IN THE COURT OF APPEALS OF IOWA

No. 1999-105 (9-292) / 98-1837
Filed May 26, 1999

AURORA OLGA MUNIZ,
Appellant,

vs.

PAUL CLAYTON BRAMON,
Appellee.

FILED
MAY 26 1999
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge.

Aurora Muniz appeals a jury verdict on her personal injury claim, asserting that the verdict was inconsistent and the award inadequate. **AFFIRMED IN PART, REVERSED IN PART AND REMANDED.**

Patrick W. O'Bryan, Des Moines, for appellant.

Joseph A. Happe and William H. Grell of Huber, Book, Cortese, Happe & Brown, P.L.C., Des Moines, for appellee.

Heard by Sackett, C.J., and Vogel and Zimmer, JJ.

VOGEL, J.

Aurora Muniz appeals a jury verdict on her personal injury claim, asserting that the verdict was inconsistent and the award inadequate. We affirm the jury's finding of causation, but reverse and remand for a retrial on the issue of damages.

Background facts. On May 27, 1997, Muniz was involved in an automobile collision with Paul Bramon at an intersection on Euclid Avenue in Des Moines, Iowa. Muniz subsequently filed an action against Bramon to recover for her personal injuries and damages resulting from the accident.

Trial was held in August of 1998. After deliberations, the jury found that both parties were 50% at fault. The jury awarded Muniz past medical expenses of $9,421 and past physical and mental pain and suffering of $17,579, which was reduced by one-half for a total judgment of $14,500. Muniz filed a motion for a new trial, claiming the verdict was internally inconsistent and inadequate. The district court denied the motion and Muniz now appeals.

Scope of review. Our standard of review of a denial of a motion for new trial depends upon the grounds for new trial asserted in the motion and ruled upon by the court. *Ladeburg v. Ray*, 508 N.W.2d 694, 696 (Iowa 1993); *Julian v. City of Cedar Rapids*, 271 N.W.2d 707, 708-09 (Iowa 1978). If the motion for new trial and ruling are based on a claim that the trial court erred on an issue of law, then the trial court's decision stands or falls on the correctness of its ruling on the legal question. *Ladeburg*, 508 N.W.2d at 696-97 (citation omitted). If the motion and ruling are

based on a discretionary ground, the trial court's decision is reviewed on appeal for an abuse of discretion. *Id.* at 696 (citations omitted). We review the issues before us in this appeal for abuse of discretion. *See Foggia v. Des Moines Bowl-O-Mat, Inc.*, 543 N.W.2d 889, 891 (Iowa 1996).

Damages. Muniz first argues that the verdict was inconsistent because the jury failed to award her damages for lost wages. She asserts that the evidence is uncontroverted that she was employed full-time at the time of the accident and has not worked since. She contends that when the evidence is reviewed in the light most favorable to her, it supports that she is entitled to six months of damages for lost wages. Bramon, however, asserts that Muniz's credibility was seriously called into question at trial. He contends that the jury could have concluded that Muniz was able to return to work immediately following the accident.

A jury's award of itemized damages should be logically and legally consistent. *See Hoffman v. Nat'l Medical Enterprises, Inc.*, 442 N.W.2d 123, 126-27 (Iowa 1989). The jury's determination on each item of damages constitutes a special finding of fact, each of which must be supported by the evidence. *See Cowan v. Flannery*, 461 N.W.2d 155, 158 (Iowa 1990). If the jury's findings are not supported by the evidence, a new trial must be granted. *Blume v. Auer*, 576 N.W.2d 122, 125 (Iowa App. 1997).

The record indicates that the date at which Muniz could return to work was disputed at trial.[1] However, the emergency room records stated that Muniz "was given a work note excusing her from work, to return to work on May 31, 1997." Although the accident occurred on her day off, her uncontroverted testimony revealed that she worked 40 hours per week on a 3 p.m. to 12 a.m. shift. The jury's failure to award *any* damages for lost wages, even assuming the absolute first release date of May 31st, ignores the evidence of at least *some* lost wages. Therefore, the jury's verdict is in part unsupported by the evidence and inconsistent with the award of medical damages.

At oral argument, Muniz expressed that she seeks a new trial on all issues, including causation. However, that action is unnecessary as the issue of damages can be resolved separately from the issue of causation. *See Brant v. Bockholt*, 532 N.W.2d 801, 805 (Iowa 1995) (citation omitted) (stating that specific issues may be retried in lieu of total retrial if it appears that the other issues have been rightly settled and that an injustice will not be occasioned). Furthermore, the issue of causation was not preserved for our consideration on appeal. *See Goodenow v. City Council of Maquoketa, Iowa*, 574 N.W.2d 18, 27 (Iowa 1998); *State Farm Mut. Auto. Ins. Co. v. Pflibsen*, 350 N.W.2d 202, 206-07 (Iowa 1984).

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[1] We note that Muniz was given multiple release dates following the accident, including releases to return to work on June 6, 1997, March 2, 1998, April 2, 1998, and April 23, 1998. However, Muniz did not resume working and has not worked since the accident.

Jury determinations of various elements of damages are apt to be influenced by the recovery allowed for other elements of damage. *See Brant*, 532 N.W.2d at 805. We conclude that the jury's failure to award lost wages requires reversal of the entire damage award. *See Id.* (expressing that it would be inappropriate to order retrial of only a single element of damage); *see also Foster v. Pyner,* 545 N.W.2d 584, 587 (Iowa App. 1996). As we are remanding for a retrial on the issue of damages, we need not address Muniz's remaining claims that the verdict was inadequate and inconsistent due to a failure to award for past loss of function of the body.

We therefore affirm the jury's finding of causation, reverse the damage portion of the verdict and remand for a new trial on the issue of damages only. Costs of this appeal are to be split equally between the parties.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

No. 98-1837. [1999-105 (9-292)] MUNIZv. BRAMON

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge. **AFFIRMED IN PART, REVERSED IN PART AND REMANDED.** Heard by Sackett, C.J., and Vogel and Zimmer, JJ. Opinion by Vogel, J.

(5 pages $2.00)

Aurora Muniz appeals from a jury verdict on her claim for injuries and damages arising out of an automobile collision. The jury found that both parties were 50% at fault and awarded Muniz past medical expenses and past physical and mental pain and suffering. **OPINION HOLDS:** ***Damages.*** Muniz argues that the verdict was inconsistent because the jury failed to award her damages for lost wages. She asserts the evidence is uncontroverted that she was employed full-time at the time of the accident and has not worked since. The record indicates that the date at which Muniz could return to work was disputed at trial. However, the emergency room records stated that Muniz "was given a work note excusing her from work, to return to work on May 31, 1997." Although the accident occurred on her day off, her uncontroverted testimony revealed that she worked 40 hours per week on a 3 p.m. to 12 a.m. shift. The jury's failure to award *any* damages for lost wages, even assuming the absolute first release date of May 31st, ignores the evidence of at least *some* lost wages. Therefore, the jury's verdict is in part unsupported by the evidence and inconsistent with the award of medical damages. We conclude that the jury's failure to award lost wages requires reversal of the entire damage award. We therefore affirm the jury's finding of causation, reverse the damage portion of the verdict and remand for a new trial on the issue of damages only.