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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JUDITH A. ARP and RAY R. ARP, wife and husband,	)	
Plaintiffs-Appellees,	)	Filed February 26, 1985
vs.	)	
WAYNE READ, MODERN EQUIPMENT CO. and ALCO STANDARD CORP.,	)	4-535 84-527
Defendants-Appellants.	)	

Appeal from the Iowa District Court for Muscatine County - Jack L. Burns, Judge

Defendants appeal from the court's order granting a new trial on the issue of damages to the plaintiffs. On appeal, they assert that the court abused its discretion in granting plaintiffs' motion for new trial and alternatively that the court should have granted a new trial to the whole case. AFFIRMED.

Greg A. Egbers of Betty, Neuman, McMahon, Hellstrom & Bittner, Davenport, for defendants-appellants.

David J. Meloy of Stanley, Lande, Coulter & Pearce, Muscatine, for plaintiffs-appellees.

Heard by Oxberger, C.J., Donielson and Snell, JJ., but considered en banc.

OXBERGER, C.J.

Plaintiff Judith Arp brought suit to recover for personal injuries she suffered when she was involved in an accident with defendant Walter Read, who was driving a car owned by defendants Modern Equipment Company and Alco Standard Corporation. The evidence indicated that Read struck Arp from behind. A jury trial was held and the jury awarded Arp $6,001.00. Arp filed a motion for a new trial alleging inadequate damages and jury misconduct. In support of the motion, an attorney for the plaintiffs filed an affidavit outlining the behavior of the jury.

The trial court granted a new trial solely on the grounds that the damage award was inadequate. The court stated that it did not consider the affidavits on juror misconduct.

Defendants appeal from the order granting the new trial alleging that the trial court abused its discretion in granting a new trial. Plaintiffs claim that considering the nature and extent of Mrs. Arp's injuries as well as the juror misconduct, the trial court did not abuse its discretion.

This court infrequently overturns the trial court's decision that a new trial is warranted. The reluctance of appellate courts to interfere in the district court's discretion is reflected in the comments found at Householder:

> The trial court has considerable discretion in ruling on a motion for new trial on the ground of the inadequacy of a verdict. Whether damages are so inadequate as to warrant a new trial is usually left for the trial court to decide, and its discretion in granting or refusing to grant new trial will not ordinarily be disturbed on appeal unless an abuse of discretion is shown.

Householder v. Town of Clayton, 221 N.W.2d 488, 493 (1974). The proposition that the court is slower to interfere with the grant of a new trial than with its denial is so well established that our appellate rules indicate it is not necessary to cite supporting authority. Iowa R. App. P. 14(f)(4).

On the day following the accident, Judith Arp consulted her chiropractor, Dr. Shay, who took x-rays and made neck adjustments. Shay testified at trial that, in his opinion, the accident caused an injury to Judith Arp's cervical spine and caused an injury to the soft tissue in her neck. The x-rays revealed that Judith Arp had a preexisting problem with a part of her spine; however, Shay testified that he doubted this caused any pain for her before the accident. Shay stated that he had treated Judith Arp for menstrual problems on three prior occasions and neck adjustments were included in these treatments. In Shay's opinion, Judith Arp's previous problems had no relation to the pain she experienced after the accident. However, he admitted that she might have experienced some minor neck pain prior to the accident. Shay treated Judith Arp for two years after the accident and believed that she no longer had severe pain but that she still had some chronic pain. He further testified that Judith Arp would likely experience flare-ups in pain after performing certain tasks. The charges for Shay's services were $1,001.00.

Plaintiff saw a neurologist who testified that, upon examination, Judith Arp had good neck movements and did not appear to be in a great deal of pain. The neurologist performed an ENG test that indicated abnormal impulses to Judith Arp's left shoulder and arm, and he performed a cervical myelogram that required hospitalization for two days. The neurologist stated that the test uncovered no striking abnormalities in Judith Arp but that it did indicate damage to the soft tissue and muscles in her neck and indicated stretched cervical nerves. He concluded that these conditions were the result of the accident, and they were responsible for her chronic discomfort. The neurologist also believed that many types of physical activities could cause flare-ups in Judith Arp's symptoms, however, he felt that her condition would improve with time.

A physical therapist who also examined Judith Arp found limited motion in her neck and believed her pain was the result of a mechanical as opposed to psychological problem. The bills from all the doctors totaled $4,758.60.

Judith Arp testified that prior to the accident, she performed much of the work at the farm that she and her husband lived on. She stated that she still experienced pain as a result of the accident and that many physical tasks, including work around the farm, aggravated this pain. She claimed that because of her pain, she could no longer perform the work around the farm. Plaintiff Ray Arp testified that, without his wife's help on the farm, he could not get the farm work done. He stated that, in 1982, two years after the accident, he had to hire farm help and that the expenditures for this help totaled $4,750.50.

In reviewing the facts before the trial court here, we cannot find the court abused its discretion. The myelogram performed on Judity Arp convincingly shows there was damage to plaintiff and the neurologist testified the injuries were the result of the accident.

In awarding $6001 for plaintiff's damages, $1001 was allocated for current medical bills and the remainder to future medical expenses. The evidence showed the current medical bills alone totaled $4758.60, and that another $4750 was lost to the Arps after Judith could not assist her husband with farm work. The figure presented by the jury barely covers medical expenses already incurred.

These facts show the court was within its discretion in its ruling. The general rule regarding a grant of new trial should be followed and we will not disturb the court's decision.

Because of our decision, we find it unnecessary to discuss the issue raised by plaintiff of jury misconduct

Defendants further claim if the grant of a new trial is upheld, the trial should include the whole case and not the issue of damages. They refer to Householder, where the court stated, "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 at 493.

We agree with the trial court the jury apparently decided the liability issue in favor of plaintiffs and the evidence shows liability is definitely established. Plaintiffs' vehicle was legally stopped on the road when struck from behind by defendant's car. The defendant Read admitted the accident was not caused by obstructions to vision, road conditions, or any actions by Judith Arp.

We affirm the trial court's grant of a new trial on damages.

AFFIRMED

All judges concur except Snell and Sackett, JJ, who dissent.

SNELL, J. (dissenting)

I respectfully dissent. After considering the record, I believe that the trial court abused its discretion in granting a new trial.

While all the medical experts agreed that Mrs. Arp was injured as a result of the accident, there is conflicting testimony as to the severity and the permanent nature of the injuries. The Arps' chiropractor, Dr. Shay, testified that Mrs. Arp would continue to experience flare-ups of pain when she performed certain tasks. A neurologist who examined her testified that although she may have flare-ups of pain, her condition would improve. There was also conflicting testimony of whether the need to hire additional help was the result of Mrs. Arp's injuries or because of the loss of help that the Arps had been receiving from friends and neighbors.

Evidence was also presented that Judith Arp received treatments on her neck three times just a few months before the accident. She also suffered from a condition preexisting the accident known as cervical spondylosis, or degeneration of the vertibra.

The situation confronting the jury in this case necessitated a finding of how much of Judith Arp's injuries and difficulties were caused by the accident as opposed to being the result of other causes. The case is not one of undisputed evidence. In Moore v. Bailey, 163 N.W.2d 435 (Iowa 1968), the supreme court affirmed a jury verdict of $3,000.00 in a similar case, which was only $1,070.50 above plaintiff's special damages. See also Kautman v. Mar-Mac Community School Dist., 225 N.W.2d 146 (Iowa 1977) (verdict will not be set aside or altered unless it is, (1) flagrantly excessive or inadequate; or (2) 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 motive; or (4) is lacking in evidential support).

In the instant case, the award of $6,001.00, while modest, represents the jury's determination of how much defendant is responsible for plaintiff's injuries. Given the disputed evidence, I cannot say the verdict failed to do substantial justice between the parties. Although we are generally reluctant to reverse the trial court's order granting a new trial, I believe that in this case the trial court abused its discretion and a reversal is required.

Sackett, J., joins this dissent.