IN THE COURT OF APPEALS OF IOWA

No. 2-164 / 91-999

FILED
AUG 27 1992
CLERK SUPREME COURT

MARK R. RICE,

Plaintiff-Appellee,

vs.

NORWEST LEASING, INC.,

Defendant,

and

FOLEY CONSTRUCTION CO. and GARY RAY SCHNECKLOTH,

Defendants-Appellants.

Appeal from the Iowa District Court for Scott County, James R. Havercamp, Judge.

Defendants appeal a district court order granting Mark Rice a new trial on all issues based primarily on an inadequate award of damages. **AFFIRMED.**

Craig A. Levien and Vicki L. Seeck of Betty, Neuman & McMahon, Davenport, for appellants.

C.J. Munson of Munson, Woods & Franks, Bettendorf, for appellee.

Considered by Schlegel, P.J., and Hayden and Sackett, JJ.

HAYDEN, J.

Mark Rice, a roofer at Economy Roofing in the Quad City area, was riding his bicycle from work at approximately 6:15 a.m. on August 22, 1989. Rice was riding on the right-hand side of a four-lane highway. Gary Schneckloth, an employee of Foley Construction, was driving a pickup truck owned by Norwest that morning and approached Rice from the rear. As Schneckloth passed Rice, it appeared the side mirror of Schneckloth's truck struck Rice on the shoulder and knocked him to the ground. Rice suffered several bruises and abrasions as well as a fractured left scapula. About one month after the accident, Rice informed his doctor he had lost his senses of taste and smell.

In April 1990 Rice filed a petition seeking damages for his injuries. Eventually, the case proceeded to trial against Schneckloth and Foley Construction.

During trial the defendants sought to introduce evidence of previous cocaine use by Rice. The defendants argued Rice's claimed loss of taste and smell may have resulted from prior cocaine use. The district court found the evidence inadmissible, noting the defendants' allegations were pure speculation, lacking in probative value, and approaching character assassination. Also, other medical evidence indicated head trauma was the cause of Rice's loss of the senses of smell and taste.

Rice presented evidence his medical bills arising out of the accident totaled about $2695.11. Rice claimed lost earnings of approximately $4061.85.

The case then proceeded to the jury. The district court gave a comparative fault instruction. After its deliberations, the jury assessed Rice's fault at forty percent and the defendants' fault at sixty percent. The jury then assessed Rice's damages at $2281.61 for past medical expenses, $2843.39 for past lost earnings, $2000 for past injuries and pain and suffering, and $12,000 for future pain and suffering.

Following the jury verdict, Rice filed a motion for new trial or for additur. Rice also filed a motion for judgment notwithstanding verdict. Rice argued the damages awarded were inadequate and the jury improperly assessed fault. After due consideration, the district court granted Rice's motion for new trial as to both liability and damages. The court found the jury's assessment of damages wholly inadequate given the seriousness of Rice's injuries. The defendants have filed this appeal.

The defendants contend the trial court (1) abused its discretion by granting Rice's motion for a new trial and ordering a new trial on both liability and damages, and (2) erred in failing to admit testimony concerning Rice's prior use of cocaine.

The inadequacy of damages can be the basis for setting aside a jury verdict and granting a new trial. Iowa R. Civ. P. 244(d); Householder v. Town of Clayton, 221 N.W.2d 488, 492 (Iowa 1974) (citations omitted). The district court has considerable discretion in ruling on a motion for

new trial on the ground of the inadequacy of a verdict. Householder, 221 N.W.2d at 493; Iowa R. App. P. 14(f)(4). Generally, damages should be commensurate with the injury and be sufficient to right the wrong done to the injured party. Iowa Rule Civ. P. 244(d); Householder, 221 N.W.2d at 493. We are more reluctant to interfere with the grant of a new trial than its denial. Iowa R. App. P. 14(f)(4); Kiner v. Reliance Insurance Co., 463 N.W.2d 9, 13 (Iowa 1990); Riley v Wilson Concrete Co., 184 N.W.2d 689, 690 (Iowa 1971). We will not find an abuse of discretion unless evidence shows the district court exercised its discretion in a clearly untenable or clearly unreasonable manner. State v. Brumage, 435 N.W.2d 337, 341 (Iowa 1989).

Generally, new trials will be granted on all issues of a case and seldom on the issue of damages only, except when liability of a defendant is definitely established. Householder, 221 N.W.2d at 493 (citations omitted). When it appears from the jury award there was a compromise on the issue of liability, a new trial should be granted on all the issues. Id. The general rule is:

> A new trial should never be ordered on the question of damages alone when there is ground for a strong suspicion or inference that the jury awarded . . . inadequate damages to plaintiff as a result of a compromise involving the question of liability.
>
> [A]n inference that the verdict is the result of a compromise may be drawn from the inadequacy of damages awarded in view of the evidence . . . .

66 C.J.S. New Trial § 11(5) (1950). The fact there was a conflict of evidence as to the issue of liability and the verdict did not bear a relationship to the injuries sustained by Rice raises an inference the damages award was the result of a compromise. We affirm the district court's order granting a new trial on all issues.

The second issue on appeal is the admissibility of evidence showing an accident victim's use of illegal drugs five years ago. Defendants urge the evidence concerning Rice's past drug use is admissible because it is relevant to the issue of causation and to the value Rice places on the ability to taste and smell.

Rice objected to the admission of this evidence as being irrelevant and unfairly prejudicial. Rice contends he has not used illegal drugs in the last five years.

Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Iowa R. Evid. 401. Relevant evidence, however, is not admissible "if its probative value is substantially outweighed by the danger of unfair prejudice." Iowa R. Evid. 403. Issues of relevancy and prejudice are usually left to the discretion of the district court; we reverse the district court only when we find a clear abuse of that discretion. Shawhan v. Polk County, 420 N.W.2d 808, 809 (Iowa 1988) (citing State v. Roth, 403 N.W.2d 762, 765 (Iowa 1987)).

We hold the evidence of Rice's prior drug use is not relevant to any material issue and is highly prejudicial. There was no showing Rice's prior use of illegal drugs had any relation to his loss of the senses of taste and smell. The evidence is too speculative and would only cause confusion for the jury. The district court did not abuse its discretion in refusing to admit this evidence. We affirm on this issue.

AFFIRMED.