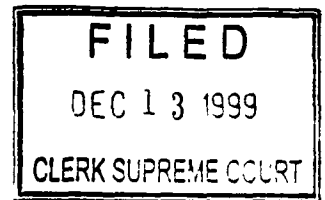


IN THE COURT OF APPEALS OF IOWA

No. 1999-139 (9-355) / 98-1790
Filed December 13, 1999



**MELANIE ROSE HIPPLER and
CARL J. HIPPLER,**
Plaintiffs-Appellees,

vs.

JEFFREY DAVID IOSSI,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mark J. Smith, Judge.

Defendant appeals a ruling denying his motion for JNOV and granting plaintiffs' motion for a new trial in their personal injury action. **AFFIRMED AS MODIFIED.**

Patrick L. Woodward and Patricia Rhodes Cepican of McDonald, Stonebraker, Cepican & Woodward, P.C., Davenport, for appellant.

James T. Carlin and Michael K. Bush of Carlin, Hellstrom & Bittner, Davenport, for appellees.

Heard by Streit, P.J., and Vogel and Zimmer, JJ., but decided by Streit, P.J., and Zimmer and Hecht, JJ.

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STREIFF, P.J.

After drinking a few beers, colliding with Melanie Hippler's pick-up, failing numerous field sobriety tests, refusing to provide a breath specimen after his arrest, and admitting liability for the collision, Jeffrey Iossi claims the district court erred in denying his motion for judgment notwithstanding the verdict as to punitive damages. Based on the above facts, a reasonable person could find a causal relationship between Iossi's willful conduct and the collision. Iossi also contends the trial court erred in granting a new trial on compensatory damages. There was not sufficient cause for disrupting the jury's compensatory damage award, but given the interplay between the compensatory and punitive damage awards, justice demands retrial as to all damage issues. The trial court is affirmed as modified.

I. Background Facts & Proceedings.

The vehicles of Jeffrey Iossi and Melanie Hippler collided on December 16, 1994. Iossi admitted to the consumption of two beers immediately prior to the accident. An investigating officer asked Iossi to perform a number of field sobriety tests. Iossi failed those tests, refused to provide a breath sample, and later pled guilty to OWI second offense.

Hippler brought suit alleging Iossi's negligence caused soft tissue injuries to her neck, upper back, and left shoulder. She sought compensatory damages for medical expenses, pain and suffering, loss of function, lost wages, and impairment of

earning capacity. She also sought punitive damages. Her husband, Carl Hippler, sued for loss of spousal consortium.

After stipulating to Iossi's negligence, the parties proceeded to trial. The jury returned a verdict for Melanie Hippler awarding her \$3549 in compensatory damages and \$75,000 in punitive damages. Hippler filed a motion for new trial claiming the discrepancy in damage amounts was too incongruent to be supported by the evidence. Iossi, in turn, moved for a judgment notwithstanding the verdict (JNOV) or in the alternative a new trial on the issue of punitive damages. The trial court denied Iossi's motion for JNOV and ordered a new trial on the issues of proximate cause, compensatory damages, and punitive damages. Iossi appeals claiming the trial court erred in denying his motion for JNOV and claiming it abused its discretion in ordering a new trial on compensatory damages.

II. Motion for Judgment Notwithstanding the Verdict.

Iossi contends the trial court erred in denying his motion for judgment notwithstanding the verdict as to punitive damages because the causal link between his alleged willful conduct, drunk driving, and the collision was too tenuous to warrant submission of the issue to the jury.

A. Standard of Review.

We review the court's denial of a motion for judgment notwithstanding the verdict for correction of errors at law. Iowa R. App. P. 4. We view the evidence in the light most favorable to the party against whom the motion was made and take into

~~consideration~~ every legitimate inference that may fairly and reasonably be made. Iowa R. App. P. 14(f)(2); *Willey v. Riley*, 541 N.W.2d 521, 526 (Iowa 1995). If substantial evidence supports the claim, the motion will be denied. *Johnson v. Dodgen*, 451 N.W.2d 168, 171 (Iowa 1990). “Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion.” *Id.* In order to avoid a defendant’s motion for judgment notwithstanding the verdict, a plaintiff must present more than a “mere scintilla of evidence.” *Tredrea v. Anesthesia & Analgesia, P.C.*, 584 N.W.2d 276, 280 (Iowa 1998) (citing *Willey*, 541 N.W.2d at 526).

B. The Trial Court Properly Denied Iossi’s Motion for JNOV.

Substantial evidence supports the causal relationship between Iossi’s alleged willful conduct and the collision. Iossi failed numerous field sobriety tests immediately after the collision and refused to provide a breath specimen at the police station. The investigating officer detailed the deleterious effect of alcohol consumption on response time. Iossi admitted drinking two beers prior to the collision, admitted liability for the collision, and pled guilty to operating a motor vehicle while intoxicated second offense. A certified copy of his conviction was also entered into evidence. The causal link between Iossi’s drunk driving and the collision need not be evidenced by overt, extremely erratic behavior. The link may be evidenced by an admission of fault, a recognition of ingesting substances that affect one’s ability to operate a motor vehicle, a plea of guilty to operating a motor vehicle while intoxicated, and testimony regarding the proven effects of alcohol consumption

~~on reaction time.~~ A reasonable mind could take this profusion of interrelated facts and find ~~by a~~ preponderance of the evidence that Iossi's drunk driving caused the collision.¹ The trial court properly denied Iossi's motion for judgment notwithstanding the verdict.

III. Motion for New Trial as to Compensatory Damages.

Iossi next contends the trial court abused its discretion in granting Hippler's motion for new trial on compensatory damages because the award was adequate and supported by evidence.

A. Standard of Review.

We review district court rulings on motions for new trials for abuse of discretion. Iowa R. App. P. 14(f)(3). The determinative question for the district court was whether the verdict effected substantial justice between the parties. *Kautman v. Mar-Mac Community Sch. Dist.*, 255 N.W.2d 146, 147-48 (Iowa 1977).

B. Although the Trial Court Erred in Granting a New Trial on Compensatory Damages, Fairness Requires a New Trial on All Damage Issues.

A new trial may be granted if a jury verdict is inadequate or excessive in its damage award, Iowa R. Civ. P. 244(d) & (f), or when sufficient evidence does not support the jury verdict and the verdict fails to effectuate substantial justice. *Midwest Home Distrib., Inc. v. Domco Indus. Ltd.*, 585 N.W.2d 735, 738 (Iowa 1998).

¹ The issue of the allegedly erroneous jury instruction, although having some merit, has no bearing on a motion for judgment notwithstanding the verdict. The appropriate procedural vehicle for such a claim would be a motion for new trial, which was raised and granted by the trial court.

A new trial may be granted, and the jury verdict set aside, when the verdict is so logically and legally inconsistent it is irreconcilable in the context of the case. See *Blume v. Auer*, 576 N.W.2d 122, 125 (Iowa App. 1997). In assessing whether the jury verdict is inconsistent, we are mindful that a jury's verdict is to be liberally construed to give effect to the intentions of the jury and to harmonize the verdict if possible. *Id.* at 126. The test is whether the verdict can be reconciled in any reasonable manner consistent with the evidence, its fair inferences, and in light of the instructions of the court. *Hoffman v. National Med. Enter., Inc.*, 442 N.W.2d 123, 126-27 (Iowa 1989).

The trial court did not ground its rationale for granting a new trial on any specific articulation as to the applicability of the aforementioned, legally-recognized principles. The trial court expressly denied that the compensatory award was too low and it did not point to any fact-specific claim as to the insufficiency of the evidence. The court juxtaposing the punitive and the compensatory damage awards found the two simply too incongruent to support any award. The court's fear appeared to be some broad notion of jury compromise.²

Regardless of the trial court's rationale for granting a new trial, there were simply not sufficient facts to warrant the invasion of the jury's judgment.

While the jury as the trier of fact is not warranted in arbitrarily or capriciously rejecting the testimony of a witness, neither is it required to accept and give effect to testimony which it finds to be unreliable,

² The danger of jury compromise as to damages deals with a jury improperly averaging the damage amount voiced by each juror in order to reach a conclusion. Compromise in terms of assigning differing damage amounts within specific categories of damages is not a recognizable cause for upsetting a damage award.

although it may be uncontradicted. Testimony may be unimpeached by any direct evidence to the contrary and yet be so contrary to natural laws, inherently improbable or unreasonable, opposed to common knowledge, inconsistent with other circumstances established in evidence, or so contradictory within itself, as to be subject to rejection by the court or by the jury as trier of the facts.

Kaiser v. Stathas, 263 N.W.2d 522, 526 (Iowa 1978) (citation omitted). The jury's relatively small compensatory award was reasonable, as the record brimmed with evidence discrediting the severity of Hippler's injury. She did not see a doctor until two months after the accident, at which time all x-rays were negative. She did not begin to experience neck pain or have limited range of motion until a year after the accident. Despite the physical stresses of working as a nurse's aid and physical therapy technician, she never missed a day of work due to her injuries. She continued to participate in a bowling league after the accident. Included in her claim for damages were medical bills bearing no relationship to the accident. Finally the exacerbation of her injuries could be attributable to other injuries she suffered in the interim. Given our liberal stance in harmonizing the intentions of the jury, we find the trial court abused its discretion in granting a new trial as to compensatory damages.

The trial court also granted a new trial as to punitive damages. The parties did not appeal this decision. It appears the jury may have assigned the damage amounts among the two categories under some agreed upon compromise, for the two awards are incongruent. When a jury determination "of various elements of damages are apt to be influenced by the recovery allowed for other elements of damages," retrial as to

all the damages is appropriate. *Brant v. Bockholt*, 532 N.W.2d 801, 805 (Iowa 1995).

Given the interplay between the punitive and compensatory damages awards, justice demands the retrial of all damage issues. Retrial as to only punitive damages, when the jury seemed to reach some type of appropriative compromise, is not in the interest of justice. Therefore, although the trial court abused its discretion in granting a new trial on compensatory damages, retrial is appropriate as to all damage claims. The trial court's rationale is modified, but the end result affirmed.

AFFIRMED AS MODIFIED.

Zimmer, J., concurs; Hecht, J., concurs specially.

HECHT, J. (specially concurring)

I concur in the result. However, I find no abuse of discretion in the district court's grant of a new trial on compensatory damages. The trial court has broad, but not unlimited discretion in ruling on new trial motions. *Kiner v. Reliance Ins. Co.*, 463 N.W.2d 9, 13 (Iowa 1990); Iowa R. App. P. 14(f)(3). This court is slower to interfere with the grant of a new trial than with its denial. Iowa R. App. P. 14(f)(4). All medical doctors who testified opined plaintiff Melanie Hippler ("Hippler") sustained permanent injury as a result of the motor vehicle crash which was the subject of this case. The uncontroverted medical testimony shows she incurred in excess of \$8000 in medical expenses before trial to treat the injury, and she will require medical treatment at a cost of at least \$200 per month for the indefinite future. The jury's verdict awarded only \$3081 for past medical expense and nothing for future expense. Though the district court did not grant the new trial on the theory the compensatory damages were inadequate, we may affirm the lower court's ruling on any grounds appearing in the record. *Grefe & Sidney v. Watters*, 525 N.W.2d 821, 826 (Iowa 1994); *McMaster v. Hutchins*, 255 Iowa 39, 48, 120 N.W.2d 509, 514 (1963); *Newmire v. Maxwell*, 161 N.W.2d 74, 80 (Iowa 1968). Under the circumstances in this case, the jury's compensatory damage verdict is inadequate and not sustained by sufficient evidence. The district court correctly ordered a new trial of both compensatory and punitive damage issues. Iowa R. Civ. P. 244(d), (f).