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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

SHARON ANN MYERS,)

Plaintiff-Appellee,) Filed November 22, 1978

vs.)

ARLEN ORVILLE ZUNKEL,) 694
2-61543

Defendant-Appellant.)

Appeal from Boone District Court - M. D. Seiser, Judge.

Defendant in negligence action appeals from portion of final judgment awarding punitive damages. Affirmed.

Jerry L. Jones, of Ames, counsel for appellant.

Kirke C. Quinn, of Doran, Doran, Courter & Quinn, of Boone, counsel for appellee.

Submitted to Oxberger, C. J., Donielson, Snell and Carter, JJ.

DONIELSON, J.

This is an action for personal injuries sustained when the motorcycle on which plaintiff Sharon Myers was riding was hit by a car driven by defendant Arlen Zunkel. Zunkel admitted liability for Myers' injuries prior to trial, and the sole issue before the trial court was the proper measure of damages. The primary issue on appeal is whether an award by the trial court of $25,000 in punitive damages was proper.

The accident occurred on the evening of June 28, 1976, when the 1975 Cadillac driven by Zunkel crossed the center line of the highway and struck the motorcycle on which Myers was a passenger. Myers sustained severe and permanent injuries that resulted in the amputation of her left foot.

Zunkel did not stop at the scene of the accident, and when arrested an hour later, stated he was not aware that he had been in an accident. The arresting officer believed from his observations that Zunkel was intoxicated, and Zunkel admitted that he had been drinking. A blood test administered shortly thereafter revealed that Zunkel had a blood alcohol level of .286. Section 321.281, The Code 1977, lists a blood alcohol level of more than .100 as presumptive evidence that a defendant in a criminal cause is under the influence of an alcoholic beverage.

The defendant contends that there was insufficient evidence to support the award of punitive damages based upon his intoxication at the time of the collision. There was some dispute whether Zunkel had conceded liability for punitive damages before trial. Because of this, the trial court awarded punitive damages specifically "on the basis of the facts and circumstances which were introduced into evidence during the trial." We agree that these were sufficient to support the award.

In Sebastian v. Wood, 246 Iowa 94, 66 N.W.2d 841 (1954) the main purpose of punitive damages was discussed as punishment and effective deterrence preventing similar future offenses. The supreme court in **Sebastian** held that punitive damages could be recovered for injuries caused by drunken driving even though no actual malice exists. It is enough if the plaintiff is injured by "malice, oppression, wantonness, recklessness or gross negligence." 246 Iowa at 101. The type of act that will sustain an award for punitive damages is one done in such a manner and under such circumstances

as to show heedlessness and utter disregard and abandonment as to what result may flow. Northrup v. Miles Homes, Inc., 204 N.W.2d 850, 859 (Iowa 1973).

Zunkel spent a good portion of the afternoon and evening of June 28, 1976 drinking, at a time when he was upset over his father's health. After voluntarily rendering himself unfit to operate a car properly, he undertook to drive his Cadillac, a potentially lethal machine, down a well-traveled highway. He crossed not only the center dividing line of the highway but most of the opposing lane to strike the motorcycle. The motorcycle, its driver, and the passenger, Myers, were thrown skidding into different directions. Zunkel did not stop to see if there were injuries or render aid. When he was arrested later, the left front of his car was damaged and blood and tissue from Myers was seen on the metal. Yet Zunkel stated he did not know he had been involved in an accident.

We believe that Zunkel's negligent manner of driving coupled with his intoxication was sufficiently offensive to sustain the award of punitive damages. We find support for this in **Sebastian** and in cases from numerous other jurisdictions, including Miller v. Blanton, 213 Ark. 246, 210 S.W.2d 293 (1948); Infeld v. Sullivan, 151 Conn. 506, 199 A.2d 693 (1964); Harrell v. Ames, 265 Or. 183, 508 P.2d 211 (1973); Dorn v. Wilmarth, 254 Or. 236, 458 P.2d 942 (1969); Focht v. Rabada, 217 Pa. Super. 35, 268 A.2d 157 (1970). See Annot., 65 A.L.R. 3d 656 (1975). There was no error in awarding punitive damages.

Defendant also contends on appeal that the trial court erred in permitting plaintiff's witness Dr. Robert Baughman to testify as to the effect of a given blood alcohol level upon the human nervous system and brain. Dr. Baughman's qualifications to testify concerning the analysis of blood specimens for alcohol level were stipulated to by both parties, but objection was made as to the lack of proper foundation when plaintiff questioned Dr. Baughman on the physiological effects of alcohol on the human body. After Dr. Baughman testified further as to his qualifications, the objection was overruled, and he was allowed to testify in a limited way. We find this was not an abuse of discretion on the part of the trial court, and there was no error. Rasmussen v. Thilges, 174 N.W.2d 384, 387 (Iowa 1970). The trial court noted that the foundation was "thin", but was sufficient to allow the testimony to be admitted. The question then became one of the weight and credibility of the opinion, not its admissibility.

Dougherty v. Boyken, 261 Iowa 602, 155 N.W.2d 488 (1968). When Dr. Baughman was questioned as to standard treatises or writings supporting his opinion, defendant's objections were sustained. The trial court appeared to give little weight to his testimony. We find no abuse of discretion in admitting Dr. Baughman's testimony. Hoyt v. Chicago, R. I. & P. R. Co., 206 N.W.2d 115 (Iowa 1973).

AFFIRMED.