

IN THE COURT OF APPEALS OF IOWA

No. 7-066 / 96-0070

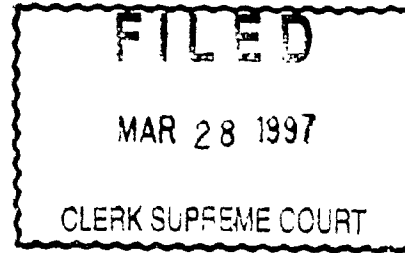
DONALD E. SORENSEN,

Plaintiff-Appellee/Cross-Appellant,

vs.

ANGELA MARIE GRAFF,

Defendant-Appellant/Cross-Appellee.



Appeal from the Iowa District Court for Clay County, Joseph J. Straub, Judge.

Defendant appeals from the trial court's order setting aside the jury's damage award and granting a new trial on that issue. **AFFIRMED IN PART; REVERSED IN PART AND DISMISSED.**

Stephen F. Avery of Cornwall, Avery, Bjornstad & Scott, Spencer, and Paul B. Ahlers of Johnson, Erb, Bice, Kramer, Good & Mulholland, P.C., Fort Dodge, for appellant.

Michael L. Zenor of Zenor & Houchins Law Office, Spencer, for appellee.

Heard by Sackett, P.J., and Cady and Vogel, JJ.

SACKETT, P.J.

Motor vehicles driven by plaintiff Donald E. Sorensen and defendant Angela Marie Graff collided and plaintiff sued defendant for injuries. The jury returned a verdict finding both plaintiff and defendant fifty percent at fault. While finding defendant's negligence was a proximate cause of plaintiff's injuries, the jury went on to find plaintiff's damages were zero. Plaintiff filed a motion for new trial and the trial court granted plaintiff a new trial on the issue of damages only.

Defendant appeals from this order contending the trial court erred because the jury's verdict was supported by the evidence and its answers to the questions regarding fault and damage were consistent. Plaintiff cross-appeals and argues a new trial should be granted on the issues of both liability and damages. Plaintiff argues, among other things, the jury was influenced by passion and prejudice. We affirm in part and reverse in part and dismiss.

The accident happened on December 3, 1992, on Highway 71 south of Spencer, Iowa. The highway was eighty to one hundred percent snow and ice covered. Defendant was driving approximately thirty to thirty-five miles per hour when her car fishtailed twice and collided with a bus owned by the Regional Transit Authority and driven by plaintiff. The collision occurred near or on the centerline. After the accident, plaintiff directed traffic. The state trooper's accident report indicated neither party sustained any injuries.

Plaintiff sought treatment for neck stiffness a couple of weeks after the accident. In March 1994, plaintiff quit his job as a county manager with the Regional

Transit Authority contending he was physically unable to do the work because of the injuries he sustained in the accident. On November 29, 1994, he filed a personal injury action against defendant.

At trial, plaintiff presented expert testimony he had post-traumatic arthritis, a broad term encompassing chronic upper back and neck pain, which was caused by the accident. Dr. Robinson testified he advised plaintiff not to continue driving a bus because he could not do so safely due to his neck injury.

Defendant introduced evidence of plaintiff's long history of back and neck problems dating back to 1970. The accident involved a low-impact collision and defendant did not sustain injuries, although she drove a smaller vehicle. Defendant introduced reports of a pain management specialist who examined plaintiff in October 1993 and concluded he had normal range of motion of his neck. Evidence was introduced that one month prior to trial plaintiff renewed his commercial driver's license and he indicated on the renewal application he did not have any mental or physical disabilities which affected his driving ability.

The jury returned a verdict finding both defendant and plaintiff were at fault. It determined both parties proximately caused damage to plaintiff and it assessed each party fifty percent at fault. The jury then determined plaintiff was not entitled to any damage award. The jury had been instructed if plaintiff failed to prove any item of damage, it should enter "0" for that item. The jury entered "0" on all seven claims of damage submitted by the trial court.

The court, in granting plaintiff's motion for new trial only on the issue of damages, concluded the jury's verdict was not influenced by passion or prejudice, but found either (1) the jury's award of no damages is not supported by the evidence, or (2) the jury's first finding defendant proximately caused damage to plaintiff and then awarding no damages was not consistent. Plaintiff and defendant both challenge the trial court's ruling on the motion for new trial.

An aggrieved party may be granted a new trial where the jury awarded excessive or inadequate damages appearing to have been influenced by passion or prejudice, or where the verdict is not sustained by sufficient evidence or is contrary to law. Iowa R. Civ. P. 244(d) and (f). A new trial is not a matter of right. *Cowan v. Flannery*, 461 N.W.2d 155, 156 (Iowa 1990).

In ruling upon motions for new trial, the court has a broad but not unlimited discretion in determining whether the verdict effectuates substantial justice between the parties. Iowa R. App. P. 14(f)(3). We are slower to interfere with the grant of a new trial than with its denial. Iowa R. App. P. 14(f)(4).

The trial court has wide, but not unlimited, discretion in ruling on a motion for new trial. *Kautman v. Mar-Mac Community Sch. Dist.*, 255 N.W.2d 146, 147 (Iowa 1977). Ordinarily the jury should be allowed to settle disputed fact questions, but that, too, is a limited power and one which must be exercised within the framework of the evidence in any particular case. The court always has inherent power to set aside a verdict which fails to do substantial justice between the parties.

It is not for us to invade the province of the jury. In fact, a verdict will not be set aside or altered unless it (1) is flagrantly excessive or inadequate, or (2) is so out of reason as to shock the conscience or sense of justice, or (3) raises a presumption it is the result of passion, prejudice, or other ulterior motives, or (4) is lacking in evidential support. *Cowan*, 461 N.W.2d at 156. If the verdict has support in the evidence, the others will hardly arise; if it lacks support, they may all arise. Where the verdict is within a reasonable range as indicated by the evidence, the courts should not interfere with what is primarily a jury question. *Id.*

We first address the cross-appeal. Plaintiff contends he should have a new trial on the liability issue. He contends there was not substantial evidence to support a finding he was fifty percent at fault. The jury's findings must be supported by substantial evidence, and if not, a new trial must be granted. *Peck v. Hutchinson*, 88 Iowa 320, 328-29, 55 N.W. 511, 514 (1893).

There was evidence the accident happened when the roadway was covered with ice and snow and weather conditions were bad. There was evidence the accident happened close to the centerline. There was evidence defendant made the statement he was traveling fifty miles per hour. There was substantial evidence to support the finding plaintiff was fifty percent at fault. We affirm on this issue.

Plaintiff next contends the verdict was influenced by passion and prejudice. The trial court found none. We review for abuse of discretion. *See Ladeburg v. Ray*, 508 N.W.2d 694, 696 (Iowa 1993). There is no evidence to support this argument. We affirm.

We next address defendant's contention there should have been no new trial.

The jury made the following findings:

QUESTION NO. 1: Was the defendant, Angela Marie Graff, at fault? Answer "yes" or "no." ANSWER: Yes. (If your answer is "no," do not answer any further questions.)

QUESTION NO. 2: Was the fault of the defendant, Angela Marie Graff, a proximate cause of damage to plaintiff Donald E. Sorensen? Answer "yes" or "no." ANSWER: Yes. (If your answer is "no," do not answer any further questions.)

QUESTION NO. 3: Was the plaintiff, Donald E. Sorensen, at fault? Answer "yes" or "no." ANSWER: Yes. (If your answer is "no," do not answer questions 4 or 5.)

QUESTION NO. 4: Was the plaintiff's, Donald E. Sorensen, fault a proximate cause of his damage? Answer "yes" or "no." ANSWER: Yes. (If your answer is "no," do not answer Question No. 5.)

QUESTION NO. 5: Using 100% as the total combined fault of the plaintiff, Donald E. Sorensen, and the defendant, Angela Marie Graff, which was a proximate cause of damage to the plaintiff, what percentage of such combined fault do you assign to the plaintiff and what percentage of such combined fault do you assign to the defendant? ANSWER:

Plaintiff, Donald E. Sorensen	50%
Defendant, Angela Marie Graff	<u>50%</u>
TOTAL:	100%

(If you find plaintiff to be more than 50% at fault, do not answer Question No. 6.)

QUESTION NO. 6: State the amount of damages sustained by the plaintiff, Donald E. Sorensen, for each of the following items of damage. Do not take into consideration any reduction of damages due to plaintiff's fault. If the plaintiff has failed to prove any item of damage, enter 0 for that item. You may refer to Instruction No. 23 when answering this question. ANSWER:

1. Past medical expense	\$ 0
2. Past lost earnings	\$ 0
3. Diminished future earning capacity	\$ 0
4. Past loss of function of body	\$ 0
5. Future loss of function of body	\$ 0
6. Past physical and mental pain and suffering	\$ 0
7. Future physical and mental pain and suffering	\$ 0
TOTAL (Add the separate items of damage)	\$ 0

The jury found no damage amounts. While there was medical evidence plaintiff suffered injuries in the accident, there was also evidence he did not. The jury, confronted with conflicting medical evidence, was at liberty to accept or reject any of the evidence in whole or in part. *Kautman*, 255 N.W.2d at 148; *Miller v. International Harvester Co.*, 246 N.W.2d 298, 302 (Iowa 1976).

The only question is whether the answers to Questions No. 2 and 4 are so inconsistent with the award of no damages at Question No. 6 as to support the award of a new trial. A trial court should not discharge a jury until it determines the special verdicts are consistent and supported by the evidence. *Cowan*, 461 N.W.2d at 160. It is fundamental that a jury's verdicts are to be liberally construed to give effect to the intention of the jury and to harmonize the verdicts if it is possible to do so. *Hoffman v. National Medical Enter., Inc.*, 442 N.W.2d 123, 126 (Iowa 1989). The test is whether the verdicts can be reconciled in any reasonable manner consistent with the evidence and its fair inferences, and in light of the instructions of the court. *Id.* at 127. Only where the verdicts are so logically and legally inconsistent that they cannot be reconciled will they be set aside. *Id.*

The only conclusion that can be gained from studying the verdict is the jury found plaintiff was not injured in the accident. A new trial should not have been ordered.

AFFIRMED IN PART; REVERSED IN PART AND DISMISSED.

Vogel, J., concurs; Cady, J., specially concurs.

CADY, J. (specially concurring)

I concur in the result reached by the majority. However, I would conclude the responses to the special questions reveal the jury failed to find Sorensen proved his damages by a preponderance of the evidence. A finding of proximate causation is not inconsistent with the subsequent failure to award damages. A finding of proximate cause only establishes a casual relationship between a defendant's negligence and damage to the plaintiff. It may imply plaintiff was damaged in some way, but it does not establish proof of damages by a preponderance of the evidence. That determination is made by the jury in a separate analysis. The verdict was not inconsistent and the district court erred in granting a new trial.