IN THE COURT OF APPEALS OF IOWA

NEIL CURTIS HIRSCHEY,

Plaintiff-Appellant,

vs.

MARGUERITE LESLIE KASTEN,

Defendant-Appellee.

Filed September 29, 1981

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2-65021

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CLERK SUPREME COURT

Appeal from Polk District Court. Anthony M. Critelli, Judge.

Plaintiff appeals the trial court's order for a directed verdict for the defendant for failure to introduce any medical testimony establishing a causal relationship between the automobile accident and the plaintiff's alleged injury. REVERSED AND REMANDED.

Phillip S. Deats, of Whitesell Law Firm, Iowa Falls, Ia., for plaintiff-appellant.

Henry A. Harmon, of Grefe & Sidney, Des Moines, Ia., for defendant-appellee.

Heard by Oxberger, C. J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

Plaintiff appeals the trial court's order for a directed verdict for the defendant for failure to introduce any medical testimony establishing a causal relationship between the automobile accident and the plaintiff's alleged injury. We reverse and remand.

The plaintiff, Neil Hirschey, and the defendant, Marguerite Kasten, were in an automobile accident on October 22, 1976. The accident occurred when Mrs. Kasten failed to obey a stop sign and proceeded through the intersection. The defendant's car struck the plaintiff's car on the left rear quarter panel, causing the plaintiff's car to spin 180 degrees. Mrs. Kasten was issued a citation, to which she plead guilty and paid a fine.

The plaintiff is suing for compensation for the past and future pain, suffering and medical costs he has allegedly sustained from the injury to his knee. Plaintiff attributes his knee injury to being thrown around the interior of his car when it was hit by the defendant's car. Although there was no visible indication of injury to plaintiff's knee, testimony indicated he sought medical treatment for pain and stiffness in his knee and that he was laboring under various degrees of inflexibility and pain after, but not before the accident. The only testimony regarding plaintiff's injury came from the plaintiff and his two friends. Medical testimony on the plaintiff's condition was not offered.

The trial court granted the defendant's motion for a directed verdict against the plaintiff at the close of the plaintiff's case. The trial court found, as a matter of law, plaintiff had failed to establish a causal connection between his knee injury and the accident because of his failure to introduce medical testimony concerning his injury.

This appeal presents two issues, whether submission of the issue of proximate cause of the plaintiff's knee injury to the jury was precluded by the plaintiff's failure to introduce expert testimony on causation, and whether plaintiff's evidence regarding medical expenses should have been admitted. Our review is limited to correction of errors at law. Iowa R. App. P. 4.

The proximate cause of an injury is usually a jury question. Iowa R. App. P. 14(f)(10). A directed verdict may only be granted on the issue of proximate cause where the facts are clear and undisputed and their relation to cause and effect so obvious that only one conclusion can be fairly drawn from the facts. Oak Leaf Country Club, Inc. v.

Wilson, 257 N.W.2d 739, 746 (Iowa 1977). In essence, only when the proximate cause becomes a question of law, rather than of fact, may a directed verdict be ordered on the issue. Id. The issue becomes a question of law only where the facts are undisputed, and minds of reasonable people are inevitably led to the same conclusions and draw the same inferences. 75 Am. Jur. Trials §§ 336, 342.

In the case at bar, we conclude the plaintiff introduced sufficient evidence to give rise to a question of fact to be decided by the jury. Generally a plaintiff is competent to describe the injuries received and to testify to their character and extent. 22 Am. Jur.2d, Damages §305 at 404; see e.g Daniels v. Bloomquist, 258 Iowa 301, 308, 138 N.W.2d 868, 875 (Iowa 1965): Carradus v. Lange, 203 N.W.2d 565, 567 (Iowa 1973); Judd v. Rudolf, 207 Iowa 113, 116, 222 N.W. 416, 418 (Iowa 1928): Landgon v. Ahrends, 166 Iowa 636, 640, 147 N.W. 940, 943 (Iowa 1914). Once a witness' statements are admitted, the jury has the duty to determine the credibility of the witness and to weigh the obviously self-serving statements of the plaintiff-witness. In this case, the plaintiff testified that before the accident his knee was uninjured, but after the accident, his knee was causing him pain and stiffness. His condition motivated him to seek medical treatment after the accident. Two witnesses testified that the plaintiff suffered stiffness and pain after the accident but that they had not noticed any of those symptoms in the plaintiff before the accident. The plaintiff testified that he was thrown about the interior of the car upon impact with the defendant's car, causing him to bang his knee into the door. He contends that since he was not showing signs of injury before the accident, that he was in fact involved in an accident and that he felt pain and stiffness only after the accident, one logical inference from those assertions would be that the accident caused the plaintiff's injury. We agree with the plaintiff.

On the narrow issue of whether there was sufficient evidence to engender a jury question on causation, we hold there was, and the trial court erred in not submitting the question to the jury. In arriving at the conclusion, we consider the evidence in the light most favorable to the plaintiff and make no judgments of the credibility of the witnesses. Becker v. D. & E. Distributing Co., 247 N.W.2d 727, 729-30 (Iowa 1976). All we need to reach our decision is evidence indicating a likelihood of a causal connection between the plaintiff's injury and the accident. Nicholson v. City of Des Moines, 245 Iowa 270, 285, 60 N.W.2d 240, 248 (1953). We find sufficient evidence from which a reasonable inference that the cause of the plaintiff's injury was probably the accident could be made. We cannot say, as a matter of law, that no reasonable juror could have

concluded that the plaintiff's knee injury was not caused by the collision of the defendant's car with the plaintiff's. We leave for the jury on remand, the questions of credibility of the witnesses, the existence of an actual injury to the plaintiff, negligence on the part of the defendant and a causal relationship between the defendant's negligence and the plaintiff's injury.

Implicit in our holding is a rejection of the notion that expert medical testimony on the cause of a subjective injury is required to prevent having a directed verdict granted for the defendant on past or present pain and suffering damages. We are dealing with an injury that has not physically manifested itself to anyone, thus, raising the possibility of a feigned injury. The plaintiff is seeking damages for past pain and suffering attributable to that subjective injury, which he alleges is a direct product of the defendant's negligence. To ultimately prevail in his action, the plaintiff must prove the defendant's negligence, the existence of an injury and the causal link between the two. The existence of negligence is a jury issue turning on factual determinations. Wirtanen v. Provin, 293 N.W.2d 252, 257-58 (Iowa 1980); Iowa R. App. P. 14(f)(10). The existence of an injury in this case is primarily a question of the credibility of the witnesses for the plaintiff since the injury is not apparent. Jette v. Healy, 245 Iowa 294, 297-98, 60 N.W.2d 541, 543 (Iowa 1953); 81 Am. Jur.2d, Witness § 658 at 659-60. For there to be a question on the causation issue, there must appear from the evidence that the plaintiff could have been injured, in the manner and degree as alleged, by being tossed about the interior of his car when it was struck by the defendant's car. Becker v. B. & D. Distributing Co., 247 N.W.2d 727, 731 (Iowa 1976). If there was not sufficient evidence to establish an inference of the likelihood of causation, the issue will not be submitted to the jury. Since only nonexpert testimony was introduced on the issue of causation, we must detemine whether such evidence is sufficient to create the requisite likelihood of causation to engender a jury question.

This question is "not wholly scientific or of such nature as to render valueless any opinion but that of an expert", and therefore, expert testimony is not necessary. 31 Am. Jur.2d, Expert and Opinion Evidence § 99 at 620-21; see e.g. Suddeth v. City of Boone, 121 Iowa 258, 261, 96 N.W. 833, 854 (Iowa 1903). This is not a case like Mabrier v. A. M. Servicing Corporation of Raytown, 161 N.W.2d 180 (Iowa 1968), in which the plaintiff's injury was objective but medical testimony on the issue of causation was nonetheless

required even though the injury physically manifested itself in the plaintiff. In Mabrier, the plaintiff's lingering condition was not the type of injury that was within an average person's library of common experiences. Id. at 182-83. The inference that a person can sustain an injury, which causes pain and stiffness, from being tossed about the interior of a car during an accident, however, is within the realm of the usual or ordinary experiences of the average person. Therefore, expert testimony to the effect that being jossled in a car accident could cause an injury resulting in present pain would not be a necessity. Accord, Suddeth v. City of Boone, 121 Iowa 258, 261, 96 N.W. 853, 854 (Iowa 1903); 31 Am. Jur.2d, Expert and Opinion Evidence § 99 at 620-21; see also Johnson v. Bender, 369 N.E.2d 936, 940 (Ind. App. 1977); Jackson v. Navik, 37 Ill. App. 88, 93, 346 N.E.2d 116, 122 (Ill. App. 1976); Stahlberg v. Moe, 283 Minn. 78, 82, 166 N.W.2d 340, 345 (Minn. 1969); City of Cedarburg Light and Water Commission v. Allis Chalmers, 33 Wis.2d, 560, 564, 148 N.W.2d 13, 16 (Wis. 1967); Cackowski v. Jack A. Halprin, Inc., 133 Conn. 631, 635, 53 A.2d 649, 651 (Conn. 1947). Once the causal link is found, however, the burden is upon the jurors to weigh the testimony and consider the witnesses' veracity in order to determine the actual existence of past injury and pain when there is no external manifestation of injury. Necessarily, given our decision, it was error for the trial court to prevent admission of the plaintiff's bills for past medical treatment.

The trial court is reversed and the cause remanded for a new trial on plaintiff's claim.

REVERSED AND REMANDED.