IN THE COURT OF APPEALS OF IOWA

No. 9-861 / 99-0861
Filed June 28, 2000

STEVE SULENTIC,
Plaintiff-Appellant,

vs.

ROBERT FRANCIS HEFFRON,
Defendant-Appellee.

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CLERK SUPREME COURT

Appeal from the Iowa District Court for Monroe County, James Q. Blomgren, Judge.

Plaintiff appeals contending the court erred in failing to grant additur or a new trial on damages following the jury verdict on his personal injury action. **REVERSED AND REMANDED FOR NEW TRIAL ON ALL ISSUES.**

Michael T. Jalovec and James A. Sinclair of Sinclair & Associates, P.C., West Des Moines, for appellant.

John A. Pabst of the Pabst Law Firm, Albia, for appellee.

Heard by Vogel, P.J., and Mahan and Miller, JJ.

MAHAN, J.

Plaintiff appeals contending the court erred in failing to grant additur or a new trial on damages following the jury verdict on his personal injury action. He also contends the court erred by reducing his medical expenses to amounts paid by Medicare. We reverse and remand for new trial on all issues.

Shortly after 10:00 a.m. on April 5, 1997, Steve Sulentic (Sulentic), born January 18, 1926, left the Owl Tap in Albia, Iowa after drinking one beer. Sulentic, who had ridden his bike to the Owl Tap, pushed his bike to the southeast curb at the intersection of Benton and Main Street. Sulentic claims the light had changed to "Walk" when he proceeded northbound across Benton Avenue. He was wearing glasses at the time and he also contends the northbound traffic light was green when he began to cross.

On this same date, Robert Heffron (Heffron) left the Monroe County fairgrounds and headed south on Main Street into Albia. He was driving a 1989 Chevy half-ton pickup truck. Heffron contends the light on the corner of Main Street and Benton Avenue was red when he reached that intersection. He waited in the left hand turn lane and claims he started making his left turn after the turn arrow was green.

Sulentic had proceeded approximately seven to ten feet across Benton Avenue when he was struck by Heffron's pickup truck. Heffron along with a witness, Danny Casper, believed Sulentic appeared to be hurt. Sulentic was taken to the hospital by ambulance.

Officer Randy Hutchinson investigated this collision. He determined that according to a breath test, Sulentic was not intoxicated. Officer Hutchinson met

with Sulentic in the hospital. Sulentic claims he had the right to cross the street at the time of the incident. Officer Hutchinson also met with Heffron who stated he never stopped at the intersection because the light had turned yellow and he was going through it. Heffron, however, later denied ever stating the light was yellow. Both Officers Hutchinson and Kenneth Power gave testimony as to the sequence of the lights at the intersection of Main Street and Benton Avenue.

Officer Hutchinson had listed Sulentic's injuries as major and incapacitating. The emergency room diagnosed Sulentic as having multiple left lower extremity fractures due to trauma. X-rays taken revealed "fracture of the mid shaft of the fibula as well as fractures of both left malleoli in the ankle." Sulentic had multiple abrasions on the lower extremities, some evidence of bleeding on the right palm, a large hematoma on the right thigh, and deformity in the left ankle.

After he was examined in the emergency room, Sulentic was transferred by ambulance to Ottumwa Regional Health Center for further evaluation and treatment. Sulentic was examined by Dr. Jack Brindley whose impression was "multiple injuries from a bicycle/car accident with a fracture of the left mid fibula and fracture of left medial malleolus displaced, multiple contusions with large contusion medial right knee." Dr. Brindley also performed the following surgery on Sulentic: "Open reduction internal fixation of medical malleolar fracture, left ankle." He also placed a short arm cast on Sulentic's right arm to treat his non-displaced distal right radius fracture. Sulentic was discharged from the hospital two days after the accident on crutches with a short arm cast and a short left leg

walking cast. He contends he was unable to leave his apartment for the first couple weeks after the injury.

On April 20, 1999, this matter came to trial in front of a jury in Monroe County. One day later, the jury returned a verdict allocating Heffron to be fifty percent at fault and Sulentic to be fifty percent at fault. However, the questions on damages were not completed by the jury. The judge returned the verdict form and instructed the jury to resume their deliberations. The jury returned the verdict form the second time awarding only past medical expenses. The judge again resubmitted the verdict form to the jury and instructed them the law required them to award an amount for past pain and suffering and loss of function. The jury returned its verdict again with awards of $200 for past physical and mental suffering and $200 for future loss of bodily function. The court determined this last damage award to be a scrivener's error and corrected it to award past loss of bodily function. The court denied Sulentic's motion for additur and new trial. Sulentic appeals.

I. Standard of Review. Our review of a district court's action on a motion for a new trial is for abuse of discretion. *Ten Hagen v. DeNooy*, 563 N.W.2d 4, 6 (Iowa App. 1997). In rulings upon motions for new trial, we give the district court broad but not unlimited discretion in determining whether the verdict effectuated substantial justice between the parties. *Id.* at 6-7. We will not find an abuse of discretion unless it is shown the trial court's discretion was exercised on ground clearly untenable or to an extent clearly unreasonable. *Id.* at 7.

II. Additur or New Trial. Sulentic contends the district court abused its discretion by denying his motion for an additur or in the alternative a new trial on

damages.[1] He believes the jury's verdict provided inadequate damages and was not supported by sufficient evidence. Sulentic claims the jury award was inadequate based on the severity of his injuries.

A new trial may be granted if the jury awards inadequate or excessive damages, or when the verdict is not sustained by sufficient evidence, or is contrary to law. Iowa R. Civ. P. 244(d), (f). Damages awarded should be sufficient to right the wrong done to the injured party. *Blume v. Auer*, 576 N.W.2d 122, 125 (Iowa App. 1997) (citing *Yoch v. City of Cedar Rapids*, 353 N.W.2d 95, 99 (Iowa App. 1984)). The test for adequacy is what will fairly and reasonably compensate an injured party for the injury sustained. *Id.* The verdict is adequate if it bears a reasonable relationship to the loss suffered. *Id.* Whether the damages awarded are inadequate in a particular case depends on the facts of that case. *Kerndt v. Rolling Hills Nat'l Bank*, 558 N.W.2d 410, 417 (Iowa 1997).

In the present case, the jury returned its verdict and found each party fifty percent at fault. The following damages were awarded:

1. Past medical expenses	$ 11,498.41
2. Future medical expenses	$ 0
3. Past pain and suffering	$ 200.00
4. Future pain and suffering	$ 0
5. Past loss of function	$ 0
6. Future loss of function	$ 200.00 [2]
Total	$ 11,892.41

[1] He does not contest the liability verdict even though it allocated fault on a fifty/fifty basis.

[2] This item was changed to past loss of function by the district court.

Based on the severity of the injuries, Sulentic contends the damages are inadequate and a new trial is warranted. *Cowan v. Flannery*, 461 N.W.2d 155, 158 (Iowa 1990).

The real question in most cases, as here, is the amount and sufficiency of evidence to support the award made. *Id.* Where the verdict is within the reasonable range as indicated by the evidence, the courts should not interfere with what is primarily a jury question. *Id.* Our courts have not adopted an inflexible rule that every verdict awarding only damages for medical expenses in a personal injury action is inadequate as a matter of law. *Id.*

Sulentic testified at trial to his current complaints. He still had pins in his leg, his ankle is swollen, and he broke his wrist. Sulentic also claims he was unable to perform or limited in the performance of the following activities: hunting, mushroom hunting, fishing, gardening, and walking.

Although the past medical expenses were within the range of evidence, we find the remaining damage awarded by the jury to be wholly inadequate based on the severity of the injuries Sulentic suffered. Here the evidence clearly does not support the award made and the verdict is not within the reasonable range as indicated by the evidence. Heffron admits the "jury's award of damages in this case is clearly the result of a compromise." We conclude a new trial must be granted on damages. Heffron requests if a new trial is granted, it be granted on all issues including liability.

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 liability of a defendant is definitely established. *Householder v. Town of Clayton*, 221

N.W.2d 488, 493 (Iowa 1974). Where it appears from the jury award there was a compromise on liability, a new trial should be granted on all of the issues. *Id.* The general rule in this regard is a new trial should never be ordered on the question of damages alone when there is ground for a strong suspicion or inference that the jury awarded excessive or inadequate damages to plaintiff as a result of a compromise involving the question of liability. *Id.* In reviewing the record in the instant case, we find the evidence warrants a new trial on both damages and liability.

III. Reduction of Medical Expenses. Sulentic contends the district court erred when it reduced his medical expenses by the amounts paid by Medicare. He relies on the collateral source rule and section 668.14 as preventing the district court from reducing his past medical expenses in this manner.

Based on our decision in this case, there is no need to discuss this issue. We are aware both parties agree this is an issue that may come up again in the future. However, we decline the invitation to address it here.

REVERSED AND REMANDED FOR NEW TRIAL ON ALL ISSUES.