FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

EMILY BURESH,

Plaintiff-Appellee,

vs.

EVERETT THOMAS,

Defendant-Appellant

Filed February 26, 1985

4-539
84-554

Appeal from the Iowa District Court for Howard County - L. John Degnan, Judge

Defendant appeals from the trial court's order granting Plaintiff's Motion for New Trial in Plaintiff's damage action. REVERSED AND REMANDED.

Calvin R Anderson of Strand, Anderson & Wilmarth, Decorah, for defendant-appellant

James Burns of Miller, Pearson, Gloe, Burns, Beatty & Cowie, P.C., Decorah, and Henry L Elwood, Cresco, for plaintiff-appellee.

Heard by Oxberger, C J , and Hayden and Sackett, JJ

Defendant appeals from the trial court's order granting Plaintiff's Motion for New Trial in Plaintiff's damage action. The trial court apparently determined the damage award to the plaintiff was not sufficient.

Plaintiff sued defendant for injuries plaintiff sustained when her automobile struck the automobile owned and operated by the defendant. The case was tried to a jury who found plaintiff to be 25% negligent and defendant to be 75% negligent. The jury determined plaintiff's damages to total $5,000, which, when reduced by her percentage of fault, resulted in an award to her of $3,750.

Facts

Plaintiff did not claim to be injured following the accident. She immediately got out of her car and walked across the road and stood along side of the road until the investigating officer came. After the officer completed his investigation Buresh drove her car home at which time she experienced a headache. She also had some bruises on her right arm and hip.

At the time of trial plaintiff claimed to have suffered the following injuries as a result of the accident in question:

1. Flexion-extension mechanism or whiplash.
2. Bruised right arm and leg.
3. Cervical strain.
4. Headaches.
5. An aggravation of a preexisting hip replacement.
6. A hearing loss in the left ear.
7. Vertigo.
8. A broken wrist suffered after the accident which she claims was caused when she suffered a dizzy spell (she claimed the dizzy spell to be accident related).

Defendant introduced no medical evidence. The dispute is narrowly confined and depends on plaintiff's medical evidence. See Waddell v. Peet's Feed, Inc., 266, N.W.2d 29, 31 (Iowa 1978).

A very careful reading of plaintiff's medical evidence indicates that other than the bruises plaintiff received in the accident all of her other alleged injuries

are either based on plaintiff's subjective complaints and/or manifested themselves sometime after the accident. All of plaintiff's medical experts except plaintiff's brother, who was a doctor and testified in her behalf, testified there was only a possibility, not a probability, that the injuries of which plaintiff complained were caused by the accident. Plaintiff's brother testified plaintiff's ligaments were torn when she came down hard on the pedal at the time of the accident. A similar diagnosis was not made by the other doctors.

The medical testimony concerning plaintiff's alleged injuries does not establish with any certainty that the accident was the cause of the alleged injuries other than the bruises. The jury has the right to reject plaintiff's claims that the injuries were caused by the accident.

In Waddell v. Peet's Feeds, Inc., 266 N.W.2d 31, 32 (Iowa 1978), the Iowa Supreme Court said:

1. In granting or denying new trials, the trial court has wide but not unlimited discretion.
2. The fact finder is not obliged to accept expert testimony, even if it is uncontradicted, although testimony should not be arbitrarily and capriciously rejected.
3. In determining if a verdict is either excessive or inadequate, each case must be determined on its own special facts.
4. Courts should see that a verdict fairly and adequately compensates a plaintiff for the damages suffered, but the amount of damages to be awarded is peculiarly a jury, not a court, function.
5. The fact that a court may have reached a different result is no ground for setting aside a jury verdict and awarding a new trial.

Applying these principles we conclude the award made by the jury was supported by the evidence and the trial court abused its discretion in granting the plaintiff a new trial. We reverse and remand to the district court for reinstatement of the judgment.

REVERSED AND REMANDED.