IN THE COURT OF APPEALS OF IOWA

No. 8-418 / 97-1805

LOUISE M. ISENBERG,

Plaintiff-Appellant,

vs.

SUSAN KAY PRINS and MARVIN PRINS,

Defendants-Appellees.

FILED
OCT 29 1998
CLERK SUPREME COURT

SUSAN KAY PRINS and MARVIN PRINS,

Third-Party Plaintiffs,

vs.

JAMES WARREN,

Third-Party Defendant.

Appeal from the Iowa District Court for Story County, Carl E. Peterson, Judge.

Plaintiff appeals the trial court's refusal to grant her a new trial in her personal injury suit. **AFFIRMED.**

Donald G. Juhl, Nevada, for appellant.

Kirke C. Quinn of Quinn, Doran & Anderson, Boone, for appellees Prins.

John B. Grier of Cartwright, Druker & Ryden, Marshalltown, for appellee Warren.

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

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SACKETT, P.J.

Plaintiff-appellant Louise M. Isenberg appeals the trial court's refusal to grant her a new trial in her personal injury suit. We affirm.

Plaintiff sued defendants-appellees Susan Kay Prins and Marvin Prins after the car plaintiff was driving was struck by a car owned by defendants and driven by defendant Susan Kay Prins. Following a jury trial, defendants were found to be ninety-five percent at fault and plaintiff five percent. The jury fixed plaintiff's damages at $10,000. Defendants had sued James Warren as a third-party defendant. He was found not to be at fault and no appeal is taken from the finding he was not liable.

At trial, plaintiff claimed medical expenses of $7830 and lost wages of $1880. After the verdict, she filed a motion for new trial contending $10,000 was inadequate compensation and asking permission to subpoena jurors to question them about possible juror misconduct. The trial court denied both plaintiff's motion for mistrial and motion to subpoena jurors.

Plaintiff contends she should have been allowed to subpoena and question jurors about the discussion of insurance in the jury room. There is no claim the jury sought or obtained outside evidence of insurance coverage. Plaintiff claims the jury relied upon extraneous, prejudicial information in respect to insurance and Medicare issues in relation to the medical bills and the jury thought plaintiff was trying to collect twice. The district court denied plaintiff the right to subpoena jurors to

advance this claim finding any proposed testimony obtained from the jurors would not be admissible to impeach the verdict.

Iowa Rule of Evidence 606(b) provides:

> **(b) Inquiry Into Validity of Verdict or Indictment.** Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes.

Iowa R. Evid. 606(b).

Only in rare exceptions is evidence admissible to impeach a jury verdict. *See State v. Johnson*, 445 N.W.2d 337, 341-42 (Iowa 1989). This is especially true when the jury has already been dispersed at the time the challenge is made. *Weatherwax v. Koontz*, 545 N.W.2d 522, 525 (Iowa 1996). In *Rutledge v. Johnson*, 282 N.W.2d 111 (Iowa 1979), the court laid down two exceptions to permitting a jury to disagree with a verdict after the jury separated: (1) Ministerial errors where inadvertence or clerical errors occurred and where the proof of the same was clear and inescapable; and (2) where the jury reached a verdict it inadvertently failed to record. *Id.* at 114-15. Statements allegedly made in the jury room about insurance inhere in the verdict and are not competent to impeach it. *See Bangs v. Pioneer Janitorial of Ames, Inc.*, 570 N.W.2d 630, 631-32 (Iowa 1997). We affirm on this issue.

Plaintiff also contends the district court should have granted her a new trial because the damage award was not adequate. We review for an abuse of discretion. *Carolan v. Hill*, 553 N.W.2d 882, 885 (Iowa 1996). An inadequate damage award can justify the granting of a new trial. *See Witte v. Vogt*, 443 N.W.2d 715, 716 (Iowa 1989). If the uncontroverted facts show the amount of the verdict bears no reasonable relationship to the loss suffered, the verdict is inadequate. *Id.*

We are slower to interfere with the grant of a new trial than its denial. Iowa R. App. P. 14(f)(4). Whether damages awarded are adequate in a particular case depends on the facts of each case. *Matthess v. State Farm Mut. Auto. Ins. Co.*, 521 N.W.2d 699, 702 (Iowa 1994).

At the time of the accident, plaintiff was about sixty-seven years old and working full-time at Walmart, being paid an hourly wage of $5. She enjoyed reasonably good health. In the accident, plaintiff suffered a cut on her lip and had the two remaining teeth of her lower jaw knocked out. Her top denture was knocked out of her mouth and was broken. She suffered a cracked wrist and a dislocated finger. Plaintiff was hospitalized for three days. The injuries to her finger and wrist were treated by immobilizing them and letting them heal. She did not take any pain medication other than Tylenol.

Plaintiff visited the dentist fourteen times. She incurred $3000 of her $7830 of medical expenses for dental treatment; $2300 of that amount was for her lower dentures. Plaintiff went to a dentist and got a full upper denture when she was eighteen. She had never gone back to the dentist until after the accident.

The jury was asked to find only the total amount of plaintiff's damages. No request was made for the jury to itemize damages. Defendants advance that while plaintiff claims her medical expenses were $7830, the jury could well have determined the $2300 for her bottom dentures were not made necessary in whole or in part as a proximate result of the accident.

The jury verdict is within a reasonable range when we view the evidence in the light most favorable to defendants. *See Miller v. Eichhorn*, 426 N.W.2d 641, 642-43 (Iowa App. 1988). We affirm.

AFFIRMED.