FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-98 / 89-777

DAVID THIES,

Appellant,

vs.

DENA MICHELLE ZENTI and BEN ZENTI,

Appellees.

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Appeal from the Iowa District Court for Polk County, Rodney Ryan, Judge.

A jury awarded appellant $29,974 for injuries he received from an automobile accident. The jury determined defendants 100% at fault. Plaintiff appeals. **AFFIRMED.**

David S. Wiggins of Marcucci, Wiggins & Anderson, P.C., West Des Moines, for appellant.

Harry Perkins III and Douglas A. Haag of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, Des Moines, for appellees.

Heard by Donielson, P.J., and Hayden and Habhab, JJ.

PER CURIAM

This litigation arose from an auto accident on March 6, 1987. David Thies was injured when his car collided with a vehicle driven by Dena Zenti and owned by Ben Zenti. His claim for damages included permanent injuries and loss of earning capacity.

Thies had been involved in an earlier auto accident on August 29, 1986. He commenced a law suit for personal injury damages he allegedly incurred from this prior accident on May 27, 1987. His claim for damages from the 1986 accident included permanent injury and loss of income through March 1987.

In the present case, the jury found the Zentis were 100% at fault and awarded Thies damages of $29,978. Thies has appealed from the judgment in his favor. We affirm.

At trial one of the Zentis' defense strategies was to suggest that some of the Thies' alleged permanent injuries and lost wages arose from the 1986 auto accident. Thies denied this, testifying that at the time of the Zenti accident he had completely recovered from all injuries suffered in the first accident. In response, the Zentis offered evidence Thies had filed a lawsuit arising from the first accident in which he asserted claims for permanent injury. The court allowed this evidence for the limited purpose of impeaching Thies' testimony that at the time of the Zenti accident he had completely recovered from all injuries suffered in the first accident. Thies then sought

to present evidence that he had settled the first lawsuit for $20,000. His theory was this settlement figure was low enough to suggest to the jury in the present suit he had not been compensated for any permanent injuries in his settlement of the first suit. The district court excluded Thies' proposed evidence he had settled the first suit for only $20,000.

Thies presents two issues for our determination:

1. He claims the trial court erred by excluding his proposed evidence he had settled his first lawsuit for $20,000.

2. He claims the trial court erred by instructing the jury future damages must be reduced to present value.

Our scope of review is upon assigned error. Iowa R. App. P. 4.

I.

In the present litigation Thies' testimony included he had not suffered any permanent injury from the first accident. He had settled not for a great deal of money as there was no permanent injury involved. He was healed completely and not suffering from any symptoms on March 6, 1987, that related back to his 1986 accident. After the first accident he was able to work in December 1986 and January and February 1987 but he could not work after the second accident.

After the above testimony was offered by plaintiff in his direct examination, the trial court permitted defendants to offer evidence about the claims plaintiff had for permanent injury and loss of income in the first lawsuit. This was done by defendants' cross-examination of plaintiff. Before this evidence was offered, the trial court admonished the jury as follows: "This evidence is only to be considered by you as it may bear upon the witness's credibility and as it is offered to show an admission against interest and should be considered for no other purpose."

Appellant does not contest the admission of this evidence but complains the trial court excluded his evidence as to the amount of settlement he received in the first litigation.

> As a general rule the amount paid in settlement should never be submitted. That figure itself may have little relation to the actual damages of a plaintiff, since it may reflect a compromise, the evaluation of a defendant's potential liability, and any other factors not relevant to a jury's consideration of actual monetary damages.

Gail v. Clark, 410 N.W.2d 662, 672 (Iowa 1987) (citations omitted).

> [S]uch evidence is admissible when offered to prove a fact other than liability. . . . The decision whether to admit such evidence for other purposes is committed to the discretion of the trial court. . . . The importance of informing the jurors fully so that they can carefully judge the credibility of each witness in making their fact determination may in some situations outweigh the desire to encourage settlements. But this choice must be made in the first instance by the trial judge.

Id. at 671 (citations omitted).

It was proper for the jury to consider those prior statements in assessing the credibility of the plaintiff's testimony. The trial court admonished the jury to consider this testimony only for purposes of assessing the plaintiff's credibility. Plaintiff "opened the door" on this area of inquiry by asking about the claims for damages he had made in the first lawsuit.

> Even relevant evidence may be excluded when its probative value is substantially outweighed by prejudice to the opposing party, confusion of issues, or considerations of waste of time.

Id. at 672.

We hold the trial court did not abuse its discretion in making these evidentiary rulings.

II.

We affirm the trial court on appellant's second claim in this appeal. The trial court did not err in instructing the jury future damages must be reduced to present value.

Appellant claims Iowa has not settled the controversial issue of whether a jury should apply the present value rule. On the contrary we do not consider it a controversial issue. If so, it is a well-settled principle in Iowa. In 1974 our supreme court held the present value rule has been adhered to by this court as to future damages. An allowance for future damages must be reduced to its present value. Schnebley v. Baker, 217 N.W.2d 708, 727 (Iowa 1974) (citations omitted).

AFFIRMED.