IN THE COURT OF APPEALS OF IOWA 000203

No. 8-004 / 96-1922
Filed February 25, 1998

FILED
FEB 25 1998
CLERK SUPREME COURT

PATRICIA R. LUNDGREN and DOUG LUNDGREN,
Appellants,

vs.

LUCILLE JONES,
Appellee.

Appeal from the Iowa District Court for Fremont County, Charles Smith, Judge.

Plaintiffs appeal the district court's denial of their motion for new trial. **AFFIRMED.**

Richard B. Maher, Glenwood, and Vicki R. Danley, Sidney, for appellants.

Lyle W. Ditmars of the Peters Law Firm, P.C., Council Bluffs, for appellee.

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

STREIT, J.

Plaintiff appeals the trial court's denial of her motion for new trial alleging the jury verdict was inadequate. Because the jury award is supported by the substantial evidence in the record, we affirm the trial court.

I. Background & Facts.

On October 30, 1991, Patricia Lundgren and Lucille Jones were in an automobile accident in the parking lot of the Grape Community Hospital. Both women were employees of the hospital.

Lundgren consulted her family physician in December 1991 for symptoms of pain, stiffness, and headaches. She also received treatment for her symptoms from a physical therapist and chiropractor. In March 1996, plaintiff had surgery for the removal of a portion of a disk due to pain in her cervical area.

Lundgren and her husband filed an action against Jones for damages arising out of the accident. Lundgren claims she incurred $20,838.50 in medical bills related to the injury sustained in the accident. Jones argues not all Lundgren's medical expenses were related to the injury she received in the accident.

After trial, the jury found Jones sixty percent and Lundgren forty percent at fault for the accident. The jury awarded Lundgren damages totaling $466.50. Lundgren motioned for new trial claiming the jury award was inadequate. The motion was denied. Lundgren appeals.

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II. Adequacy of Damages.

Lundgren asserts she should have been granted a new trial due to the inadequacy of the damages awarded by the jury. We review the denial of a motion for new trial for correction of errors at law. Iowa R. App. P. 4. However, when the motion is based on a discretionary ground we review for an abuse of discretion. *Id.* A ruling on a motion for new trial based on the adequacy of the jury verdict is reviewed for an abuse of discretion. *Smith v. Air Feeds, Inc.* 556 N.W.2d 160, 165 (Iowa App. 1996).

If a jury verdict is not supported by sufficient evidence and substantial justice was not accomplished by the verdict, a new trial may be granted. *Delaney v. Sand*, 1997 WL 442690, at *3 (Iowa App. 1997). It is not controlling that the evidence at trial may justify a higher damage award. *Foggia v. Des Moines Bowl-O-Mat, Inc.*, 543 N.W.2d 889, 891 (Iowa 1996). "The key question is whether after examining the record, 'giving the jury its right to accept or reject whatever portions of the conflicting evidence it chose,' the verdict effects substantial justice between the parties." *Id.*

The Plaintiffs contend the jury's damage award did not effectuate substantial justice because it did not adequately compensate them for the injury sustained. We disagree. Defendant presented evidence through expert testimony and cross-examination of the plaintiffs' expert that the medical expenses were not causally linked to the incident. Based on the evidence and testimony presented at trial, a reasonable jury could have found most of Lundgren's medical expenses were not

linked to the accident. It was reasonable for the jury to forego an award of pain and suffering in light of evidence showing the injury was short lived. The findings made by the jury are precisely the type which are within the province of the jury. *See Foggia*, 543 N.W.2d at 891. The findings are supported by substantial evidence on the record. *See id.* Unable to find an abuse of discretion, we affirm the trial court's denial of a new trial. Because we affirm the trial court's denial of the motion for new trial, the defendant's cross-appeal for the trial court's denial of its motion for summary judgment is moot.

AFFIRMED.