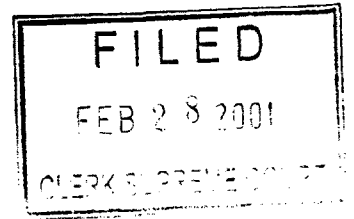


IN THE COURT OF APPEALS OF IOWA

No. 0-771 / 99-1127
Filed February 28, 2001



LOREN C. SORENSEN and JUDITH M. SORENSEN,
Appellees,

vs.

KERRIE RIEPMA and MICHAEL RIEPMA,
Appellants.

Appeal from the Iowa District Court for Plymouth County, James D. Scott,
Judge.

Kerrie and Michael Riepma appeal the district court's ruling denying their
motion for new trial on the issue of damages in Loren and Judith Sorensen's
personal injury action. **AFFIRMED.**

Michael J. Frey of Hellige, Lundberg, Meis, Erickson & Frey, Sioux City,
for appellants.

John H. Cook, Jr. of Herrick, Ary, Cook, Cook, Cook & Cook, Cherokee,
for appellees.

Considered by Streit, P.J., and Vogel and Mahan, JJ.

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VOGEL, J.

Kerrie and Michael Riepma appeal the district court's ruling denying their motion for new trial on the issue of damages in Loren and Judith Sorensen's personal injury action. We find the jury award is reasonable and supported by substantial evidence and, therefore, we affirm.

Background facts. On October 29, 1994, Loren and Judith Sorenson's automobile was hit from behind by Kerrie Riepma's van while at a stoplight. Riepma described the impact as minor while the Sorensens described it as being quite forceful. The Sorenson car was pushed approximately fifty feet into the intersection. The accident caused several scrapes to the Sorenson's Oldsmobile Cutlass and the front passenger seat was damaged. The Sorensens suffered trauma to their necks and backs from the impact of the collision. They sought medical treatment from a chiropractor and brought suit to recover for their injuries.

Judgment was entered on May 3, 1999, following a jury trial. The jury found Ms. Riepma liable for the injuries to the Sorensens. The jury awarded damages to Loren in the amount of \$26,766 and to Judith in the amount of \$25,743. The Riepmas filed a motion for new trial or remittitur of the verdict. The trial court overruled this motion and they now appeal.

Scope of review. We review the denial of a motion for new trial for correction of errors at law. Iowa R. App. P. 4; *Johnson v. Knoxville Community Sch. Dist.*, 570 N.W.2d 633, 635 (Iowa 1997). However, if the motion is based on a discretionary ground, we review for abuse of discretion. *Condon Auto Sales*

& Service, Inc. v. Crick, 604 N.W.2d 587, 594 (Iowa 1999). A ruling on a motion for new trial following a jury verdict is a discretionary matter. *Id.* In ruling on motions for new trial, the trial court has a broad, but not unlimited, discretion in determining whether the verdict effectuates substantial justice between the parties. See Iowa R. App. P. 14(f)(3). The discretion must not be exercised arbitrarily but must have support in the record. *Id.*; *Riley v. Wilson Concrete Co.*, 184 N.W.2d 689, 690 (Iowa 1971). We are generally reluctant to interfere with a jury verdict and give considerable deference to a trial court's decision not to grant a new trial. *Spaur v. Owens-Corning Fiberglas Corp.*, 510 N.W.2d 854, 869 (Iowa 1994).

Whether the awards are supported by substantial evidence. The jury awarded damages for both Loren and Judith Sorenson in the following six areas: past medical expenses, Loren, \$2,729 and Judith, \$2,051; future medical expenses, Loren, \$1,170 and Judith, \$1,008; past loss of function, Loren, \$5,475 and Judith, \$5,475; future loss of function, Loren, \$5,000 and Judith, \$5,110; past pain and suffering, Loren, \$7,500 and Judith, \$7,500; and future pain and suffering, Loren, \$4,892 and Judith, \$4,599. The Riepmas do not dispute the amount awarded for past medical expenses but contend the record does not contain sufficient evidence to support the jury's findings in the other five areas. The Riepmas claim that because the parties were under chiropractic care prior to the accident, the jury should have found they had pre-existing conditions, which degenerate over time rather than finding the injuries attributable to what she claims was a minor car accident. They assert the Sorensens' conditions had

worsened because of the aging process rather than as a result of being struck from behind by her vehicle.

Although Loren and Judith were seventy-two and sixty-five years of age respectively at the time of trial and had some health issues prior to the accident, we find the record contains substantial evidence to support the jury verdict. Dr. Kennedy, the Sorensens' chiropractor, testified that although he was treating the Sorensens prior to the accident, their number of necessary treatments increased substantially following the accident. He also assigned a whole body permanent partial disability to Loren of eight to ten percent and to Judith a five percent impairment. These impairments, Dr. Kennedy opined, were a direct consequence of the impact of the accident. Additionally, the record contains evidence that the Sorensens have sustained increased pain during activities or an inability to perform certain tasks they were capable of prior to the accident related injuries. Therefore, we find the jury award is supported by sufficient evidence.

Whether the awards were blatantly excessive. Next, the Riepmas allege the verdict was so excessive as to "shock the conscience" and raise the presumption of prejudice. The jury's verdict should not be set aside or altered unless the plaintiff proves the verdict: (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 the result of passion, prejudice or other ulterior motive; or (4) is lacking in evidential support. *Gorden v. Carey*, 603 N.W.2d 588, 590 (Iowa 1999). Here, Ms. Riepma asserts the \$52,509 verdict for the Sorensens was so

excessive as to "shock the conscience." The Riepmas contend the verdicts were so lacking in substantial evidence as to create an inference of bias among the jury. We find, however, the verdict is reasonable considering the age of the plaintiffs and the pain, medical expenses, and loss of function suffered from back injuries sustained when their stopped vehicle was struck from behind. It is the province of the jury to decide the weight of the evidence presented. See *Seastrom v. Farm Bureau Life Ins. Co.*, 601 N.W.2d 339, 346 (Iowa 1999).

Additionally, the Riepmas argue the verdict raises the strong presumption the jury was motivated by sympathy for the Sorensons because they are "elderly, genuinely nice people and retired." They present no evidence to support such a statement, except their own perceptions and the fact that the jury decided in favor of the Sorensons. We find this claim is meritless and unsupported by any evidence in the record.

In the alternative to a new trial, the Riepmas request a remittitur be ordered to substantiate justice. We find, however, the award granted by the jury is reasonable and supported by the evidence and, therefore, we will not set it aside or alter it. See *Condon Auto Sales & Service, Inc.*, 604 N.W.2d at 594. Accordingly, we affirm.

AFFIRMED.