

FILED

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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

FREDERICK WAALK and
DELORIS WAALK,

Plaintiffs-Appellees,

vs.

DALE GERST,

Defendant-Appellant.

Filed May 30, 1980

0-94

2-63859

Appeal from Jones District Court - Robert E. Ford, Judge.

Defendant appeals order granting new trial for inadequacy of jury's damage award in plaintiffs' personal injury action. - AFFIRMED.

Steven J. Pace and Robert D. Houghton, of Shuttleworth & Ingersoll, Cedar Rapids, and David M. Remley, of Remley, Heiserman & Willems, Anamosa, for defendant-appellant.

Douglas Henry & William C. Fuerste, of Fuerste, Carew, Coyle, Juergens & Sudmeier, Dubuque, for plaintiffs-appellees.

Heard by Oxberger, C.J., and Donielson, Snell and Johnson, JJ. Carter, J., takes no part.

Defendant appeals from the trial court's order granting a new trial in plaintiffs' personal injury action. The trial court granted the new trial on the ground that the jury's award of damages was inadequate. Defendant contends that since there was sufficient evidence to support the jury's damage award, the trial court abused its discretion by granting a new trial. We affirm.

Plaintiffs' cause of action arose out of an automobile accident that occurred on June 23, 1976. Plaintiff Frederick Waalk was stopped behind traffic on the highway when his automobile was struck from behind by defendant's pickup truck. Frederick's claim for damages was based on an alleged "whiplash" injury received because of the collision. Frederick's symptoms included headaches, back and neck pain, and general misery. The record reveals that Frederick had suffered from a variety of health problems prior to the accident, some of which closely resembled some of the symptoms experienced after the accident. There was also conflicting testimony regarding whether Frederick's brake lights were operating while he was stopped along the highway.

Plaintiffs' petition sought \$75,000 for Frederick's damages, including medical and hospital expenses, injuries to Frederick's person, past and future pain and suffering, and lost future income. In addition, the petition asserted a claim for \$25,000 in damages for Deloris Waalk's loss of consortium. After trial, the jury returned a verdict for Frederick awarding damages in the amount of \$2249.47, an amount coinciding with the trial court's instruction on the maximum amount that could be awarded for Frederick's medical and hospital expenses. The jury also returned a verdict for Deloris on her loss of consortium claim but awarded no damages. Plaintiffs filed a motion for a new trial, and the trial court granted the motion and ordered a new trial on all issues on the ground that the damage award was grossly inadequate.

In ruling on a motion for a new trial, the trial court has broad discretion. Northrup v. Miles Homes, Inc., 204 N.W.2d 850, 861 (Iowa 1973). The determining consideration is whether the verdict effectuates substantial justice between the parties. Lappe v. Blocker, 220 N.W.2d 570, 572 (Iowa 1974). We are more reluctant to interfere with the grant of a new trial than with its denial. Iowa R. App. P. 14(f)(4). We will not

disturb a trial court's ruling on a motion for a new trial unless there is a clear showing of abuse of discretion. Northrup, 204 N.W.2d at 861.

We do not think the trial court abused its discretion by ordering a new trial in the case at bar. The jury found defendant liable for Frederick's injuries, but only awarded damages in the amount of Frederick's special damages, and awarded no damages for Frederick's pain and suffering. Defendant contends the jury award could be interpreted as awarding a certain percentage of Frederick's claimed special damages with the remainder of the award attributable to an award of damages for pain and suffering. In light of the congruity to the very penny of the jury's award to the claimed medical and hospital expenses that comprised Frederick's special damages, defendant's contention is clearly more theoretical than real. See Allbee v. Berry, 254 Iowa 712, 717, 119 N.W.2d 230, 233 (1963).

Defendant also contends the jury could have concluded that Frederick proved no pain and suffering for which he should be compensated, and the award of only special damages was appropriate. However, this is not a situation in which the special damages related to curative medical expenses, such as the cost of stitching a wound, setting a broken bone, or surgical restoration of an internally damaged area. Rather, the special damages here related to alleviative medical expenses, i.e., the cost of relieving Frederick's pain and discomfort. Thus, the medical expenses incurred were directly related to the existence of pain and suffering. If there was no pain and suffering, there was no justifiable need to incur the medical expenses. Nevertheless, the jury arrived at the logical inconsistency of awarding damages for Frederick's medical expenses incurred by reason of his pain and suffering, and awarding nothing for the pain and suffering that gave rise to those expenses. Under these circumstances, the trial court correctly determined that the award was inadequate.

Such an award indicates a misapprehension of duty, the influence of passion or prejudice, or a compromise on the question of liability. Allbee, 254 Iowa at 718, 119 N.W.2d at 233. When, as is the situation in the case at bar, the jury's award is inadequate as not related to the injuries sustained, and there is a conflict of evidence on the issue of liability, an inference of a compromise verdict — a verdict obtained through a compromise between jurors on the questions of liability and damages — can properly

be inferred. Householder v. Town of Clayton, 221 N.W.2d 488, 494 (Iowa 1974); Allbee, 254 Iowa at 718, 119 N.W.2d at 233. The jury's verdict in favor of Deloris on her loss of consortium claim with no award of damages further supports the suspicion that the verdict may have been the result of a compromise. In such a situation, a new trial on all the issues is proper. Householder, 221 N.W.2d at 493; Alibee, 254 Iowa at 719, 119 N.W.2d at 234.

Defendant relies on Kaiser v. Stathas, 263 N.W.2d 522 (Iowa 1978) as support for his contention that the jury verdict should not be disturbed in this case. However, Kaiser is distinguishable on the ground that in that case, plaintiff was awarded an amount well in excess of his special damages and the dispute arose over the adequacy of the amount in excess of special damages. Id. at 527. In the case at bar, plaintiff was awarded only special damages, and those special damages arose out of pain and suffering for which plaintiff received nothing. In light of the principle stated in Kaiser, that each case must be decided according to its own unique circumstances, id. at 523, we conclude the trial court properly ordered a new trial on all issues.

AFFIRMED.

Dissent by Donielson, J.

I dissent. The broad discretion a trial court possesses in granting a new trial is not unlimited. Waddell v. Peet's Feeds, Inc., 266 N.W.2d 29, 31 (Iowa 1978); Kaiser v. Stathas, 263 N.W.2d 522, 525-26 (Iowa 1978). Courts should see that a verdict fairly and adequately compensates a plaintiff for damages suffered, but the amount of damages to be awarded is peculiarly a jury, not a court function. Waddell, 266 N.W.2d at 32. The fact a court may have reached a different conclusion is no ground for setting aside a jury verdict and awarding a new trial. Id. Here, the record provided a reasonable basis for the jury returning the amount of the verdict it did, and the trial court erred in subsequently granting a new trial.

At trial, defendant introduced Frederick's extensive and extended medical history, which included treatment for back pain, the primary basis of his claim here. The jury could have reasonably concluded that some, if not most, of Frederick's claimed injuries did not result from the accident, but were pre-existing conditions. In jury trials controverted issues of fact are for the jury to decide and should not be set aside because a judge would have reached a different conclusion. Lantz v. Cook, 256 Iowa 409, 413, 127 N.W.2d 675, 677 (1964), quoted in Kaiser, 263 N.W.2d at 525. While the jury as trier of fact is not warranted in arbitrarily rejecting a witness' testimony, neither is it required to accept and give effect to testimony that it finds to be unreliable. Kaiser, 263 N.W.2d at 526.

The fact the jury only awarded damages for Frederick's special damages and no damages for pain and suffering is not conclusive grounds for granting a new trial. Conclusions on the rationale behind a jury's award for the exact amount of the special damages are highly speculative. See Waddell, 266 N.W.2d at 31-32. At best, such speculation should not be grounds for the granting of a new trial absent proof of prejudice or passion on the part of the jury. See generally id. Plaintiffs proved no such prejudice or passion. I would vacate the trial court's grant of a new trial and order a judgment in accordance with the verdict be entered.