IN THE COURT OF APPEALS OF IOWA

No. 9-485 / 89-374

FILED
NOV 27 1989
CLERK SUPREME COURT

146

CHERYL GARDNER,

Appellant,

vs.

KEITH RICHARD PAULSEN,

Appellee,

and

WILLIAM LEROY BELCHER; RUAN LEASING COMPANY, A Division of Ruan Financial Corporation; and BRAYTON LEASING COMPANY,

Defendants.

Appeal from the Iowa District Court for Linn County, William L. Thomas, Judge.

In a negligence action arising from a car-truck collision, the plaintiff recovered a verdict for $10,000. She has appealed from the judgment and contends the damage award was inadequate as a matter of law. **AFFIRMED.**

John L. Kuehnle of Sebesta & Kuehnle, Mechanicsville, and David L. Baker of Riccolo & Baker, P.C., Cedar Rapids, for the appellant.

John K. Von Lackum of Elderkin & Pirnie, Cedar Rapids, for the appellee.

Heard by Oxberger, C.J., and Donielson and Hayden, JJ.

DONIELSON, J.

Cheryl Gardner, a passenger in a car, was injured in a car-truck collision. She suffered a severe broken ankle and other minor injuries. Gardner was hospitalized for three days and was off work for approximately three months following the accident. She sustained lost wages of $4303.74 and medical expenses of $3134.32. Her physician testified she had sustained a permanent partial disability rating of sixteen percent of the body as a whole. She expects to suffer pain and reduced leg function in the future.

Gardner filed this suit against the driver of the car in which she was riding, Keith Paulsen, and against the driver and owners of the truck. The jury returned a verdict finding Paulsen one hundred percent at fault and awarding Gardner damages of $10,000.

Gardner has appealed from the judgment in her favor against Paulsen. She contends the amount of damages awarded by the jury was inadequate as a matter of law. She contends the district court should have awarded her a new trial on this ground. Our review of this action is for errors at law. Iowa R. App. P. 4.

An inadequate damage award merits a new trial as does an excessive one. Witte v. Vogt, 443 N.W.2d 715, 716 (Iowa 1989). The trial court has considerable discretion in ruling on a motion for a new trial on the ground of the

inadequacy of a verdict. Miller v. Eichorn, 426 N.W.2d 641, 643 (Iowa App. 1988). The question of whether damages in a particular case are inadequate turns on the particular facts of that case. Witte, 443 N.W.2d at 716.

Gardner's main contention is that, assuming the jury awarded her all of her undisputed special damages (lost wages and medical expenses), they only awarded her $2,561.94 to compensate her for her permanent disability and pain and suffering. In jury trials, controverted fact issues are for the jury to decide, Northrup v. Miles Homes Inc. of Iowa, 204 N.W.2d 850, 861 (Iowa 1973). Assessing damages is peculiarly a function of the jury, and a jury ordinarily should be allowed to settle fact disputes on damage issues. Collier v. General Ins. Corp., 431 N.W.2d 189, 191 (Iowa App. 1988).

A review of the record in this case reveals Gardner was able to resume most of her preaccident employment and recreational activities, albeit with moderation and some modification depending upon the activity. In addition to the deposition testimony of her doctor regarding her physical condition, Gardner demonstrated for the jury what level of flexibility and mobility she retained in her injured ankle. It is possible this physical demonstration, along with the evidence that Gardner has essentially resumed a normal life-style, may have influenced the jury to award her less compensation for her pain and suffering and loss of function.

While the evidence in this case could have sustained a larger verdict, "[o]ur task is to determine whether the trial court abused its discretion in not granting a new trial in light of the award made, not whether a higher verdict would have been justified." Young v. Gibson, 423 N.W.2d 208, 210 (Iowa App. 1988). The amount of the verdict bears a reasonable relationship to the loss suffered in this case. See Witte, 443 N.W.2d at 716. The verdict does not appear to have been influenced by passion or prejudice, and it is sustained by sufficient evidence. Iowa R. Civ. P. 244(d),(f). We cannot find the trial court abused its discretion in denying Gardner's motion for a new trial. The decision of the trial court is affirmed.

AFFIRMED.