FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

MYRON RICHART,	)	Filed April 26, 1983
Plaintiff-Appellant,	)	
vs.	)	2-453 / 2-68252
HAROLD L. FRATZKE,	)	
Defendant-Appellee,	)	
and	)	
DAIRY EQUIPMENT CO.,	)	
Defendant.	)	

Appeal from Benton District Court, August F. Honsell, Jr., Judge.

Plaintiff appeals from the judgment entered on a jury verdict for him in which the jury awarded no damages. AFFIRMED.

Morris L. Eckhart, Vinton, for plaintiff-appellant.

Michael E. Sheehy, Iowa City, for defendant-appellee.

Considered en banc.

PER CURIAM

Plaintiff appeals from the judgment entered on a jury verdict for him in which the jury awarded no damages. We affirm.

Plaintiff is a dairy farmer in Benton County. Defendant Fratzke is a dealer in milking equipment, including the pipeline milking systems manufactured by defendant Dairy Equipment Company. Plaintiff purchased such a pipeline system through Fratzke in 1976. The system, as installed by Fratzke, was plagued by vacuum leaks. Some of the lines were perforated, and plaintiff repaired them at his own expense.

After the system was installed, the level of mastitis infection in plaintiff's dairy herd increased. Plaintiff had the system redesigned twice by experts in pipeline milking systems. The level of mastitis infection in his herd continued to rise, however.

Plaintiff sued Fratzke and Dairy Equipment on theories of breach of implied warranty and negligence. He requested both compensatory and punitive damages. On the issue of compensatory damages, he asserted that he had to cull more cows than normal, that milk production was reduced, and that he incurred additional veterinary expenses. The claim against Dairy Equipment was dismissed before trial.

The case against Fratzke was tried to a jury. Plaintiff presented expert testimony to show that the increased level of mastitis resulted from defects in the design or installation of the equipment. Defendant presented expert testimony which stated that there are many possible causes of mastitis, and that the continuing increase in the disease in plaintiff's herd after the pipeline milking system was altered to correct standards indicates that the system was not the cause.

The court directed a verdict on the punitive damages claim, but submitted the implied warranty and negligence claims to the jury. The jury returned a verdict formwith the verdict for plaintiff signed, but with "none" written in the space provided for the amount of recovery.

Plaintiff moved for a new trial, alleging that the damages awarded were inadequate. The court denied the motion, and plaintiff appeals.

Plaintiff raises two issues on appeal. First, he asserts that the jury's finding of liability included a decision for plaintiff on the element of damages, and failure to award damages is inconsistent with the liability finding. Secondly, he asserts that, since liability was established, the award of no damages was inadequate as a matter of law.

Because this is an action to vacate or modify a judgment of the trial court, our review is on assigned error only. Mishler v. Stouwie, 301 N.W.2d 744, 747 (Iowa 1981).

The first issue that plaintiff raises on appeal is premised upon the misapprehension that a plaintiff is always entitled to recover damages once he establishes liability on the part of defendant. This is not the case. While it is true that a plaintiff must prove damages generally in order to establish liability, it is also true that the damages which the jury may consider for the purpose of establishing liability are not always the same as those which it may consider for the purpose of fixing a recovery amount. If a defendant, through negligent acts, destroys plaintiff's car, the fact that the car was damaged is sufficient evidence of damage to uphold a finding of liability. However, unless plaintiff submits evidence concerning the market value of his car prior to the damage and its present salvage value, he is entitled to no recovery. The jury cannot award damages for which the amounts have not been claimed and proven by the evidence. See Hinrichs v. Mengel, 228 Iowa 1124, 1129 (1940).

In the case before us, the jury could have found that plaintiff suffered pecuinary damages when he undertook the repair of the milking system. This is damage which the jury could have found to be a proximate result of defendant's negligence in installing the system. It is damage which will support a finding of liability on defendant's part. However, plaintiff made no claim for these damages, and the jury could not have considered them in fixing his recovery.

In any event, jury instructions 19 and 20 empowered the jury to return a verdict for plaintiff, but award no recovery. Plaintiff did not challenge these instructions and does not appeal them. The rule followed in this jurisdiction is that jury instructions which are not challenged or appealed become the law of the case. Champlin v. Walker, 249 N.W.2d 839, 842 (Iowa 1977), Tarrell v. Erdmann, 221 N.W.2d 504, 507 (Iowa 1974).

Having established that a verdict for plaintiff does not necessitate awarding him damages, we next turn to the issue of whether the award of no damages in this case was inadequate as a matter of law. The determination as to the amount of damages to be awarded in a particular case is left to the sound discretion of the jury. Woode v. Kabela, 128 N.W.2d 241, 247 (Iowa 1964). It will not be disturbed by this court on the grounds of inadequacy unless the award is so flagrantly small in light of the facts disclosed that it fails to administer substantial justice. Feldhahn v. Van DeVenter, 253 Iowa 1194, 1197 (1962). We do not find this to be the case here.

A review of the testimony in the record indicates that the issue concerning the cause in fact of the increase in mastitis in plaintiff's herd was not definitively resolved. Plaintiff had three witnesses testify that alleged design flaws in defendant's milking system contributed to the increase in mastitis. Defendant's

expert witness, however, testified that the milking system could not have been the cause of the increase in mastitis. The verdict of the jury is not dependent upon the number of witnesses called by each party. The weight accorded to the testimony of each is the controlling factor. See Wiese v. Hoffman, 86 N.W.2d 861, 866 (Iowa 1957). Furthermore, the credibility and weight to be given to each witness's testimony are matters for the jury to decide. See State v. Ragona, 5 N.W.2d 907, 910 (Iowa 1942).

The jury could have believed the testimony of defendant's expert witness, and discounted the testimony of plaintiff's witnesses. From the testimony given, the jury could also have found that plaintiff had mastitis problems with his herd prior to the installation of defendant's milking system, and that the problem continued to worsen for years after the system was properly modified. Contrary to what plaintiff asserts, the verdict for him on the issue of defendant's liability does not estaablish that defendant's negligence or breach of warranties was the probable cause of the increase in mastitis in his herd. Because plaintiff's specifications of damages were based entirely upon losses and expenses related to the increase in mastitis, we hold that the jury award of no damages was not inadequate as a matter of law.

AFFIRMED.