure to award her future damages was against the weight of uncontroverted medical evidence. The court granted the motion and ordered a new trial on all damages, noting the jury's decision not to award any damages for future loss of function of body and future pain was arbitrary and not supported by the evidence. The Claytons appeal from this ruling.

On appeal, the Claytons contend the district court abused its discretion in granting Berry's motion for new trial. They assert the jury was presented with

¹ David Clayton was in driver's education at the time of the collision. The vehicle he was driving was owned by Luann or Paul Clayton.

sufficient evidence to infer Berry's claims of continuing pain and discomfort are arguably attributable to factors other than the automobile accident.

II. Standard of Review.

We review a district court's grant of a motion for new trial for an abuse of discretion. *Foggia v. Des Moines Bowl-O-Mat, Inc.*, 543 N.W.2d 889, 891 (Iowa 1996). When a verdict is amply supported by evidence, a trial court abuses its discretion by granting a new trial on the ground that it would have reached a different result. *Kaiser v. Stathas*, 263 N.W.2d 522, 525 (Iowa 1978).

III. The Merits.

In *Foggia*, the supreme court acknowledged "an inadequate damage award merits a new trial as much as an excessive one." *Foggia*, 543 N.W.2d at 891; *see also* Iowa R. Civ. P. 244. Whether damages awarded are adequate in a particular case depends on the facts of the situation. *Kaiser*, 263 N.W.2d at 523. The test we must apply is "whether the verdict fairly and reasonably compensates the injury the party sustained." *Id.* Although the evidence presented at trial may justify a higher damage award, this alone does not control. *Foggia*, 543 N.W.2d at 891. The key question is whether after examining the record, "giving the jury its right to accept or reject whatever portions of the conflicting evidence it chose, the verdict effects substantial justice between the parties." *Id.* (quoting *Kautman v. Mar-Mac Community Sch. Dist.*, 255 N.W.2d 146, 148 (Iowa 1977)).

In ruling on Berry's motion for new trial, the district court emphasized the jury's disregard of uncontroverted medical testimony Berry's back pain and loss of range of motion were the result of the accident. The court determined the jury's rejection of such undisputed testimony was arbitrary, thus necessitating a new trial on damages. We disagree.

While the jury as the trier of fact is not warranted in arbitrarily rejecting undisputed evidence, neither is it required to accept and give effect to evidence which it finds to be unreliable, although it may be uncontradicted. *See Kaiser*, 263 N.W.2d at 526. The jury is entitled to use its own common knowledge and experiences in weighing the evidence before it. The jury is free to reject uncontroverted testimony if it is inconsistent with common knowledge and contrary to other circumstances established by the evidence. *See Welte v. Bello*, 482 N.W.2d 437, 442 (Iowa 1992); *Burger v. Omaha & C.B. St. Ry. Co.*, 139 Iowa 645, 117 N.W. 35 (Iowa 1908).

Berry is the head coach of the women's basketball team at Buena Vista University. Berry testified she is an active participant in team practices and continues to play basketball. Additionally, Berry's assistant coach testified she plays racquetball with Berry, and Berry is an accomplished player. The record also indicates Berry was in the third trimester of pregnancy at the time of trial and her first child was born after the accident, but before trial. Other medical testimony indicates low back pain is common during pregnancy, especially in the third trimester.

We hold the jury could have reasonably concluded that Berry's back pain and loss of range of motion were attributable to her active lifestyle, the rigors of her occupation, and common symptoms associated with her pregnancies. These facts also support the jury's refusal to award future damages of any kind. The district court's contrary conclusions were erroneous, and we accordingly reverse and remand for entry of judgment in conformity with the verdict.

REVERSED AND REMANDED.