

**FILED**

AUG 23 1989

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-276 / 88-1096

ROBERT EUGENE WALLACE and JEANNE A. WALLACE,

Appellants,

vs.

JEANNE LOU GREEN and LOREN H. GREEN,

Appellees.

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Appeal from the Iowa District Court for Polk County,  
George Bergeson, Judge.

Plaintiff appeals a judgment in his favor contending the verdict was inadequate and not supported by the evidence, and challenges two instructions. **AFFIRMED.**

Delbert C. Binford of Dreher, Wilson, Simpson, Jensen, Sellers, Butters, Adams & Kaiser, Des Moines, for appellants.

Mark D. Sherinian of Hanson, Bjork & Russell, Des Moines, for appellees.

Considered by Oxberger, C.J., and Hayden and Habhab, JJ.

**HAYDEN, J.**

Plaintiffs sued defendants for injuries plaintiff, Robert Wallace, allegedly incurred in an auto accident with defendant driver Jeanne Green. The accident occurred on N.W. 100th Street in Clive, Iowa. The date was December 14, 1983. Robert Wallace was the driver and sole occupant of his vehicle. Jeanne Green was the driver and sole occupant of defendants' automobile.

The jury awarded plaintiff, Robert Wallace, \$2,500 for his personal injury claim. Plaintiff, Jeanne Wallace, was awarded nothing for her loss of consortium claim. She has not appealed. Defendants do not cross-appeal. Plaintiff, Robert Wallace, appeals. He contends the amount of the jury verdict was inadequate and was not supported by the evidence. He contends he is entitled to a new trial on the issue of damages. He also argues the trial court should have instructed the jury to consider the possible effects of inflation or deflation in computing the present value of future damages. Finally, he contends the trial court should have given his requested instruction on traumatic injury which aggravates a preexisting condition. He argues the jury should have been instructed where a trauma aggravates a preexisting condition, and no apportionment is or can be made between the prior condition and the result of the trauma, the defendant who is liable for the trauma should be held responsible for the entire condition. We affirm.

Our review is for corrections of errors at law. Iowa R. App. P. 4.

We note at the outset, comparative fault was not in issue before the jury. The jury determined the defendant's negligence was the proximate cause of any damage to plaintiff resulting from the accident.

The injuries Robert Wallace claims he incurred from the accident are carpal tunnel syndrome to each wrist and an aggravation of a preexisting condition. The preexisting condition is lateral epicondylitis of the left elbow, commonly known as "tennis elbow." Robert produced expert medical testimony he was treated for these injuries. Also, these injuries could have resulted from the accident with Mrs. Green.

#### I.

The trial court denied plaintiff's motion for new trial. The Iowa Supreme Court summarized the governing principles whether a trial court should grant a new trial because the verdict is claimed to be inadequate in Waddell v. Peet's Feeds, Inc., 266 N.W.2d 29, 32 (Iowa 1978).

These principles are:

1. In granting or denying new trials, the trial court has wide but not unlimited discretion.
2. The fact finder is not obliged to accept expert testimony, even if it is uncontradicted, although testimony should not be arbitrarily and capriciously rejected.
3. In determining if a verdict is either excessive or inadequate, each case must be determined on its own special facts.

4. Courts should see that a verdict fairly and adequately compensates a plaintiff for the damages suffered, but the amount of damages to be awarded is peculiarly a jury, not a court, function.

5. The fact that a court may have reached a different result is not ground for setting aside a jury verdict and awarding a new trial.

Here plaintiff's medical expenses for two carpal tunnel surgeries amounted to \$2,667.25. In adding the medical expenses for his treatment of epicondylitis, plaintiff's medical bills amounted to \$4,153.63.

Dr. Arnis Grundberg testified he commenced treating plaintiff on July 6, 1982, for epicondylitis of the left elbow. Plaintiff had been experiencing pain in his left elbow during the prior three years. Plaintiff indicated his grip was weak in his left hand. Dr. Grundberg injected the tender area of plaintiff's left elbow with cortisone and a long-acting anesthetic. This treatment was repeated again on April 26, 1983. Dr. Grundberg next saw plaintiff on December 20, 1983, which was six days after the accident. During this visit plaintiff told Dr. Grundberg he had been involved in a head-on collision. Plaintiff also related to Dr. Grundberg he had been holding on tightly to the steering wheel in the collision and twisted his wrist in some manner. Plaintiff complained his lateral epicondylitis on the left bothered him intermittently when doing heavy work before the accident. Since then the pain

had been constant. Plaintiff also complained since the accident he had intermittent numbness and tingling in his hand. At night plaintiff told the doctor both of his hands would go numb.

Dr. Grundberg testified his impression was Robert Wallace's lateral epicondylitis of the left elbow was made worse by the car accident and he had a bilateral carpal tunnel syndrome brought on by the accident. At that time it was gradually improving. The doctor injected plaintiff's elbow again. Plaintiff was treated with an injection again on January 3, 1984. The numbness in his hands was better. Plaintiff was advised to obtain physical therapy for his elbow. The next and last time Dr. Grundberg saw Robert was February 21, 1984. His carpal tunnel problem was improving and surgery was not recommended. Again Robert was advised to go to physical therapy two times a week for three weeks and if therapy did not help, then surgical treatment of his elbow was available. X-rays, taken in July 1982, revealed a small bone chip in Robert's left elbow. This chip was not fresh and had been there for a long period of time. Dr. Grundberg did not see or treat plaintiff after the February 21, 1984, visit.

On cross-examination, Dr. Grundberg stated plaintiff's part-time work as a carpenter, painter, and wallpaper hanger would be a constant aggravation to his epicondylitis problem.

On April 9, 1984, Robert Wallace saw Dr. Marshall Flapan, an orthopedic surgeon. Dr. Flapan testified plaintiff's history showed he injured his left elbow on December 14, 1983, in an auto accident. He had previous problems with his left elbow which he thought was due to a childhood injury (break) to his wrist. He had symptoms of carpal tunnel syndrome. Dr. Flapan performed carpal tunnel surgery on plaintiff's left wrist on May 2, 1984, and on his right wrist May 16, 1984. Dr. Flapan also performed surgery on plaintiff's left elbow on June 14, 1984. Dr. Flapan testified carpal tunnel syndrome can be caused by trauma. The auto accident could have been an inciting course of plaintiff's problem. Plaintiff continued to see Dr. Flapan after his surgeries through April 4, 1988. He was also seen by Dr. Scott Neff, an orthopedic surgeon, and Dr. Alexander Matthews, a thoracic surgeon at defendant's attorney's request. Drs. Flapan, Neff, and Matthews indicated plaintiff may have thoracic outlet syndrome. This problem requires the removal of the first rib. Dr. Flapan also agreed on cross-examination repeated use of hands and motions using a paint brush could cause tennis elbow and carpal tunnel syndrome.

At the time of the accident, plaintiff's auto was nearly stopped and defendant's auto was sliding on the slick street surface at an angle, and struck the left front of plaintiff's auto. At impact, defendant's speed was less

than twenty-five miles per hour. Plaintiff worked as an insurance claims adjuster and supervisor. He worked extra jobs doing carpenter work and wall papering and painting.

We have recited and referenced the above facts and testimony from the record to indicate what was before the jury for its consideration. The cause and extent of plaintiff's injuries here were disputed. Plaintiff relies upon the case of Household v. Clayton, 221 N.W.2d 488, 493 (Iowa 1974). In that case the Iowa Supreme Court held:

[D]amages should be commensurate with the injury, and be sufficient to right the wrong done to the injured party.

The test for adequacy is for the court to determine what will fairly and reasonably compensate an injured party for the injury sustained. . . . a verdict will be set aside as inadequate where it appears clearly from uncontroverted evidence that the amount of the verdict bears no reasonable relationship to the loss suffered by the plaintiff. (Citations omitted.)

Id. at 493. The undisputed facts in Householder indicated the minimum loss to the plaintiff was \$9,805.22. The court held that the \$8,000 jury verdict was inadequate under all the prevailing tests for adequacy and reversed the trial court's denial of plaintiff's motion for a new trial. Id. at 493.

Unlike Household, the cause and amount of plaintiff's injuries and damages are disputed and contested. We determine Household is not controlling authority or applicable to this appeal.

In the case of Miller v. Eichorn, 426 N.W.2d 641, 642-43 (Iowa App. 1988), our court held an award of \$3,569.70 was not an inadequate award where there was a dispute as to the cause of injuries. Also, in the case of Young v. Gibson, 423 N.W.2d 208, 210 (Iowa App. 1988), our court determined an award for property damage only was not inadequate where there was a dispute as to the cause of injuries.

This case is similar to Kaiser v. Stathis, 263 N.W.2d 522 (Iowa 1978). In that case as here there is no serious question as to defendant's negligence being the proximate cause of the collision with plaintiff's car, the record before us does contain a number of factual issues which the jury had to decide in reaching its verdict. In Kaiser, the jury had to determine whether any portion of the damages claimed by plaintiff for his knee problems was due to any physical ailment or disability which may have been caused by Osgood-Shlatter, a disease plaintiff suffered in his youth, or what portion, if any, of his damages sustained was due to any disability or physical ailment caused by this condition being aggravated and made active by the accident. See id. at 525-26. Here the jury had the task of determining what amount of plaintiff's damage, if any, to his elbow was caused by the accident, the work he performed, or from the condition being aggravated by the accident. Also, in Kaiser, the jury had to decide if part

of plaintiff's back problem was caused by his exercise regimen or by bending and stooping at his job. See id. at 526.

Likewise, this jury was required to decide to what extent plaintiff's carpal tunnel syndrome malady was the result of the accident or caused by plaintiff's work and use of his hands doing carpentry work, wallpapering, and painting.

The Iowa Supreme Court in Kaiser affirmed our court which reversed the trial court in granting a new trial and let stand the jury verdict. In Kaiser, the uncontroverted evidence of plaintiff's damage was \$11,877.90, but the jury awarded only \$7,500 for those losses and an additional claim for pain and suffering. In support of this decision, our supreme court held:

While the jury as the trier of fact is not warranted in arbitrarily or capriciously rejecting the testimony of a witness, neither is it required to accept and give effect to testimony which it finds to be unreliable, although it may be uncontradicted. Testimony may be unimpeached by any direct evidence to the contrary and yet be so contrary to natural laws, inherently improbable or unreasonable, opposed to common knowledge, inconsistent with other circumstances established in evidence, or so contradictory within itself, as to be subject to rejection by the court or by the jury as trier of the facts. Kindred v. Crosby, 251 Iowa 198, 202, 100 N.W.2d 20, 23.

This court also said: "The court is not required to accept it as a verity uncontradicted testimony, but might well scrutinize closely such testimony as to its credibility, taking into consideration all the circumstances throwing light thereon, such as the interest of the witnesses, remote or otherwise." Gregory v.

Gregory, 248 Iowa 672, 682, 82 N.W.2d 144, 150.  
See also Gilmer v. Neuenswander, 238 Iowa 502,  
507, 28 N.W.2d 43, 46.

The factual history in Kaiser is more in point with the factual background of this case. Therefore, we determine it is applicable and controlling authority for our decision in this appeal.

In jury trials controverted issues of fact are for the jury to decide. That is what juries are for. To hold that a judge should set aside a verdict just because he would have reached a different conclusion would substitute judges for juries. It would relegate juries to unimportant window dressing. That we cannot do. . . .

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Where, as here, the disputes are principally factual, and there is substantial evidence to support the jury's determination of these facts, the judge should not grant a new trial merely because reasonable men might disagree with the jury's conclusion.

The courts in general hold that when a verdict is amply supported by evidence, a trial court abuses its discretion by granting a new trial on the ground that it would have reached a different result. (Citations omitted.)

Id. at 525.

There is sufficient evidence to support the jury's verdict and, as such, the verdict is not inadequate. We affirm on this issue.

## II.

Plaintiff argues it was error for the trial court to submit an instruction on present value requiring the jury to consider an interest rate without further requiring them

to consider the effect of deflation or inflation. Plaintiff cites the case of Schnebly v. Baker Co., 217 N.W.2d 708 (Iowa 1974). It is true the supreme court in Schnebly held future inflation may be considered if shown by the evidence. (Emphasis ours.) In that case evidence of anticipated inflation was admitted. In the case before us we are unable to discern any evidence in the record of anticipated inflation or deflation. In light of the lack of evidence or testimony on the subject, we hold the trial judge did not err in not including the effect of inflation or deflation in its present value instruction. See Bosak v. Hutchinson, 375 N.W.2d 333, 348 (Mich. 1985). We affirm the trial judge on this issue.

### III.

The trial judge gave the following instruction to the jury on aggravation of a preexisting condition:

#### INSTRUCTION NO. 18

If you find Robert Wallace had epicondylitis and/or a deformity of the radial head of the left elbow before the accident and this condition was aggravated by the accident causing further suffering and disability then he is entitled to recover damages caused by the aggravation. He is not entitled to recover for any physical ailment or disability which existed prior to the accident or for any injuries or aggravations of injuries which he now has which were not caused by the defendant's actions.

Plaintiff requested the following instruction be given in lieu of the court's instruction 18, as follows:

If you find Robert Wallace had a deformed radial head in his left elbow making him more susceptible to injury than a person in normal

health, then the Defendant is responsible for all injuries and damages which are experienced by Robert Wallace proximately caused by Defendant's actions, even though the injuries claimed produce a greater injury than those which might have been experienced by a normal person under the same circumstances.

Plaintiff relies on the case of Becker v. D. and E. Distributing Co., 247 N.W.2d 727 (Iowa 1976). In Becker, plaintiff was injured in an auto accident. His injuries consisted of a fractured knee cap, a rib fracture, and a sprain of the lumbar spine. He had flat feet and had dropped a sixty-pound piece of iron on his foot at work after the accident. It is important to note Becker had no disability before the collision. Id. at 731. That cannot be said about Robert Eugene Wallace. We find Becker is not controlling authority or applicable to our decision here. Also, plaintiff failed to preserve error as to this issue. Plaintiff's counsel did not object to the court's instruction number eighteen. Also, he did not alert the trial court of its failure to include his requested latent condition instruction. We require counsel's objection to be specific in order to afford trial court the opportunity to correct a valid complaint before the instruction is given to the jury. Hoekstra v. Farm Bureau Mutual Insurance Company, 382 N.W.2d 100, 107 (Iowa 1986), and Goetzman v. Wichern, 327 N.W.2d 742, 745 (Iowa 1982).

We hold the facts of this case support the trial court's instruction number eighteen on the damage issue of aggravation of a preexisting condition. The trial court did not err in giving this instruction to the jury. Also, any alleged error as to this instruction or plaintiff's requested instruction was not preserved on appeal.

In denying plaintiff's motion for a new trial, the trial judge commented "that while I may not always agree with what juries do and what they bring in, it's incumbent upon this court not to tamper with jury verdicts unless there's just obvious circumstances that exist to allow me to do that. I don't find that any exist in this case." Like the trial court, we find no reason to tamper with this jury's verdict.

**AFFIRMED.**