



169

IN THE COURT OF APPEALS OF IOWA

DONNABELLE FISHER, ALFA A.
FISHER, JULIE FISHER and
LINDA DICKSON,

Appellees,

vs.

LOWELL H. WOELBER and
RUSSELL F. WOELBER,

Appellants.

November 10, 1977

291
2-57135

Appeal from Woodbury District Court - C. F. Stilwill, Judge.

Defendants appeal the trial court's granting a new trial to plaintiffs on the ground of inadequacy of damages awarded. - Affirmed.

Margolin, Goldblatt, Stienstra & Ryan, Sioux City, for Appellees.

Yaneff & Cosgrove, Sioux City, for Appellants.

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

PER CURIAM

Defendants Lowell and Russell Woelber appeal the trial court's order granting plaintiffs a new trial in an action for injuries sustained as a result of an automobile accident. Initially each plaintiff commenced a separate action against the defendants, but the cases were consolidated for trial.

Plaintiff Donnabelle Fisher was the driver of the automobile at the time of the accident. She sought to recover for personal injuries she sustained. Her two daughters, plaintiffs Linda Dickson and Julie Fisher, were passengers in the automobile at the time of the accident and they also sought damages for personal injuries. Plaintiff Alfa Fisher, Donnabelle's husband, was the owner of the automobile and sought recovery for property damage to his automobile, medical, hospital and surgical expenses incurred by his minor children during their minority and loss of consortium, companionship and society of his wife as a result of the injuries she sustained in the accident. Defendant Lowell Woelber was the owner of the vehicle which collided with the Fisher automobile; defendant Russell Woelber was driving with his permission.

Donnabelle Fisher claimed medical expenses of over \$3300. She also sought damages for past pain and suffering, future pain and suffering and permanent disability. Her daughters' claims were limited by the trial court to pain and suffering. Alfa Fisher sought to recover medical expenses of \$696 incurred in treating his daughters. He also sought compensation for damage to his automobile in the amount of \$434.78 as well as for loss of consortium, companionship and society of his wife, Donnabelle.

The jury returned verdicts finding in favor of Donnabelle Fisher in the amount of \$1000 and in favor of Alfa Fisher in the amount of \$800. However, the jury found against Julie Fisher and Linda Fisher Dickson on their claims for pain and suffering. All plaintiffs subsequently filed motions for new trial based on the inadequacy and inequitable nature of the verdict and alleging that the jury had overlooked the evidence. The trial court granted the plaintiffs' motions and defendants appealed.

On appeal, defendants allege the trial court abused its discretion in granting

plaintiffs' several motions for new trial. In ruling upon motions for new trial, the trial court is vested with a broad but not unlimited discretion in determining whether the verdict effectuates substantial justice between the parties. Rule 14(f)(3), Rules of Appellate Procedure. Further, we are slower to interfere with the grant of a new trial than with its denial. Rule 14(f)(4), R. App. P.

Our task is not to determine whether a higher verdict would have been justified under the evidence, but whether the trial court abused its discretion in granting a new trial because of the inadequacy of the award actually made. *Moore v. Bailey*, 163 N.W.2d 435, 436 (Iowa 1968). Ordinarily the jury should be allowed to settle factual disputes and the verdict should not be set aside simply because the reviewing court would have reached a different conclusion. Precedents in this field are of little value and each case must be decided by relating its own facts to the general principals. *Moore*, supra.

At trial plaintiffs testified concerning the injuries each had sustained and the pain, suffering and discomfort which followed. Dr. Allen Bronson, a doctor of chiropractic, treated plaintiffs and was called as a witness. He characterized the injuries as soft tissue injuries surrounding the spine and neck areas. Bronson further testified that such injuries do not normally appear on an x-ray and that they are primarily subjective in that they cannot be seen but are related to the doctor by the patients.

From a review of the record, we find the trial court did not abuse its discretion in granting a new trial. Donnabelle had over 184 treatments for her spine and neck injuries by Dr. Bronson. Donnabelle was also examined by Dr. William Krigsten, an orthopedic surgeon who hospitalized her and prescribed an orthopedic neck brace. At his request she saw a neurological surgeon who performed a complete neurological-neurosurgical examination and a complete spinal myelogram. The medical bills associated with Dr. Krigsten's examinations were over the \$1000 jury award, excluding Dr. Bronson's charges.

The jury returned a verdict in favor of Alfa Fisher for \$800. The repair bill for the automobile itself was \$434.78. The remaining balance of \$365.22 either represents loss of consortium through Donnabelle's injuries or the medical expenses

incurred in treating his daughter. If it is the latter, it is far short of the almost \$700 of actual expense.

Linda Dickson was treated by Dr. Bronson on 27 occasions for neck and shoulder pains. Julie Fisher testified to injury to the neck and thoracic region. Dr. Bronson treated her 48 times. No damages were awarded either of these plaintiffs.

The trial court found in its ruling on the new trial motions, that although the symptoms are largely subjective, it is doubtful both doctors would have had the plaintiffs under their care unless there was reason to believe that such steps were necessary. Although the jury may take all the testimony into consideration and using their good judgment may draw proper conclusions, they cannot disregard the testimony and arbitrarily fix amounts for which there is no basis in the evidence. *Henrich v. Oppedal*, 248 Iowa 509, 511, 81 N.W.2d 429 (1957).

The trial court did not abuse its discretion in granting new trials.

Affirmed.