IN THE COURT OF APPEALS OF IOWA

No. 0-11 / 88-1873

150

THE ESTATE OF DONALD LEROY McQUERRY, by its Administrator, TERESHA KELLY; TERESHA KELLY, Individually; and DOUGLAS McQUERRY, Individually,
Appellees,

vs.

JAY WENDELL KNUDSEN, JR.; JAY'S LANDSCAPE GRADING AND DISTRIBUTING, INC., a/k/a KNUDSEN'S 4 SEASONS CONSTRUCTION, INC.,
Appellants.

JAY WENDELL KNUDSEN, JR.,
Cross-Petitioner,

vs.

ROBERT THOMAS JR.,
Defendant to Cross-Petition.

FILED
MAR 27 1990
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Rodney J. Ryan, Judge.

In this wrongful death action resulting from an auto accident, a jury awarded damages of slightly over $3000. The district court sustained the plaintiffs' motions for a new trial. **AFFIRMED.**

Jack W. Rogers, Des Moines, for the appellants.

David L. Brown of Hansen, McClintock & Riley, Des Moines, for the appellees.

Heard by Donielson, P.J., and Sackett and Habhab, JJ.

DONIELSON, P.J. 151

Donald McQuerry had been a passenger in a car which was involved in a minor accident. While he was surveying the damage from this accident, he was struck and killed by a jeep driven by Jay Knudsen. The Knudsen jeep was being driven without headlights, even though it was night. There was disputed evidence concerning whether the jeep's parking lights were operational at the time of the fatal accident.

At the time of the accident, Donald McQuerry was sixty-four years old. He had not been employed since approximately 1972, and his sole income was a veteran's pension of $490 per month. He had resided with either his son or daughter for most of the time in recent years.

Following Donald McQuerry's death his daughter, as the administrator of his estate, filed the present wrongful death action against Knudsen and Knudsen's employer. (The employer owned the jeep, and Knudsen was driving within the scope of his employment at the time of the accident.) A jury found McQuerry had been 30% at fault, Knudsen had been 40% at fault, and a third party had been 30% at fault. The jury awarded the McQuerry estate damages of $3172.66--$1865.91 for medical costs incurred prior to McQuerry's death; $306.75 for interest on reasonable burial expenses; and $1000 for the present value of additional amounts McQuerry would reasonably be expected to have accumulated during the remainder of his life. The jury awarded no damages for Donald McQuerry's pain and

suffering. It also rejected requests by McQuerry's daughter and son for damages for loss of consortium. The jury declined to grant any punitive damages.

After this jury verdict was returned, the plaintiff filed a motion for a new trial, alleging the damage award was inadequate, not sustained by sufficient evidence, and failed to effectuate substantial justice between the parties. After a hearing, the district court sustained this motion and granted a new trial. The district court concluded the verdict was not sustained by sufficient evidence, failed to effectuate substantial justice, and the damage award bore no reasonable relationship to the injuries sustained by Donald McQuerry. The district court granted a new trial on all issues.

The defendants have appealed from the order granting the plaintiffs a new trial. The defendants contend the district court abused its discretion in awarding a new trial. They argue the verdict was adequate and supported by the evidence. The defendants also assert any new trial should have been limited to the issue of damages or conditioned on the defendants' refusal of additur.

Iowa Rule of Civil Procedure 244 provides for the vacating of a jury verdict, or a portion thereof, and the granting of a new trial. A trial court may grant a new trial when a verdict fails to effectuate substantial justice. Houvenagle v. Wright, 340 N.W.2d 783, 785 (Iowa App. 1983). Generally a trial court has broad discretion

in passing on a motion for new trials, and only when there is a clear abuse of that discretion will we interfere with a ruling upon the motion. Id. We are slower to interfere with a trial court's award of a new trial than with its denial of one. Lappe v. Blocker, 220 N.W.2d 570, 572 (Iowa 1974).

An inadequate award merits a new trial as much as an excessive one. Witte v. Vogt, 443 N.W.2d 715, 716 (Iowa 1989); Householder v. Clayton, 221 N.W.2d 488, 492 (Iowa 1974). The question of whether damages in a particular case are inadequate turns on the particular facts of that case. Witte, 443 N.W.2d at 716; Householder, 221 N.W.2d at 493. "Although the amount of damages to be awarded is peculiarly a jury, not a court function, courts should see that a verdict fairly and adequately compensates a plaintiff for the damages suffered." Yoch v. City of Cedar Rapids, 353 N.W.2d 95, 99 (Iowa App. 1984).

"The test of adequacy of damages is for the court to determine what will fairly and reasonably compensate an injured party for the injury sustained." Householder, 221 N.W.2d at 493. If uncontroverted facts show the amount of the verdict bears no reasonable relationship to the loss suffered, the verdict is inadequate. Witte, 443 N.W.2d at 716.

A review of the record in this case reveals the trial court did not abuse its discretion in awarding a new trial. Uncontroverted evidence existed to establish

plaintiffs' claims based on the decedent's pain and suffering. Medical evidence revealed Mr. McQuerry endured fractured ribs, broken legs, pneumothorax (a collapsed lung), and extensive blood loss. He was conscious for nearly two hours while medical personnel administered painful procedures in an attempt to save his life. Despite unrefuted evidence of McQuerry's suffering, his estate was awarded nothing for the pain and suffering he sustained.

Similarly, uncontroverted evidence demonstrated the loss McQuerry's children had incurred. He had resided with his adult children for a number of years and had a close relationship with them, yet the jury awarded no damages on their claims for consortium. The trial court did not abuse its discretion in granting a new trial in this matter.

Defendants contend the trial court should have made its order for a new trial conditional upon their refusal to accept additur pursuant to Iowa Rule of Civil Procedure 250. Rule 250 leaves it to the court's discretion to determine if a conditional new trial should be granted. Sallis v. Lamansky, 420 N.W.2d 795, 801 (Iowa 1988). We find the trial court did not abuse its discretion in declining to condition the grant of a new trial upon the defendants' refusal to accept court-ordered additur.

Defendants argue the order for a new trial should have been limited to the issue of damages. Defendants contend no basis exists for allowing reconsideration of liability and punitive damages. As a general rule, new trials will

be granted as to the whole case and on all of the issues and seldom on the issue of damages only, except where the liability of a defendant is definitely established. Householder, 221 N.W.2d at 493; Yoch, 353 N.W.2d at 100. Where it appears from the jury award there was a compromise on liability, a new trial should be granted on all of the issues. Householder, 221 N.W.2d at 493; Yoch, 353 N.W.2d at 100.

Our supreme court has stated a:

> new trial should never be ordered on the question of damages alone when there is ground for a strong suspicion or inference that the jury awarded excessive or inadequate damages to plaintiff as a result of a compromise involving the question of liability.

Householder, 221 N.W.2d at 494, quoting 66 C.J.S. New Trial § 11(5) (1950). Unlike cases where liability has been definitely established, Witte, 443 N.W.2d at 717; Vorthman v. Keith E. Myers Enterprises, 296 N.W.2d 772, 778 (Iowa 1980), this is a case in which there was a conflict of evidence on the issue of liability and the jury's award bore no relationship to the injuries sustained by the plaintiffs. Householder, 221 N.W.2d 494; Yoch, 353 N.W.2d at 100. The trial court correctly awarded a new trial on all issues in this matter.

AFFIRMED.