FILED
OCT 28 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

DANIEL W. SALLIS; LESLIE ANN SALLIS, JUSTIN WILLIAM SALLIS, AND RENEE' MARIE SALLIS, Minor Children by DANIEL W. SALLIS, their father and next friend,	)	239
Plaintiffs-Appellees,	)	Filed October 29, 1987
vs.	)	
HELEN LAMANSKY and THE SISTERS OF MERCY OF THE UNION IN THE UNITED STATES OF AMERICA, PROVINE OF CHICAGO,	)	7-268 86-1079
Defendants-Appellants.	)	

Appeal from the Iowa District Court for Johnson County (48591), William R. Eads, Judge.

Defendants appeal the trial court judgment against them claiming the amount of the verdict was so excessive as to shock the conscience, and challenging two evidentiary rulings. **AFFIRMED.**

Raymond R. Stefani and Richard A. Stefani of Gray, Stefani & Mitvalsky, Cedar Rapids, for defendants-appellants.

James W. Hall and Thomas M. Gillespie of Hall & Irvine, Cedar Rapids, for plaintiffs-appellees.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ. Snell, J., takes no part.

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PER CURIAM

Defendant, Helen Lamansky (hereinafter referred to by her religious name, Sister Josephus) and her religious order, appeal the trial court judgment against them in the amount of $626,000. They assert the trial court erred by admitting certain evidence presented by the plaintiff, Daniel Sallis, regarding past and future loss of earnings as an over-the-road truck driver. The defendants also assert the trial court erred by striking evidence presented by them regarding computer analysis of Mr. Sallis's Minnesota Multiphasic Personality Inventory (MMPI) test results. The defendants' final assertion on appeal is the trial court erred in not granting them a new trial or, alternatively, ordering a remittitur, since the amount of damages awarded by the jury was so excessive as to shock the conscience. We affirm.

I. **Background.** The record reflects Mr. Sallis's pickup truck, while stopped for traffic, was struck from the rear by a car driven by Sister Josephus and owned by her religious order. Sister Josephus testified she could have been traveling up to twenty miles per hour at the time of impact. There were no skid marks at the scene to indicate emergency braking or to aid in gauging the speed of Sister Josephus's car. The impact from the crash caused Mr. Sallis to incur a cervical hyperextension injury (whiplash). It was the opinion of Mr. Sallis's doctor he has sustained a 7½% to 10% permanent partial disability to his body as a whole and he will have recurrent muscle spasms and pain in his neck.

II. **Loss of Earnings.** At trial the defendants objected to testimony of Mr. Sallis and his economics expert, Dr. Hammond, regarding Mr. Sallis's loss of past and future earnings as an over-the-road truck driver. The defendants' objection to Mr. Sallis' testimony was it called for conjecture and speculation since Mr. Sallis had only worked as an over-the-road truck driver, prior to the

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accident in 1982, for ten months in 1980. The defendants' objection to Dr. Hammond's testimony was no proper foundation had been laid showing he had considered all relevant factors when basing his determination of Mr. Sallis's loss of earnings upon Mr. Sallis's earnings as an over-the-road truck driver in 1980.

As an initial matter, we note the receipt of opinion evidence rests largely in the discretion of the trial court and its ruling will not be disturbed absent manifest abuse of that discretion. Haumersen v. Ford Motor Co., 257 N.W.2d 7, 11 (Iowa 1977). However, the facts upon which an expert bases his opinion must be sufficient to enable him to express an opinion which is more than mere conjecture. Id. Thus, the mere possibility of a future loss of earning cannot support a damage award. Lobermeier v. General Telephone Co., 349 N.W.2d 466, 477 (Wis. 1984) (plaintiff's loss of future earnings as a journalist held to be speculative since plaintiff had merely hoped to be a journalist before the accident and there was no evidence to any reasonable certainty that such a career was possible). But if the uncertainty lies only in the amount of the damages, and not their having been sustained, recovery may be had if there is proof of a reasonable basis for which the amount can be inferred or approximated. Schmitt v. Jenkins Truck Lines, Inc., 170 N.W.2d 632, 655 (Iowa 1969). It is not required that a plaintiff have worked or have had income prior to the injury to suffer destruction of future earning capacity. Anthes v. Anthes, 258 Iowa 260, 270, 139 N.W.2d 201, 208 (1965). The determination of loss of earnings is based upon capacity to earn, not on earnings alone. Id.

In this case, the record reflects Mr. Sallis worked as an over-the-road truck driver from June 1979 to November 1980. He testified he left that work shortly after the death of his wife in order to be closer to his children. After the accident with Sister Josephus, he again worked as an over-the-road truck

driver for short periods of time in 1983, 1984, and 1985. His medical condition, however, prevented him from continuing to pursue this work.

We conclude there was sufficient evidence of Mr. Sallis's capacity to work as an over-the-road truck driver to enable him to testify as to the amount of the past and future earnings he has lost and will lose by being unable to pursue that occupation. We find no abuse of the trial court's discretion in allowing such testimony.

Nor do we find the trial court abused its discretion in allowing the testimony of Dr. Hammond. The defendants assert Dr. Hammond's testimony lacked a proper foundation since they contended he had not considered all relevant factors when determining Mr. Sallis's loss of earnings. Specifically, they contend he should have considered Mr. Sallis's employment history as an over-the-road truck driver, Mr. Sallis's driving record in that job, the availability of such a position now, and the ability of Mr. Sallis to obtain such a position. However, any factors which Dr. Hammond allegedly failed to consider were matters for impeachment and argument to be considered by the jury in determining what weight, if any, to give Dr. Hammond's opinion. See Schmitt v. Jenkins Truck Lines, Inc., 170 N.W.2d 632, 659 (Iowa 1969).

III. Computer Analysis Testimony. At trial, Dr. Thomas Sannito testified as a psychological expert for the defendants. Based upon an interview with Mr. Sallis and his interpretation of Mr. Sallis's psychological test results, Dr. Sannito stated he diagnosed Mr. Sallis as having a hysterical personality with hypochondriacal tendencies. Dr. Sannito also testified as to the results of a computer analysis of Mr. Sallis's MMPI test results. This computer analysis was undertaken to further analyze Mr. Sallis's condition and to support Dr. Sannito's clinical diagnosis. Concerning this computer analysis, Dr. Sannito stated:

> Well, basically the computer says he exaggerates his symptoms and is faking that. In other words, he is dwelling on his miseries and dwelling on his misfortunes and his pains, and so he endorses items—he endorses items that have to do with that and made his profile look worse than it was.

When asked what he meant by "endorses" these items, Dr. Sannito stated:

> Well, any item which—any item which is answered in either a true or false matter which would—which would make him look miserable and emotionally disturbed and distressed and depressed and so on, he endorsed. In other words, he constantly answered those items in the direction that would—that would make him appear to be really, really bad off. And he did it more than would be expected. In other words, more than he should have.
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> There's a little—there's some tests on the MMPI and the computer picked it up just as well as I did. There are tests on the validity of his answers and the validity of his answers aren't totally correct. I mean his answers on the test are not completely honest. There are some exaggerations to his answers. That's what the computer is saying. (emphasis added.)

All of Dr. Sannito's testimony regarding the computer analysis was stricken by the trial court. The defendants assert this action by the trial court was error and prejudicial to them. Mr. Sallis contends the testimony regarding the computer analysis was inadmissible as hearsay and as a comment on his credibility.

We need not determine the admissibility of the testimony regarding the computer analysis, however, since we conclude the exclusion of the testimony, even if admissible, did not constitute reversible error. It is the general rule that the exclusion of evidence tending to show a certain fact is not reversible error when the fact in question is fully established by other admitted evidence. Kengorco, Inc. v. Jorgenson, 176 N.W.2d 186, 189 (Iowa 1970). In this case, the computer analysis merely served to show the same facts Dr. Sannito testified his own interpretation of the MMPI revealed. The trial court specifically instructed the jury "the remainder of Dr. Sannito's testimony [i.e., that unrelated to the computer analysis] remains for evaluation by the jury." Thus, the jur

was still free to consider Dr. Sannito's testimony regarding Mr. Sallis's alleged malingering and exaggeration of symptoms and pain.

IV. Award of Damages. The defendants' final assertion on appeal is trial court erred in not granting them a new trial or, alternatively, ordering a remittitur. They contend the amount of damages awarded by the jury was so excessive as to shock the conscience.

As stated in Schmitt v. Jenkins Truck Lines, Inc., 170 N.W.2d 632, 659-60 (Iowa 1969):

> It is not for us to invade the province of the jury. In fact a verdict will not be set aside or altered unless it is, (1) flagrantly excessive or inadequate; or (2) so out of reason as to shock the conscience or sense of justice; or (3) raises a presumption it is the result of passion, prejudice or other ulterior motive; or (4) is lacking in evidential support . . . .
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> In considering defendants' contention the verdicts are so excessive as to shock the conscience and show passion and prejudice, we must take the evidence in the aspect most favorable to plaintiffs which it will reasonably bear. We must also give weight to the fact the trial court, with benefit of seeing and hearing the witnesses, observing the jury and having before it all incidents of the trial, did not see fit to interfere.

Id. Each case must be evaluated according to the evidence peculiar to it alone. Holmquist v. Volkswagon of America, Inc., 261 N.W.2d 516, 526 (Iowa App. 1977). And, as noted in Lantz v. Cook, 256 Iowa 409, 413, 127 N.W.2d 675, 677 (1964):

> In jury trials controverted issues of fact are for the jury to decide. That is what juries are for. To hold that a judge should set aside a verdict just because he would have reached a different conclusion would substitute judges for juries.

Id. Where the verdict is within a reasonable range as indicated by the evidence, we shall not interfere with what is primarily a jury question. Mazur v. Grantham, 255 Iowa 1292, 1303, 125 N.W.2d 807, 814 (1964).

In this case, the jury could have reasonably believed Mr. Sallis had incurred a 7½% to 10% permanent partial disability to his body as a whole and that he

had suffered and would continue to suffer from great pain. The jury also could have reasonably believed the accident prevented Mr. Sallis from pursuing a career as an over-the-road truck driver, resulting in a potential loss of future earnings ranging from $650,000 to $900,000, depending upon his expected work life. Viewing the evidence in the aspect most favorable to Mr. Sallis which it will reasonably bear, we conclude the jury's verdict, although relatively high, is within the reasonable range indicated by the evidence.

AFFIRMED.