

IN THE COURT OF APPEALS OF IOWA

FILED

NOV 20 1984

CLERK SUPREME COURT

ELENORE HECKATHORNE,)

Plaintiff-Appellant,)

Filed November 20, 1984

105

vs)

4-409

83-1389

HAROLD ARTHUR GERARD,)

Defendant-Appellee.)

Appeal from the Iowa District Court for Webster County-R. K. Richardson,
Judge.

Plaintiff appeals from a judgment in her favor claiming that her damage
award was inadequate. AFFIRMED.

David A. Opheim, of Kersten, Opheim, Carlson & Trevino, Ft. Dodge, and
Caroll Wood, Webster City, for plaintiff-appellant.

Allan L. Goode, of Price, Goode, Breen & Breen, Ft. Dodge, and Neven
Mulholland, of Johnson, Erb, Latham & Gibb, Ft. Dodge, for defendant-appellee.

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

Plaintiff was a passenger in a vehicle that was struck head-on by an automobile owned and operated by the defendant. Plaintiff filed suit against the defendant alleging defendant was negligent in the operation of his vehicle and claiming that as a result of said negligence she suffered personal injuries. The matter came on for trial before the court. The trial court found in favor of the plaintiff and entered judgment in her behalf for \$4,789.79.

Plaintiff has appealed contending the award was inadequate because (1) it was induced by an erroneous application of the law and (2) it was not supported by the evidence.

L. Whether the verdict was induced by an erroneous application of the law.

The plaintiff claimed medical expenses, head and knee injuries. The award of the trial court compensated her for these expenses and injuries. In addition, plaintiff sought to prove that as a result of the accident she suffered an aggravation of an arthritic condition.

The trial court's findings provided in part:

"As the result of this accident, the plaintiff has incurred medical expenses and has received head injuries; but the evidence concerning the aggravation of the arthritic condition, if in fact there was an aggravation of the arthritic condition, was the result of this accident. The plaintiff, however, would be entitled to damages to her head and knees as a result of the accident and for the medical expenses incurred."

The plaintiff claims that in these findings the trial court found that the arthritic condition was caused by the accident and then failed to award her any compensation for the aggravated arthritic condition.

The findings of the trial court are not completely clear. Any ambiguity in the trial court's findings is resolved in favor of the judgment. Eldridge v. Herman, 291 N.W.2d 319, 321 (Iowa 1980). A fair reading of the court's findings is that the trial court concluded that plaintiff's arthritic condition is not casually related to the accident. The trial court found the plaintiff to be entitled to

damages for her head and knee injuries. The amount of the verdict is in concert with such an award. There is no basis for plaintiff's contention that the verdict was induced by an erroneous application of the law.

II. Whether the findings of the trial court were supported by the evidence.

Plaintiff further claims that the findings of the trial court were not supported by substantial evidence. Plaintiff's argument here is directed toward the trial court's failure to award her damages for the arthritic condition.

"[T]rial court's finding of facts are equivalent to the special verdict of a jury; if supported by substantial evidence they will not be disturbed; we view the evidence in the light most favorable to the judgment, whether contradicted or not; the findings of the trial court are to be broadly and liberally construed, rather than narrowly or technically, and in case of ambiguity, they will be construed to uphold, rather than defeat the judgment. These principles do not preclude inquiry into whether trial court applied erroneous rules of law which materially affected its decision. We are not bound by trial courts determinations of law." Farmers Insurance Group v. Merryweather, 214 N.W.2d 184, 186-87 (Iowa 1974)(citations omitted).

The evidence here will be set forth in the light most favorable to the judgment. Plaintiff received head and knee injuries in the accident. She was taken by police car to the emergency room at Trinity Regional Hospital, treated and released. By her own testimony, her upper back did not begin hurting until three or four weeks after the accident. She was employed at the time of the accident as a typist. She was still so employed at the time of trial. She testified she had a good work record and other than trips to the doctor has missed no work attributable to the accident. Two weeks prior to this accident plaintiff was driving a car that slid into a utility pole. Dr. Lee, plaintiff's treating physician, testified that she suffered from an arthritic condition that was aggravated. The doctor testified he projected that the injury was related with the car accident in question."

It is difficult to determine if Dr. Lee testified that he could establish with reasonable medical certainty that this accident aggravated plaintiff's arthritic condition. However, even if the doctor so testified, the trial court, as a trier of fact, is free to reject evidence even if it is uncontroverted. Waddell v. Peets Feeds, Inc., 266 N W 2d 29, 31 (Iowa 1978).

The trial court's findings are further supported by testimony of Dr. Lee that an accident other than this one could have been an aggravating factor, and medical evidence presented by the defendant which contradicted the testimony of Dr. Lee.

We affirm the trial court.

AFFIRMED