

IN THE COURT OF APPEALS OF IOWA

No. 1-142 / 90-1425

FILED

MAY 29 1991

CLERK SUPREME COURT

MARQUITA PALAR GALLEGOS

Appellant,

vs.

105

WALTER EUGENE YEAGER and BRADLEY DALE SHIPLEY,

Appellees.

Appeal from the Iowa District Court for Des Moines
County, R. David Fahey, Judge.

Plaintiff appeals the district court denying her motion
for a new trial on the grounds the jury award of damages
was inadequate. **REVERSED AND REMANDED FOR NEW TRIAL.**

J. Bryan Schulte of Ruther, Bauer, Schulte, Hahn,
Swanson & Crowley, Burlington, for appellant.

George E. Wright of Napier, Wright & Wolf, Fort
Madison, for appellees.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

HAYDEN, J.

A vehicle in which Marquita Gallegos was riding was hit from the rear while stopped for a stoplight. Gallegos claimed to have suffered a neck injury from the accident.

Gallegos later filed the present lawsuit against the owner (Shipley) and driver (Yeager) of the other car. Shipley and Yeager admitted liability for causing the accident. The only controverted issue at trial was the amount of Gallegos' damages for her physical injuries.

A jury found Shipley and Yeager 100% at fault but awarded Gallegos damages of only \$457. This figure was the exact amount of her past medical bills.

Gallegos has appealed the judgment entered upon the verdict described above. She contends she should be granted a new trial because the amount of the damage award was inadequate as a matter of law.

Our review is on errors of law. Iowa R. App. P. 4.

We note initially the jury rendered a general, rather than special, verdict. The trial court issued the general verdict forms to the jury only after the vehement insistence of counsel for both parties. In fact, the trial court specifically warned the attorneys if they used the general rather than specific verdict forms, they were in effect "buying an appeal."

Due to the use of the general verdict form, the trial court could not tell what amount was awarded for each item of damage claimed, or whether the jury disbelieved the

plaintiff sustained damage in any particular area. The trial court refused to assume the jury only awarded past medicals merely because the award coincided with the submitted bills. The verdict form did specify future damages were not awarded.

We set out the applicable law concerning granting a new trial for inadequate damages.

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 is peculiarly a jury, not a court, function.
5. The fact that a court may have reached a different result is no ground for setting aside a jury verdict and awarding a new trial.

Waddell v. Peet's Feeds, Inc., 266 N.W.2d 29, 32 (Iowa 1978), aff'g No. 348 / 2-60056 (Iowa App. Dec. 28, 1977) (new trial denied where verdict was almost twice the amount of the special damages).

We review the trial court's denial of a new trial for abuse of discretion. Witte v. Vogt, 443 N.W.2d 715, 717 (Iowa 1989). We are slower to interfere with the grant of a new trial than with its denial. Iowa R. App. P. 14(f)(4); Cowan v. Flannery, 461 N.W.2d 155, 157 (Iowa 1990). In ruling on motions for new trial, the court has broad but not unlimited discretion in determining whether

the verdict effectuates substantial justice between the parties. Iowa R. App. P. 14(f)(3); Cowan, 461 N.W.2d at 157.

In the present case the jury awarded Gallegos the exact amount of her special medical damages. The defendants admitted 100 percent liability. No expert testimony was offered contradicting Gallegos' claim of injury to her occipital nerve and the consequent pain and suffering, as well as disability arising from the injury. Additionally, Gallegos' expert witness testified future surgery, while unlikely at this time, may be necessary.

The Iowa Supreme Court on numerous occasions has found the award of only special damages inadequate and has granted a new trial on damages. Cowan, 461 N.W.2d at 160; Witte, 443 N.W.2d at 717; Webster v. City of Colfax, 250 Iowa 181, 184-86, 93 N.W.2d 91, 92-94 (1958). The supreme court in Witte held a general verdict for slightly more than plaintiff's special damages was clearly inadequate, in light of the plaintiff's obvious pain and suffering and possible need for future surgery. Id., 443 N.W.2d at 716-17.

In Cowan, the Iowa Supreme Court reversed a jury award as inadequate. 461 N.W.2d at 160. The jury only awarded the special damages concerning past and future medial expenses. Id. at 157. It made no allowance for general damages for loss of bodily function or pain and suffering. Id.

In Webster, the jury awarded the plaintiff the exact amount of her medical expenses, despite extensive evidence of pain, suffering, and disability. The supreme court reasoned the verdict shocked the conscience of the court, the verdict failed to effectuate substantial justice, and the jury may have misunderstood its rights and duties. Id., 250 Iowa at 183-86, 93 N.W.2d at 92-94. Any one of these is apparently an adequate reason to reverse the jury's award. Id. The supreme court stated:

While it is true that the assessment of unliquidated damages is peculiarly within the discretion of the jury, yet we have often said that discretion is not unlimited. The applicable rule is that courts will usually not interfere unless the result is so large or so small that it shocks the conscience. Obviously, the jury awarded damages covering medical expenses only, which was inadequate under the record. We are satisfied that the jury's failure to award any sum for pain and suffering and failure to award her any sum for loss of earnings, are sufficient to justify [granting a new trial].

Id. at 184-85, 93 N.W.2d at 93 (quoted in Cowan, 463 N.W.2d at 158) (emphasis added).

We determine the jury award of medical expenses only is inadequate under the record. The trial court abused its discretion in refusing to grant a new trial on the issue of damages only.

We reverse the trial court and remand for a new trial on damages only. All items of damages are to be determined by the jury. See Cowan, 461 N.W.2d at 160.

REVERSED AND REMANDED FOR NEW TRIAL.