

IN THE COURT OF APPEALS OF IOWA

No. 9-032 / 98-638

Filed June 23, 1999

DEANNA WRIGHT,

Appellant,

and

JOSEPH C. WRIGHT,

Plaintiff,

vs.

LYLE SINNOTT and PATRICIA SINNOTT, d/b/a PUMP & MUNCH,

Appellees.

Appeal from the Iowa District Court for Pottawattamie County, James S. Heckerman, Judge.

Plaintiff appeals the district court order denying her motion for a new trial following a jury verdict in her favor on her personal injury claim. **AFFIRMED.**

Michael G. Reilly of Reilly, Petersen & Hannan, P.L.C., Council Bluffs, for appellant.

Brien M. Welch and David A. Blagg of Cassem, Tierney, Adams, Gotch & Douglas, Omaha, Nebraska, for appellees.

Considered by Sackett, C.J., and Huitink and Streit, JJ.

STREIT, J.

Deanna Wright argues the jury's verdict which awarded medical expenses, lost wages, and past pain and suffering, but no damages for loss of function to the body, was not supported by sufficient evidence in light of uncontroverted evidence Wright had suffered loss of function of the body. Because the jury was free to reject the uncontroverted testimony and we find the jury acted within its discretion, the award is supported by sufficient evidence. We affirm.

I. Background Proceedings & Facts.

Wright injured her right knee when she slipped and fell in a pool of gas at the Pump & Munch gas station, owned by the Sinnotts. Wright filed a premises liability and negligence action against the Sinnotts for damages arising for her injury. Her husband brought a corresponding claim for loss of consortium.

Following a jury trial, the jury returned a verdict in favor of Wright, finding the Sinnotts one hundred percent at fault. The jury awarded her \$7,047.73 for past damages, including medical expenses, lost wages, and pain and suffering. No damages were awarded for past or future loss of function of the body, future pain and suffering, or for the consortium claim. The court denied Wright's motion for new trial. Wright appeals.

II. New Trial Based on Jury's Verdict.

Wright contends the trial court erred in denying her request for a new trial on damages based on the jury's verdict. She argues the jury's verdict is not supported

by sufficient evidence on the record and is inadequate. We review district court rulings on motions for new trials for abuse of discretion. Iowa R. App. P. 14(f)(3).

A new trial may be granted if a jury verdict is inadequate or excessive in its damage award, Iowa R. Civ. P. 244(d) and (f), or when sufficient evidence does not support the jury verdict and the verdict fails to effectuate substantial justice. *Midwest Home Distrib., Inc. v. Domco Indus. Ltd.*, 585 N.W.2d 735, 738 (Iowa 1998); *Johnson v. Knoxville Comm. Sch.*, 510 N.W.2d 633, 641 (Iowa 1997). It is not controlling that the evidence at trial may justify a higher damage award. *Foggia v. Des Moines Bowl-O-Mat, Inc.*, 543 N.W.2d 889, 891 (Iowa 1996). “The key question is whether after examining the record, giving the jury its right to accept or reject whatever portions of the conflicting evidence it chose, the verdict effects substantial justice between the parties.” *Id.* We also look to “whether the verdict fairly and reasonably compensates the injury the party sustained.” *Matthess v. State Farm Mut. Ins. Co.* 521 N.W.2d 699, 702 (Iowa 1994).

Wright has claimed the jury’s verdict is not supported by substantial evidence on the record. Her sole contention supporting this argument is that uncontroverted medical testimony supports her claim for past and future loss of function and for future pain and suffering. Although it is true the defendants did not rebut Wright’s evidence regarding loss of body function or future pain and suffering, the jury was not obligated to accept the uncontroverted testimony. *Jackson*, 507 N.W.2d at 589. It is within the discretion of the jury to accept or reject the testimony of a witness which

it finds unreliable. *Yoch v. City of Cedar Rapids*, 353 N.W.2d 95, 100 (Iowa App. 1984). Wright's credibility was attacked by the defendants throughout the trial. The jury may have found Wright's evidence regarding loss of function incredible in part or in whole. The jury is in the best position to judge the credibility of witnesses and decide what noneconomic damages should be awarded. *Id.* The jury acted within its discretion in rejecting Wright's evidence regarding loss of function and future pain and suffering. We find the jury verdict is adequate in that it fairly and reasonably compensates Wright for her injury. The trial court is affirmed.

AFFIRMED.

No. 98-420. [9-026] HELMS v. SUM-PING

Appeal from the Iowa District Court for Johnson County, L. Vern Robinson, Judge. **AFFIRMED.** Considered by Huitink, P.J., and Streit and Vogel, JJ. Opinion by Streit, J. (6 pages \$2.40)

Janet and Jeffrey Helms appeal a jury verdict finding Janet Helms ninety percent at fault for her damages based on her failure to mitigate her damages from a car accident. The finding resulted in an award of no damages under our comparative fault act. Sum-Ping asserted the defense of mitigation of damages at trial, arguing Helms' symptoms were caused by her addiction and withdrawal from the prescription drug Stadol rather than a cognitive injury sustained in the car accident. **OPINION HOLDS:** Substantial evidence supports the jury verdict. There is a plenitude of evidence in the record which could have led a reasonable jury to the conclusion Helms' symptoms were caused by her addiction to the drug Stadol.