IN THE COURT OF APPEALS OF IOWA

No. 0-242 / 99-941
Filed July 26, 2000

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DWIGHT HEWITT and LAUREL HEWITT,
Plaintiffs-Appellees,

vs.

LOWE'S,
Defendant-Appellant.

Appeal from the Iowa District Court for Des Moines County, John G. Linn, Judge.

Defendant appeals following the trial on plaintiffs' personal injury action, contending the court abused its discretion in granting a new trial on the issue of damages and that if a new trial is granted it should be on liability as well. **AFFIRMED.**

Martha J. Shaff and Jean Dickson Feeney of Betty, Neuman & McMahon, L.L.P., for appellants.

Douglas L. Tindal of Tindal, Erdahl, Goddard & Nestor, P.L.C., Washington, for appellee.

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

STREIT, J.

Lowe's home improvement store appeals the district court's grant of a new damages trial stemming from Dwight Hewitt's fall at its store. Lowe's claims the jury award was adequate and, in the alternative, a new trial should have been granted as to damages *and* liability. We affirm the district court, finding the jury award both inadequate and inconsistent and the finding of liability supported by sufficient evidence.

I. Background Facts & Proceedings.

Seventy-nine-year-old Dwight Hewitt was leaving a Lowe's home improvement store in Burlington, when he tripped over a theft-prevention cable strung through a row of riding lawnmowers. He hit his head and was taken by his wife to the hospital. At the hospital Hewitt was given a tetanus shot, and his minor cuts and bruises were treated. On the way home Hewitt began to experience terrible headaches and was later taken to the emergency room in Iowa City. A neurologist examined Hewitt and found some limited range of motion and discomfort in his neck. The doctor prescribed some pain medication and sent Hewitt home. Hewitt continued to experience pains in his neck and occasionally suffered from fairly intense neck spasms. Over the next year Hewitt sought treatment from a physician in Iowa City, a chiropractor, and a pain clinic at University Hospitals. Hewitt's medical bills totaled $5587. Hewitt submitted to an independent medical examination at Lowe's request. The physician concluded Hewitt suffered legitimate neck pain as a result of his fall.

A jury found Lowe's and Hewitt to be equally negligent in the fall and awarded Hewitt $2,793.50 in past medical expenses and nothing for past or future pain and suffering. Hewitt moved for a new trial or an additur on his claim for pain and suffering. Lowe's resisted the motion, but in the alternative pressed for a new trial as to both damages and liability. The court granted a new trial on damages alone.

Lowe's appeals, claiming the trial court abused its discretion in granting a new trial as to damages and in denying its request for a new trial on liability.

II. Standard of Review.

We review district court rulings on motions for new trials for an abuse of discretion. Iowa R. App. P. 14(f)(3). We are slower to interfere with an order granting a new trial than with a denial of new trial. Iowa R. App. P. 14(f)(4).

III. New Trial on Damages.

Lowe's first alleges the trial court erred in granting a new trial as to damages. It claims the jury award was adequate.

A court may grant a new trial if the damages awarded by the jury are so inadequate as to materially affect the movant's substantial rights. Iowa R. Civ. P. 244(d). The adequacy of a damage award turns on the unique facts of the case at hand. *Witte v. Vogt*, 443 N.W.2d 715, 716 (Iowa 1989). If the facts demonstrate the damages awarded by the jury bear no reasonable relationship to the loss, the verdict is inadequate. *Id.* Merely because a jury awards medical expenses but not pain and suffering does not make the award inadequate as a matter of law. *Fisher v. Davis*, 601 N.W.2d 54, 58 (Iowa 1999). Rather, the

degree with which the evidence tended to dispute the nature, extent, or severity of the injuries is the principal factor in determining whether a new trial is appropriate. *Id.*

Although Lowe's attempts to minimize Hewitt's neck injury by pointing to his previous medical conditions, all doctors examining Hewitt agreed the pain he was experiencing was attributable to his fall. The jury concurred by awarding Hewitt a portion (exactly one-half) of his medical expenses. It is inconsistent for a jury to recognize that a compensable injury occurred by awarding medical expenses, but that no amount of pain and suffering resulted from that injury. *See Foggia v. Des Moines Bowl-O-Mat, Inc.*, 543 N.W.2d 889, 892 (Iowa 1996). Given the strength of the medical testimony regarding the causal link between Hewitt's fall and his subsequent pain, the well-documented existence of Hewitt's pain and suffering, and the jury's recognition that an injury did occur due to the partial negligence of Lowe's; we concur with the trial court in finding the award inadequate.[1] The court did not abuse its discretion.

IV. New Trial on Liability.

Lowe's next claims the trial court erred in denying its alternate argument for a new trial on both damages and liability. It alleges the finding of liability was not supported by sufficient evidence.

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[1] We do not address the adequacy of the past medical expenses awarded by the jury. Regardless of whether the jury incorrectly limited Hewitt's medical expenses based on his apportionment of fault or simply did not believe all medical expenses claimed were attributable to the fall does not impact our findings, as the failure to award any damages for pain and suffering alone warrants a new trial on damages.

A district court may grant a new trial if the jury's verdict is not supported by sufficient evidence. Iowa R. Civ. P. 244(f). The jury in the present case, however, had ample evidence to find Lowe's fifty percent at fault for Hewitt's fall and subsequent injuries. Although Hewitt suffered from some previous medical conditions that may have contributed to his fall, the jury, in allocating fault to the respective parties, obviously found Hewitt contributed largely to his own injuries. The jury was presented with evidence that Lowe's intentionally left up to six feet of slack in the theft-prevention cable strung through its riding-mower display and the display was in an area of the store subject to heavy foot traffic. There was sufficient evidence to support the jury's finding of liability, and we find no abuse of discretion. The district court is affirmed.

AFFIRMED.