FILED
APR 28 1992
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-590 / 90-1002

822

MELISSA M. RUTLEDGE,

Appellant,

vs.

BEN ARCHER, JR., and MARSHA L. ARCHER,

Appellees.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge.

Plaintiff appeals from a jury verdict claiming the damages awarded are inadequate and not supported by the evidence. **AFFIRMED.**

Robert A. Wright, Jr., Des Moines, for appellant.

David L. Phipps of Whitfield, Musgrave & Eddy, Des Moines, for appellees.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

HAYDEN, P.J.

Melissa Rutledge's car was struck from the rear, at low speed, by a car driven by Marsha Archer and owned by Ben Archer. Rutledge claimed to have suffered soft-tissue neck and back injuries as a result of this accident. Archers questioned whether such injuries had occurred at all and if so, whether the injuries were as serious as Rutledge claimed.

Rutledge sued Archers to recover for her injuries. A jury found Rutledge had suffered damages totaling $1000 and both drivers were fifty percent at fault. The district court entered a judgment in favor of Rutledge for $500. Rutledge appeals, contending the district court should have granted her a new trial because the damages awarded were inadequate and not supported by the evidence.

"Whether damages are so inadequate as to warrant a new trial is usually left for the trial court to decide, and its discretion in granting or refusing to grant a new trial will not ordinarily be disturbed on appeal unless an abuse of discretion is shown." Householder v. Town of Clayton, 221 N.W.2d 488, 493 (Iowa 1974). "Our task is to determine whether the trial court abused its discretion in not granting a new trial in light of the award made, not whether a higher verdict would have been justified." Young v. Gibson, 423 N.W.2d 208, 210 (Iowa App. 1988).

We first note Archers complain Rutledge did not provide an adequate record for review. We find the record to be

adequate and thus proceed to determine whether the trial court abused its discretion in refusing to grant plaintiff a new trial on the ground the verdict was inadequate. At the time of trial plaintiff had incurred medical expenses of $3,907.20. Rutledge argues the jury was required to find her damages were at least equal to her claimed medical expenses. We affirm the trial court.

In overruling plaintiff's motion for new trial, the trial court noted there was considerable controversy about the reasonableness and necessity of certain medical expenses presented by the plaintiff. Rutledge was injured on August 27, 1987. Her injury consisted of a soft-tissue type injury to her neck and back with no visible manifestations. Dr. Carver, Rutledge's treating physician, testified plaintiff had scoliosis to a mild degree; however, it was unclear whether that condition was related to the accident or a condition she had prior to the accident. Dr. Carver also testified by October 1987 plaintiff's back pain had decreased to zero, her muscle tightness had been eliminated, and her range of motion had returned to within normal limits. Dr. Carver neither placed work restrictions on Rutledge nor advised her to quit her job which she did after the accident. Rutledge was not seen by Dr. Carver during the period of April through September 1988. She returned to see Dr. Carver in September 1988. Rutledge reported she had obtained another job which required her to be on her feet all day and caused

her pain in the midback area. Plaintiff's medical records indicate many of her medical expenses were incurred after October 1987. All of plaintiff's expenses for chiropractic treatment were incurred after she had obtained employment requiring her to stand all day.

The jury was not obligated to accept the testimony plaintiff's injuries were caused by this accident. Young, 423 N.W.2d at 210. The jury could have determined plaintiff's early medical expenses were legitimate; however, the subsequent expenses were either unnecessary or unrelated to the accident. The jury had the right to reject the later expenses. Miller v. Eichhorn, 426 N.W.2d 641, 643 (Iowa App. 1988).

We hold the trial court did not abuse its discretion in refusing to grant a new trial on the issue of damages. We affirm. Costs of this appeal are taxed to Rutledge.

AFFIRMED.