FILED
SEP 29 1992
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-406 / 91-1802

65

LAWRENCE A. BECKER,

Plaintiff-Appellant,

vs.

MERCY MEDICAL CENTER, An Iowa Corporation,

Defendant-Appellee.

Appeal from the Iowa District Court for Linn County, William R. Eads, Judge.

Lawrence Becker appeals a district court decision overruling his motion for a conditional new trial. **AFFIRMED.**

Robert B. Fischer of Fischer Law Firm, Vinton, for appellant.

Edward M. Blando and Tamra L. Mitchell of Elderkin & Pirnie, Cedar Rapids, for appellee.

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

PER CURIAM

Plaintiff-appellant Lawrence A. Becker appeals contending the trial court should have ordered a conditional new trial in his personal injury action. We affirm.

Plaintiff fell and fractured his hip in the parking lot of defendant-appellee Mercy Medical Center. The plaintiff sued contending his fall was the result of the defendant's negligence in maintaining the parking lot. The jury returned a verdict finding the plaintiff was fifty percent at fault and the defendant was fifty percent at fault. The jury found that the defendant had been damaged in the amount of his medical expenses of $11,977.25. The jury made no award for future medical expenses, loss of body function, or past or future pain and suffering.

The plaintiff filed what was captioned a "Conditional Motion for New Trial". Plaintiff's motion asked that the trial court grant him a conditional new trial for determination by the trial court of future medical expenses, loss of function of the body, and damages for past and future pain and suffering. The trial court overruled the motion.

Plaintiff has appealed contending he should be granted a conditional new trial where the trial court or a jury would determine an appropriate amount for future medical expenses, loss of function of the body, and past and future disability and suffering. Plaintiff does not seek a total

new trial on the liability issue or medical expense issue. Rather, the plaintiff seeks to retain the verdict he has received but asks that the trial court or a jury be directed to fix damages for future medical expense, loss of function of the body, and damages for past and future pain and suffering. The plaintiff admits there is no Iowa authority supporting his position. Plaintiff contends, however, we should establish authority for such a position.

The plaintiff relies in part on Cowan v. Flannery, 461 N.W. 2d 155 (Iowa 1990). However, Cowan does not address the issue the plaintiff has raised. While Cowan may have paved the way for the plaintiff to be granted a new trial under the facts here, plaintiff made it very clear in his brief and on oral argument that he does not want a new trial. Plaintiff only wants the trial court or a jury to be directed to fix additional damages.

We review for an abuse of discretion. See Fournier v. Fraternal Order of Eagles Waterloo Aerie No. 764, 368 N.W.2d 849, 852 (Iowa App. 1985).

Generally a new jury trial is on both the issue of liability and the issue of damages. See Householder v. Town of Clayton, 221 N.W. 2d 488, 493 (Iowa 1974). Here, the issue of liability was strongly contested. An additur may be allowed only when damages are undisputed or liquidated, or the damages are fixed by law, or where the amount may be determined by mathematical calculation.

There is no record of an Iowa court awarding an additur for unliquidated damages.

We affirm.

AFFIRMED.