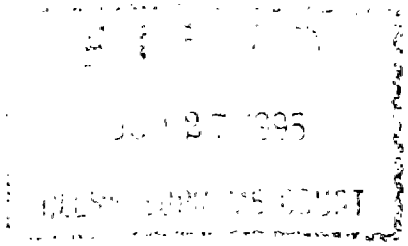
IN THE COURT OF APPEALS OF IOWA

No. 5-167 / 94-995



REBECCA JEAN LATHROP,
Plaintiff/Appellee,

vs.

JOHN DEERE INSURANCE COMPANY,
Defendants/Appellants,

and

JACKIE TACKITT,
Defendant.

Appeal from the Iowa District Court for Wapello County, Richard J. Vogel, Judge.

John Deere Insurance Company appeals from the district court's ruling denying its motion for new trial. **AFFIRMED.**

Jeffrey A. Boehlert, Ronald M. Rankin and William A. Wickett of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, Des Moines, for appellant.

J. Terrence Denefe of Kiple, Kiple, Denefe, Beaver & Gardner, Ottumwa, for appellee.

Heard by Habhab, P.J., and Cady and Huitink, JJ.

HABHAB, J.

On August 9, 1992, Rebecca Jean Lathrop was driving her pick-up truck when she was struck by a car driven by Jackie Tackitt, an uninsured motorist. Lathrop did not seek medical attention on August 9.

Two days after the accident, Lathrop sought treatment at the hospital emergency room for injuries she received from the collision. She was experiencing pain in her left shoulder and neck. Lathrop was diagnosed as having cervical strain. She was prescribed a cervical collar, muscle relaxers, and pain pills. Lathrop was instructed to have the injuries rechecked if she was not well in ten days or if the pain worsened. Although she testified the symptoms had not gotten better in ten days, she did not go back to be rechecked, nor did she seek other medical advice within that ten-day period.

Lathrop went to see Dr. Mark Hines, a neurologist, on September 11, 1992 because she was suffering from headaches and shoulder pain. Dr. Hines prescribed physical therapy and anti-inflammatory medication. Lathrop returned to Dr. Hines on September 30 and underwent several tests. Dr. Hines diagnosed Lathrop as having cervical strain, post-traumatic headaches, and a brachial plexus stretch injury. He prescribed additional physical therapy, trigger point injections with steroids, muscle relaxants, and pain medication.

Lathrop brought suit against her insurer, John Deere Insurance Company, for the breach of insurance contract. A jury trial was held on the amount of damages only.[1]

At trial, Dr. Hines testified he had last seen Lathrop on April 15, 1994. He stated Lathrop continues to have difficulties with shoulder and neck pain, trigger point dysfunction, and headaches. It was his opinion these problems are permanent and she would continue to need medication to treat her symptoms for the rest of her life.

Dr. David Boarani testified he did not believe Lathrop had a permanent injury from the accident.

Lathrop testified she was traveling about five miles per hour at the time of the accident, and Tackitt was going approximately ten to fifteen miles an hour. Lathrop stated she still has shoulder pain and headaches for which she takes medication. However, she stated the medication she takes does not completely relieve her pain.

The parties stipulated to a sealed verdict. The jury found Lathrop had proved the following items of damages:

1. Past medical expenses	$4,674.92
2. Future medical expenses	$50,000.00
3. Past loss of wages	$364.94
4. Loss of future earning capacity	$6,125.56
5. Past loss of function of the body	$5,000.00
6. Future loss of function of the body	$15,000.00
7. Past pain and suffering	$3,833.58

[1] The defendant admitted plaintiff suffered some injury from the accident and the resulting injuries were caused by the uninsured motorist Jackie Tackitt.

8. Future pain and suffering	$0
TOTAL	$85,000.00

In a ruling on post-trial motions, the district court reduced the verdict for amounts previously paid by John Deere for some of Lathrop's medical expenses and ordered judgment be entered against the defendants, jointly and severally, in the amount of $82,609.14, with interest thereon at the rate of ten percent per annum from the date the action was filed, and for court costs.

John Deere filed a motion for new trial on the ground the verdict was inconsistent and unsupported by the evidence because the jury awarded damages for future medical expenses but did not award damages for pain and suffering. The court found the jury could have concluded the pain medication Lathrop was taking would eliminate all future pain and suffering; therefore, the jury's verdict was not inconsistent or unsupported by the evidence.

John Deere appeals. The plaintiff, Lathrop, does not.

On appeal, John Deere contends the district court abused its discretion in refusing to grant a new trial. John Deere contends the jury's verdict was inconsistent and unsupported by substantial evidence. John Deere makes two arguments in this respect. First, the verdict is inconsistent in awarding future medical expenses, but finding no future pain and suffering. Second, if the verdict is construed as finding Lathrop will not have future pain and suffering, then the award for future medication

and future loss of function are unsupported by substantial evidence. Under either argument, John Deere contends a new trial must be given.

We review the district court's ruling on a motion for a new trial for an abuse of discretion. *Kiner v. Reliance Ins. Co.*, 463 N.W.2d 9, 13 (Iowa 1990). The district court has wide, but not unlimited, discretion in ruling on a motion for a new trial. Iowa R. App. P. 14(f)(3). We are slower to interfere with the grant of a new trial than with its denial. Iowa R. App. P. 14(f)(4).

As the reviewing court, we indulge every reasonable presumption in favor of the legality of a verdict. In *Cowan v. Flannery*, 461 N.W.2d 155 (Iowa 1990), our supreme court quoted a district court finding that "[c]onsiderable deference must be given to the jury's itemization of damages if we are ever again to have final verdicts in personal injury actions."

When we review a charge of irreconcilable conflict of verdicts, our task is not to determine whether the findings are conflicting but rather we must ascertain if there is any reasonable basis upon which the answers may be reconciled. In this respect, we believe the following analysis to be instructive:

> The test to determine if a conflict between jury questions is irreconcilable is, whether one answer would establish a cause of action while the other answer would destroy it. The ultimate question is whether the conflict is fatal to the entry of judgment.
>
> It is fundamental that every attempt must be made to harmonize a jury's verdict. Only where verdicts are so logically and legally inconsistent that they cannot be reconciled will they be set aside. The presumption on appeal is that jurors do not intend to return conflicting answers, but rather the contrary. As a general rule, a reviewing court

> indulges every reasonable presumption in favor of the legality of the verdicts. If the answers to special verdict questions can be reconciled on any theory, the verdict will not be disturbed.
>
> The trial court possesses broad discretion in attempting to harmonize inconsistent answers. The applicable standard is whether the answers can be reconciled in any reasonable manner consistent with its fair inferences. If it is impossible to harmonize such answers then they cancel one another out and should be disregarded by the Court. A court may not strike down conflicting jury answers if there is any reasonable basis upon which they may be reconciled. The reviewing court, upon reviewing the jury's answers, must not determine whether the findings may be viewed as conflicting, but rather, must ascertain if there is any reasonable basis upon which the answers may be reconciled.

75B Am. Jur. 2d *Trial* § 1853 (1992).

We conclude there is a reasonable basis upon which the answers to the complaint of verdicts may be reconciled. When we couple the mortality table with Dr. Hines' testimony as to the number and cost of office visits along with future prescription expenses, there is not much question there is substantial evidence in the record to support the jury's award of $50,000 for future medical expenses. We believe the same is true as to the jury award of future earning capacity and future loss of function of the body. It appears from the brief the appellant does not seriously challenge an award for these injuries.

Turning once again to Dr. Hines' testimony, he confirmed Lathrop would continue to have difficulties with her back pain and shoulder pain. He further testified these problems were a result of the accident and the pain could be controlled by muscle relaxants and some pain medication. We believe from his testimony there

is a reasonable basis upon which the answers complained of may be reconciled. As the trial court found when it denied the motion for new trial:

> The court finds that the evidence in this case would support a conclusion by the jury that the pain medication that the plaintiff would be taking would eliminate all future pain and suffering. Therefore, the court finds that the jury verdict is not inconsistent or unsupported by the evidence.

We agree with the trial court's finding. In addition, it cannot go unnoticed the plaintiff, Lathrop, does not object that she did not receive an award for future pain and suffering. Perhaps she reasons the funds she claimed and received for future medical expenses, which included an amount for prescription expenses, will enable her to buy those drugs that are necessary to alleviate or control her pain.

In conclusion, we find the district court did not abuse its discretion in failing to grant a new trial. In addition, we also find the verdict to be consistent and supported by the evidence. We affirm the district court.

AFFIRMED.