FILED
NOV 2 7 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-488 / 89-392

Dubuque County No. 45709

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CATHERINE M. SAUSER,

Appellee,

vs.

CALVIN J. FOLEY,

Appellant.

Appeal from the Iowa District Court for Dubuque County, Alan Pearson, Judge.

Defendant appeals the award given to plaintiff by district court for injuries suffered in a car accident. **AFFIRMED.**

Les V. Reddick and Mark W. DeVries of O'Connor & Thomas, P.C., Dubuque, for the appellant.

Michael J. Coyle and Norman J. Wangberg of Fuerste, Carew, Coyle, Juergens & Sudmeier, P.C., Dubuque, for the appellee.

Heard by Oxberger, C.J., and Donielson and Hayden, JJ.

HAYDEN, J.

Catherine M. Sauser, plaintiff, brought this action on May 29, 1986, because of injuries sustained in a March 12, 1986, collision involving her car and a pickup truck driven by Calvin J. Foley. After a trial, the jury returned a verdict against Foley. The itemized award totaled $71,982.72 as well as interest and costs. Defendant's motion for a new trial was overruled. Defendant appeals. He challenges the sufficiency of the evidence to support the jury's itemized award of $37,500 for future medical expenses. He also claims the award of prejudgment interest on future damages was error based on Iowa Code section 668.13 as well as the United States and Iowa Constitutions. We affirm.

Plaintiff Sauser suffered injuries when the car she was driving was hit on the driver's side by a pickup driven by Foley, who failed to yield at a stop sign at an intersection. Sauser was taken to the emergency room, but was released after several hours. Two days later she began treatment by an orthopedic surgeon because of complaints involving her face, neck, left shoulder, and right knee. Dr. Pearson treated her again a month later when she was suffering pain in her left elbow, which had been injured prior to the accident. A previous injury necessitated a plastic implant in the elbow and she was permanently functionally impaired Although plaintiff had been pain

free prior to the accident, by April she was complaining of pain. The following month surgery revealed the implant had been fractured. It was removed

Sauser moved to Arizona later in 1986 and was subsequently treated by Dr. Sanders, another orthopedic surgeon. She was suffering from knee and neck pain. In February 1988, Dr. Sanders performed arthroscopic surgery on her left knee.

The trial began on December 6, 1988. The primary factual issue was whether or not Sauser's physical complaints resulted from this accident or from preexisting injuries or conditions. There was also a factual controversy about the extent of future medical care Sauser was likely to need as a result of this accident.

The itemized jury award of $71,982 in damages included $37,500 for future medical expenses. The district court entered a judgment which awarded prejudgment interest on the entire amount of the verdict, including future medical expenses, and awards for future pain and suffering and future loss of body use.

I. Future Medical Expenses. Foley argues there is not sufficient evidence to support the verdict and it should, therefore, be set aside. We disagree.

The supreme court has repeatedly said the assessment of damages is traditionally a jury function. Pagitt v. Keokuk, 206 N.W.2d 700, 704 (Iowa 1973). Only the most

compelling reasons will justify disturbing its decision. Id. A verdict will be reduced or set aside "only if it is (1) flagrantly excessive or inadequate; or (2) so out of reason as to shock the conscience of [sic] sense of justice; or (3) raises a presumption it is a result of passion, prejudice or other ulterior motive; or (4) is lacking in evidential support." Id. citing to Schmitt v. Jenkins Truck Lines, Inc., 170 N.W.2d 632, 659 (Iowa 1969). Our reading of the record convinces us there is sufficient evidence to support the verdict.

Catherine Sauser is about thirty years old. Two days after the accident on March 14, she was treated by Dr. James Pearson, an orthopedic surgeon. His initial diagnosis was a sprain of her neck and lumbar spine and contusions of the shoulder and knee.

A month later she returned due to pain and a grinding sensation in her left elbow. Six years earlier Dr. Pearson had put a plastic implant in this elbow because of a previous injury. In between the time of that surgery and the accident, she had not suffered any pain. X-rays revealed the stem of the implant had loosened and the bone had eroded. When Dr. Pearson performed surgery in May to remove the implant, he discovered it had been fractured. It was his opinion the surgery was necessitated by the automobile accident.

Dr. Larry J. Sanders, the orthopedic surgeon Sauser consulted after a move to Arizona, estimated she suffered a ten percent impairment of the upper extremity due to loss of motion in her elbow. She is not able to straighten her arm or flex it, nor can she bring her hand as close to her shoulder as other people can. Dr. Sanders testified she has two options regarding her elbow--she can live with discomfort or do surgery on the elbow and replace the implant. He stated another implant might give her some improvement in the amount of discomfort she has in her elbow and wrist, but probably will not improve the motion of her elbow.

Sauser has had ongoing problems with her right knee, which Dr. Sanders testified was caused by the automobile accident. His conservative treatment of her knee problems was not effective, so he performed arthroscopic surgery. The prognosis is she will continue to have difficulty with the same activities she did prior to the surgery, but to a lesser degree. She has difficulty going up and down stairs, sitting with her knees flexed for prolonged periods, squatting, and kneeling. Dr. Sanders anticipated she will continue to have pain in the knee. If her knee problems worsen, either arthroscopic surgery or removal of the kneecap might be required.

We are bound by the jury's findings if they are supported by substantial evidence. Winkler v. Patten, 175

N.W.2d 126, 129 (Iowa 1970). The evidence is to be given the most favorable construction it will reasonably bear to support the jury's verdict. Id. Viewing the record as a whole we conclude the jury's award of future medical expenses is supported by the evidence.

Defendant raises the issue of lack of evidentiary basis for estimating the future medical expenses. We agree with plaintiff recovery will not be denied merely because the amount of damages is difficult to ascertain. Robinson v. Perpetual Services Corp., 412 N.W.2d 562, 567 (Iowa 1987). The record in this case provided a reasonable basis from which the amount of damages can be inferred or approximated. Id. The trial court did not err in overruling defendant's motion for new trial because of insufficient evidence to support the future medical expense award.

II. **Prejudgment Interest on Future Damages.** Defendant argues the trial court erred by awarding prejudgment interest on the entire award, including future damages. He relies on Iowa Code section 668.13(4), which provides, inter alia, interest awarded for future damages shall not begin to accrue until the date of the entry of the judgment. However, this case, which was filed on May 29, 1986, does not come within the purview of 668.13(4). This section applies to all causes of action accruing on or after July 1, 1987, and those accruing

before July 1, 1987, if they have been filed on or after September 15, 1987.

The trial court was correct in awarding interest and costs on the judgment against defendant. This is statutorily controlled by Iowa Code section 535.3, which allows interest on all money due on judgments and decrees of courts.

Defendant also asks us to accept his premise section 535.3 violates due process and equal protection under the fourteenth amendment of the United States Constitution and article I, sections 6 and 9 of the Iowa Constitution. We are not persuaded by this argument. The cases relied on by defendant are not applicable as they are concerned with interpretation of federal law and are not based on any constitutional principles.

We affirm the trial court's order overruling defendant's motion for a new trial.

AFFIRMED.