IN THE COURT OF APPEALS OF IOWA

No. 1-135 / 00-1106
Filed June 13, 2001

FILED
JUN 13 2001
CLERK SUPREME COURT

ALLISA DOCK,
Plaintiff-Appellee,

vs.

PIONEER HI-BRED INTERNATIONAL, INC., and DALE EVAN MILLIS,
Defendants-Appellants.

Appeal from the Iowa District Court for Polk County, Linda R. Reade, Judge.

Defendants appeal following a trial on plaintiff's personal injury action based on an automobile accident. **AFFIRMED.**

Michael A. Dee of Pingel & Templer, P.C., West Des Moines, for appellant.

Scott Bandstra, Des Moines, for appellee.

Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

000200

VAITHESWARAN, J.

In this appeal from a jury verdict in a personal injury action, the liable parties claim various portions of the damage award were unsupported by the law or evidence. We affirm.

I. Background Facts and Proceedings

Pioneer Hi-Bred International, Inc. owned a car driven by Dale Millis. As Millis was turning, his car struck the front portion of Allisa Dock's car. Dock sued Pioneer and Millis for injuries sustained in the accident. At trial, Pioneer and Millis contended Dock's injuries resulted from an accident seven years earlier. They also challenged the evidence supporting Dock's damage claims.

A jury returned a verdict of $232,423 in favor of Dock, broken down as follows: (1) past medical expenses ($18,632); (2) future medical expenses ($20,000); (3) lost wages ($18,791); (4) loss of future earning capacity ($90,000); (5) past loss of full mind and body ($20,000); (6) future loss of full mind and body ($20,000); (7) past pain and suffering ($20,000); and (8) future pain and suffering ($25,000). Pioneer and Millis challenged the award via motions for judgment notwithstanding the verdict, new trial, and remittitur. The court denied the motions and this appeal followed.

II. Scope of Review

We review rulings on motions for judgment notwithstanding the verdict for errors of law. *Mincks Agri Center, Inc. v. Bell Farms, Inc.*, 611 N.W.2d 270, 273 (Iowa 2000). Our scope of review of a ruling on a motion for new trial depends on the grounds asserted in the motion. *Roling v. Daily*, 596 N.W.2d 72, 76 (Iowa 1999). If the motion raises a discretionary ground, our review is for an abuse of

discretion. *Id.* If the motion raises a legal question, our review is on error. *Id.* Motions challenging the amount of a verdict are reviewed for an abuse of discretion. *Fisher v. Davis*, 601 N.W.2d 54, 57 (Iowa 1999); *Kuta v. Newberg,* 600 N.W.2d 280, 284 (Iowa 1999). We also review remittitur rulings for an abuse of discretion. *Newberg*, 600 N.W.2d at 285.

III. Damage Award

Pioneer and Millis contend substantial evidence did not support the jury's award of damages for: (A) future medical expenses; (B) loss of future earning capacity; (C) past lost wages; and (D) past and future loss of full mind and body.

A. Future Medical Expenses. The jury awarded Dock $20,000 for future medical expenses. To recover the cost of future medical treatment, a plaintiff must provide substantial proof of the necessity for future treatment and its cost. *Mossman v. Amana Society,* 494 N.W.2d 676, 679 (Iowa 1993).

Two physicians testified concerning the need for future medical treatment. The first, Dr. Moore, testified that Dock suffered from chronic pain, including ongoing headaches, neck pain and pain in her back and shoulder. He could not quantify how long she would need medical treatment, but stated, "I don't feel she's going to get much better." A second physician, Dr. Blessman, treated Dock for pain by giving her periodic "trigger-point" injections of steroids and a local anesthetic. Although he also could not precisely quantify how long she would need to continue these injections, he stated, "At this point she's not showing any signs of them getting longer or further apart, and it appears that this could go on forever." He further stated Dock could be coming in to see him every four or five weeks "long term," which he elaborated could be anywhere from two to nine

years or even longer. We conclude the testimony of the physicians was sufficient to establish a need for future medical treatment.

As to cost, we have stated a plaintiff does not need to accurately determine the cost of future medical treatment as long as there is evidence from which a jury can fix an allowance. *Nesbit v. Myers*, 576 N.W.2d 613, 614 (Iowa Ct. App. 1998). Dock sought $48,839.75, which she arrived at by multiplying one year of medical expenses ($9,767.97) by five, the number of years she expected to be treated. She introduced past billing records to support the request. The jury was in the best position to assess this evidence. *See Baumler v. Hemesath*, 534 N.W.2d 650, 654 (Iowa 1995); *Matthess v. State Farm Mut. Auto. Ins. Co.*, 521 N.W.2d 699, 704 (Iowa 1994). As the district court stated:

> [t]he jury heard all of the testimony and decided that $20,000 was an appropriate amount and the Court will not second-guess the jury. Considering the age of the plaintiff and her potential future medical needs, there is sufficient evidence in the record to sustain the verdict.

We affirm this portion of the court's post-trial ruling.

B. Loss of Future Earning Capacity. The jury awarded $90,000 for loss of future earning capacity. Pioneer and Millis contend this type of damage claim requires proof of a permanent impairment which, it asserts, was lacking.

As the name implies, damages for loss of future earning capacity afford compensation for an impaired ability to work and earn. *Anthes v. Anthes*, 258 Iowa 260, 270, 139 N.W.2d 201, 208 (1965). The measure of such damages is "the difference between the value of an individual's services, if working, as he would have been but for the injury, and the value of the services of an injured person, if working, in the future." *Id.* The fact-finder need not assess this

damage component in a vacuum, but may consider the "plaintiff's poor health, education, and opportunity for education, age, intelligence, industriousness, manner of living, sobriety or temperance, frugality or lavishness or other personal characteristics which affect ability to secure business or earn money." *Holmquist v. Volkswagen of America, Inc.,* 261 N.W.2d 516, 525 (Iowa 1977) (*quoting Ehlinger v. State*, 237 N.W.2d 784, 792 (Iowa 1976)).

We agree with the defendants that this type of damage award is an element of damages for permanent injury. *Brown v. Guiter*, 256 Iowa 671, 680, 128 N.W.2d 896, 902 (1964); *Grant v. Thomas*, 254 Iowa 581, 585, 118 N.W.2d 545, 548 (1962). However, permanency in this context merely means lessened earning capacity.[1] *See Anthes*, 139 N.W.2d at 208 (stating impairment of earning capacity means "after injury decreased earning capacity"); *Guiter*, 128 N.W.2d at 903 (stating impairment of physical capacity presumed to impair general earning capacity). In *Anthes*, the court found no error in submitting to the jury a claim for damages based on lost future earning capacity despite evidence that the plaintiff-farmer's injuries did not incapacitate him completely but only required him to hire help. *Id.* Similarly, in *Thomas*, the court affirmed a damage award for lost future earning capacity where the plaintiff returned to his regular job after missing only twelve to fourteen days of work, but there was evidence he

---

[1] In support of their contention that Dock is not entitled to damages for future loss of earning capacity, Pioneer and Millis argue Dock never received a permanent impairment rating. We are not persuaded by this contention. As Dr. Blessman stated with respect to the diagnosis of another physician, "[h]e felt that the injury of October 17 '97, did not cause any permanent impairment or limitation, and I didn't have a major argument with that. In the area that's not work comp, we really don't do permanent impairments, and so I really hadn't addressed that." He went on to state, "this doctor is sort of implying that she needs no treatment, and it's ridiculous."

did not perform the job as well as he had prior to a car accident. *Thomas,* 118 N.W.2d at 547-48.

We believe Dock submitted substantial evidence of decreased earning capacity. Dock was thirty-five years old at the time of the accident. At that time, she had two jobs, one as a school bus aide and the other as a housekeeper. Following the accident, she gave up her housekeeping job upon the suggestion of Dr. Moore. In a progress note dated several months before trial, Dr. Moore explained, Dock "had a job cleaning houses and was advised to quit that job secondary to exacerbation of her condition." He also noted that, although Dock continued to work as a bus aide, she had "modified that job somewhat" and advised him she was now riding on a bigger bus.

A woman with whom Dock had worked as a bus aide testified the post-accident change in Dock's demeanor was like "night and day." She stated Dock was fun before the accident, always "kidding, laughing around." After the accident, she noted Dock rarely smiled, walked more slowly and looked thinner. The school bus driver echoed this sentiment, stating that, before the accident, Dock was "[v]ery energetic, very outgoing, always smiling, just had a lot of energy." After the accident, the bus driver stated Dock exhibited a "[c]omplete loss of energy" and seemed "to be in some sort of pain all of the time." He stated, "I work with her all week long from Monday--by the time Friday comes around, it's pretty heartbreaking to watch."

Others who knew Dock confirmed these changes. A close friend of Dock's stated they used to go out all the time, but, after the accident, there was no life at Dock's house and she seemed like "half a person." Witnesses stated Dock's

children would post signs on the porch door to advise visitors there should be no loud noise, as Dock had a headache. They testified visits had to be cut short because of Dock's pain. They noted Dock spent hours in her darkened bedroom and could no longer manage routine tasks at home such as cooking and doing laundry. Together with the physicians' prognosis of no foreseeable end to Dock's pain, we conclude this testimony is sufficient to establish diminished earning capacity.

We reach this conclusion notwithstanding expert defense testimony that Dock was qualified to perform a variety of jobs, some paying more than she earned as a housekeeper. To recover damages for future loss of earning capacity, a plaintiff need not establish an inability to perform all work. *See Anthes*, 139 N.W.2d at 208; *Thomas*, 118 N.W.2d at 548; *accord Jones v. Iowa Cent. Community College*, 972 F.2d 354 (8th Cir. 1992); *Michels v. United States*, 815 F. Supp. 1244, 1258-9 (S.D. Iowa 1993); *Cf. Swanson v. United States*, 557 F. Supp. 1041, 1046 (U.S. Idaho 1983)(noting fact finder required to consider nature and extent of injuries regardless of whether they will be permanent). Accordingly, the defense expert's opinion does not mandate a contrary result.

We also are not persuaded the amount of the jury's verdict on this item of damages is excessive. Dock's expert witness determined the present value of Dock's future loss of earning capacity to be $184,042. The jury awarded less than half this sum. Accordingly, we agree with the district court's post-trial ruling upholding this portion of the verdict.

C. Past Lost Wages. The jury awarded Dock $18,791 for past lost wages. This element of damage compensates for the reasonable value of a plaintiff's loss of time in the person's occupation. *Hopping v. College Block Ptrs.*, 599 N.W.2d 703, 706 (Iowa 1999). Dock's economic expert testified her wages during the time she did not work as a housekeeper totaled $18,791. We conclude there was sufficient evidence to support this award. In particular, we note Dr. Moore's testimony that he advised Dock she may not wish to work as a housekeeper, if this job was exacerbating her symptoms. Accordingly, we affirm the court's post-trial ruling upholding this portion of the verdict.

D. Past and Future Loss of Full Mind and Body. The jury awarded Dock $20,000 for past loss of full mind and body and $20,000 for future loss of full mind and body. Full mind and body damages compensate for "disability of mind and body, impairment of physical functions, and deprivation of mental powers." *Schnebly v. Baker*, 217 N.W.2d 708, 726 (Iowa 1974). This type of damage is distinct from damages for loss of earning capacity or from damages for loss of pain and suffering. *Id.; Brant v. Bockholt*, 532 N.W.2d 801, 804-5 (Iowa 1995). The critical inquiry is whether the injured part of the person can function normally. *Bockholt*, 532 N.W.2d at 805.

Dock suffers from chronic pain and headaches. The defendants contend these are not functional impairments. Citing *Blume v. Auer,* 576 N.W.2d 122, 126 (Iowa Ct. App. 1997), they suggest these impairments are only compensable under the pain and suffering damage component.

In *Blume,* a woman began having chronic diarrhea following bowel surgery. She was prescribed medication to control the condition. A jury awarded

her damages for pain and suffering but not for loss of full mind and body. On appeal, our court stated, "the record is devoid of any evidence indicating Blume suffered functional impairment of her body, *in addition to pain and suffering*, as a result of other specified medical negligence." *Blume*, 576 N.W.2d at 126 (emphasis in original). We are not convinced this case stands for the proposition that Blume could only recover pain and suffering damages. Rather, the quoted language addressed the sufficiency of the evidence to support the jury's refusal to award full mind and body damages.

Other opinions dealing with full mind and body damages furnish little guidance on whether impairments that are triggered by physical trauma but are grounded in pain are compensable under this damage component. *See Bockholt*, 532 N.W.2d at 804-5 (facial scarring); *Schnebly v. Baker*, 217 N.W.2d at 726 (brain injury); *Foster v. Pyner,* 545 N.W.2d 584, 586 (Iowa Ct. App. 1996) (facial scarring); *Cf. Mortimer v. Freuhauf Corp.*, 502 N.W.2d 12, 16 (Iowa 1993) (holding psychological injury caused or aggravated by a scheduled injury to be compensated as an unscheduled injury under our workers compensation statute). However, we need not answer this question, as the jury here was instructed that it could consider awarding damages for loss of full mind and body in addition to damages for pain and suffering. The jury was further instructed that loss of mind and body is "the inability of a particular part of the mind and body to function in a normal manner." Finally, the jury was admonished not to award duplicate damages. As these instructions are unchallenged on appeal, the only issue before us is the sufficiency of the evidence to support the jury's award of

damages for loss of full mind and body. *See State v. Thompson*, 326 N.W.2d 335, 338 (Iowa 1982).

As noted earlier, physicians, coworkers, friends, and family testified to Dock's diminished capacity to perform tasks which she performed as a matter of course prior to the accident. We believe this evidence was sufficient to support an award for loss of full mind and body damages.

In reaching this conclusion, we are mindful of the risk that the award for loss of full mind and body duplicated the pain and suffering and lost earning capacity awards. *See Poyzer v. McGraw,* 360 N.W.2d 748, 753 (Iowa 1985) (holding damages for loss of enjoyment of life subsumed as a matter of law under pain and suffering component). However, because the jury was required to itemize its damages, this risk was minimized. *Cf. Baker,* 217 N.W.2d at 726 (noting if case had been tried to a jury without an instruction on avoiding duplication, court might have viewed damage award differently). Additionally, the jury was explicitly told not to duplicate damages, an instruction we presume it followed. *See Kiner v. Reliance Ins. Co.,* 463 N.W.2d 9, 15 (Iowa 1990). For these reasons, we affirm the district court's post-trial ruling upholding the award for loss of full mind and body.

IV. Sufficiency of Evidence to Support Remaining Damage Awards

Dock and Millis also challenge the jury's award of past medical expenses and damages for past and future pain and suffering.

A. Past Medical Expenses. The defendants argue that some, if not all, Dock's medical expenses of $18,632 were attributable to the prior accident rather than the accident they caused. However, the record contains evidence to the

contrary. Both physicians attributed the medical expenses to the later accident. Additionally, there was evidence that, although Dock suffered from headaches before the second accident, she was able to treat those headaches with no more than Tylenol. After that accident, in contrast, she and others testified the head pain she experienced was intractable, even with trigger-point injections. We conclude the district court did not abuse its discretion in upholding this portion of the verdict.

B. Past and Future Pain and Suffering. Pioneer and Millis again contend that Dock's pain stemmed from the first accident. However, as noted, there is evidence to the contrary. Additionally, as to the amount of the award, we have stated pain and suffering cannot be measured by an exact mathematical formula but rests in the sound discretion of the jury based on an impartial consideration of the evidence. *Olson v. Nieman's Ltd.*, 579 N.W.2d 299, 310 (Iowa 1998). We are not convinced the jury abused its discretion in awarding a total of $45,000 for pain and suffering and agree with the district court's ruling upholding this portion of the verdict.

We affirm the district court's ruling denying the defendants' post-trial motions in their entirety.

AFFIRMED.