IN THE COURT OF APPEALS OF IOWA

No. 7-078 / 96-0402

RICHARD DALE STEFFEN and SANDRA LOU STEFFEN,

Plaintiffs-Appellants,

vs.

RICHARD JOSEPH TEBBS,

Defendant-Appellee.

FILED
MAR 28 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Lee County, R. D. Fahey, Judge.

Plaintiffs appeal from a jury's verdict awarding damages for bodily injuries and loss of consortium as a result of a motor vehicle accident. **AFFIRMED.**

George E. Wright of Napier, Wright and Wolf, and Gordon M. Liles, Fort Madison, for appellants.

John D. Stonebraker and Patricia Rhodes Cepican of McDonald, Stonebraker & Cepican, P.C., Davenport, for appellee.

Heard by Sackett, P.J., and Cady and Vogel, JJ.

SACKETT, P.J.

Plaintiffs-appellants Richard Dale Steffen and Sandra Lou Steffen challenge the adequacy of a jury award of damages for injuries Richard allegedly received in an automobile accident in September 1992 where defendant-appellee Richard Joseph Tebbs admitted he was negligent. We affirm.

The issue at trial was whether all injuries plaintiffs claimed were actually the result of the accident. There was evidence after the accident Richard inspected the damage to the vehicles and swept debris from the road. The evening of the accident he went to the hospital complaining of stiffness in his neck. He was told he had a cervical strain and was discharged.

There was testimony a few weeks after this accident Richard told a witness he was involved in a "fender-bender" and he "wasn't feeling bad at all." Richard confirmed he spoke with the witness and he told her he was "fine" but had a "little stiffness but nothing serious."

Richard was in a go-cart accident in October 1992. The medical reports say the go-cart flipped end-over-end. Richard contends he did not injure his neck in the go-cart accident, but injured his groin and left index finger and had "brow pain." He also claimed the go-cart did not flip end-over-end.

In April 1993, Richard began experiencing severe pain in his neck. He subsequently had two surgeries to correct problems caused by herniated disks in May

1993 and April 1994. His medical doctor testified the herniated disks were a result of the motor vehicle accident and Richard had an impairment rating of thirty-one percent to his body as a whole.

The jury concluded defendant's negligence was the proximate cause of injuries to Richard. It awarded Richard $3591 for past medical expenses, $1500 for past pain and suffering, $2000 for future pain and suffering, $600 for past loss of function of the mind and body, $6500 for future loss of function of the mind and body, and $1671 for past lost wages. Regarding damages for loss of consortium, it awarded $600 for Sandra's past loss of consortium and $1000 for her future loss of consortium.

Plaintiffs filed a motion for new trial contending the jury's verdict was inadequate and not supported by substantial evidence, and the trial court erred in not submitting over plaintiffs' objection the issue of future diminished earning capacity. The court denied the new trial motion reasoning the jury could have believed plaintiffs and their witnesses exaggerated their injuries, and Richard's doctor's credibility was challenged regarding the possibility of other sources of the injuries. The trial court found plaintiffs failed to present evidence of what Richard's future income would have been if not for the injury.

Plaintiffs appeal contending the trial court erred (1) in failing to grant a new trial based upon the inadequacy of the jury's award; (2) in failing to instruct the jury

upon diminished future earning capacity; and (3) in instructing the jury the mere fact an accident occurred does not give rise to a presumption of entitlement to damages.

An aggrieved party may be granted a new trial where the jury awarded excessive or inadequate damages appearing to have been influenced by passion or prejudice, or where the verdict is not sustained by sufficient evidence or is contrary to law. Iowa R. Civ. P. 244(d) and (f). A new trial is not a matter of right. *Cowan v. Flannery*, 461 N.W.2d 155, 156 (Iowa 1990).

In ruling upon motions for new trial, the court has a broad but not unlimited discretion in determining whether the verdict effectuates substantial justice between the parties. 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).

The trial court has wide, but not unlimited, discretion in ruling on a motion for new trial. *Kautman v. Mar-Mac Community Sch. Dist.*, 255 N.W.2d 146, 147 (Iowa 1977). Ordinarily the jury should be allowed to settle disputed fact questions, but that, too, is a limited power and one which must be exercised within the framework of the evidence in any particular case. The court always has inherent power to set aside a verdict which fails to do substantial justice between the parties.

There was medical evidence Richard suffered all his injuries in the accident. There was also evidence he did not. The jury, confronted with conflicting medical evidence, was at liberty to accept or reject any of the evidence in whole or in part.

Kautman, 255 N.W.2d at 148; *Miller v. International Harvester Co.*, 246 N.W.2d 298, 302 (Iowa 1976). The test is whether the verdicts can be reconciled in any reasonable manner consistent with the evidence and its fair inferences, and in light of the instructions of the court. *Hoffman v. National Medical Enter., Inc.*, 442 N.W.2d 123, 127 (Iowa 1989). Only where the verdicts are so logically and legally inconsistent that they cannot be reconciled will they be set aside. *Id.* We affirm on this issue.

Plaintiffs next contend the trial court erred in instructing the jury the fact an accident happened does not raise a presumption of entitlement to damages. This issue was not preserved for review.

Plaintiffs next contend the trial court erred in failing to submit the issue of loss of earning capacity as an element of damage. The trial court concluded there was not substantial evidence to support its submission. Plaintiff did not introduce any evidence of what his future income would have been had he not been injured. There was no evidence of his earnings in the twelve months before trial. There was not substantial evidence to support the submission. *Berquist v. Mackay Engines, Inc.*, 538 N.W.2d 655, 657 (Iowa App. 1995). We affirm the trial court on this issue.

AFFIRMED.