

IN THE COURT OF APPEALS OF IOWA

No. 2-020 / 91-568

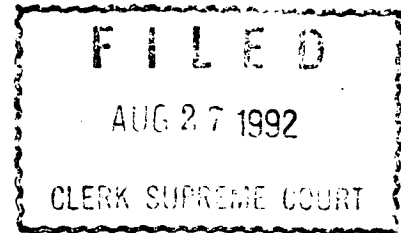
DEBRA L. JOHNSON, f/k/a DEBRA L. STARK,

Appellant,

vs.

MOBILE AUTO GLASS OF IOWA, INC., and JERRY TODD MORRISON,

Appellees.



Appeal from the Iowa District Court for Polk County,
Arthur E. Gamble, Judge.

Plaintiff appeals the district court's judgment
awarding her \$625 in damages after the jury found her 50%
at fault in a motor vehicle collision. **AFFIRMED.**

John J. Gajdel and Frank Watson, Jr. of Watson and
Gajdel, Des Moines, for appellant.

Henry A. Harmon and Ken A. Winjum of Grefe & Sidney,
Des Moines, for appellees.

Considered by Oxberger, C.J., and Donielson and
Sackett, JJ.

OXBERGER, C.J.

Plaintiff Debra Johnson brought this personal injury action after she was in an automobile accident involving defendant Jerry Morrison. At the time Morrison was driving a van owned by defendant Mobile Auto Glass of Iowa, Inc. A jury found Johnson was 50% at fault and Morrison was 50% at fault. Johnson's total damages were found to be \$1,250 and she was thus awarded a judgment of \$625 against defendants. Johnson's motion for new trial was denied by the district court. She appealed. We affirm.

At about 3:30 p.m. on May 6, 1987, Morrison was driving east on Grand Avenue in Des Moines, Iowa. At the intersection of Grand avenue and 31st Street, Morrison intended to turn left and proceed on 31st Street. The light at the intersection was green for traffic on Grand Avenue. A large dump truck was in the inside westbound lane on Grand Avenue, apparently waiting to turn left. The dump truck impaired Morrison's view of traffic coming west on Grand Avenue, but he began to turn slowly into the intersection. At the same time, Johnson was driving west on Grand Avenue in the curb lane. As she approached the intersection with 31st Street, she saw the large dump truck in the inside westbound lane. Johnson did not slow down to go through the intersection. Johnson's car and Morrison's van collided in the intersection.

The parties disagree about the extent of Johnson's injuries caused by the accident. Johnson claimed that the

collision caused her to hit her head and that she was temporarily unconscious after the accident. She stated she now suffers chronic low back pain and frequent headaches. She also testified she has difficulty with memory, judgment, and motivation due to the accident.

Johnson's treating physician, Dr. Marc Hines, testified that the collision caused Johnson to develop lumbo sacral sprain, pelvis sprain, post-traumatic migraine syndrome, post-traumatic whiplash injury, post-traumatic seizure disorder, and orbital frontal cortex injury. Dr. Hines also testified Johnson developed chronic depression as a result of the chronic pain and the brain injury. Dr. Ronald Evan, a chiropractor, testified Johnson had permanent chronic low back pain. Dr. William McMordie, a neuropsychologist, testified Johnson suffered brain damage in the accident which caused her to have brain seizures.

The defendants point out that at the time of the accident Johnson complained of only a cut finger. She did not mention a loss of consciousness then or the next day, when she received medical treatment at a clinic. Johnson saw Dr. Ronald Buntin on June 17, 1987, for low back pain. Dr. Buntin found the accident may have aggravated a preexistent mild instability. Dr. Sam Graham, a psychologist, testified Johnson's mental symptoms were indicative of depression, not a brain injury. Dr. Michael Taylor, a psychiatrist, testified Johnson had a major depressive disorder which caused her to exaggerate symptoms.

The jury found Johnson's damages amounted to \$600 for past medical expenses and \$650 for past physical and mental pain and suffering. She was awarded nothing for future medical expenses, future loss of earning capacity, past or future loss of function of the mind and body, or future physical and mental pain and suffering.

I. This action was filed at law; our review is for the correction of errors at law. Iowa R. App. P. 4. If supported by substantial evidence and justified as a matter of law, the judgment will not be disturbed on appeal. Moore's Builder & Contractor, Inc. v. Hoffman, 409 N.W.2d 191, 194 (Iowa App. 1987). The reviewing court is not bound by the trial court's determination of the law. Id.

II. Johnson contends the district court erred as a matter of law in instructing the jury it could find her negligent for failing to keep a proper lookout, failing to have her vehicle under control, or traveling at a speed greater than reasonable and proper under the circumstances. She argues there was not sufficient evidence in the record to support these instructions.

Johnson states she could not be found negligent for failing to keep a proper lookout because the accident occurred instantaneously and she had no duty to anticipate Morrison would make a left turn when his vision was obstructed. She states there was absolutely no evidence she did not have her vehicle under control. She also states that the only evidence concerning her speed was her

own testimony she was traveling at thirty miles per hour or less.

Courts have a duty to instruct juries on the law applicable to the facts as disclosed by the evidence, and must so instruct if there is evidence admitted which supports some involved issue. State v. Freeman, 267 N.W.2d 69, 71 (Iowa 1978). Conversely, it is error to instruct upon an issue having no substantial evidentiary support or which rests only on speculation. Miller v. International Harvester Co., 246 N.W.2d 298, 300-301 (Iowa 1976).

We find there was substantial evidentiary support for the jury instructions in this case. Johnson had a duty to maintain a proper lookout, which includes being watchful of the movements of one's own vehicle as well as other things seen or seeable. See Diehl v. Diehl, 421 N.W.2d 884, 887 (Iowa 1988). Furthermore, Johnson had a duty to maintain control of her vehicle, which meant she had a duty to proceed with such care as existing conditions required. Id. Johnson also admitted she did not really know what her speed was before the accident.

In this case Johnson knew she was approaching an intersection. She also knew the large dump truck was obstructing her view of any other vehicles which might be entering the intersection. We do not accept Johnson's argument that because she was proceeding through the intersection with a green light she should be absolved of all further responsibility. The district court properly

instructed the jury that Johnson had a duty to drive with such care as the circumstances required.

III. Johnson contends the jury's verdict is not supported by substantial evidence. She believes there is no evidence to show she was negligent or that if she was negligent, such negligence was the proximate cause of her injuries.

Questions of fault and proximate cause are questions of fact, and only in exceptional cases may these questions be taken from the jury and decided as a matter of law. Johnson v. Junkmann, 395 N.W.2d 862, 864 (Iowa 1986). Only if the record contains no substantial evidence upon which a finding of fault or proximate cause could be based can these questions be decided as a matter of law. Id. at 866.

We find there is substantial evidence to support the jury's verdict. The jury could have found, under the circumstances of this case, that Johnson was negligent for failing to slow down on entering the intersection. A court may not grant a new trial merely on the ground that it may have reached a different result. Lappe v. Blocker, 220 N.W.2d 570, 573 (Iowa 1974).

IV. Finally, Johnson contends the jury's award of damages was inadequate and was lacking in evidentiary support. She sought special damages of \$13,713. This amount included \$4,484 for doctors, \$6,288 for hospital tests, and \$2,941 for medication. Johnson points out that this represents only her past medical expenses and that she expects to have continued medical costs in the future.

Generally, the amount of damages to be awarded is peculiarly a jury function. Yoch v. City of Cedar Rapids, 353 N.W.2d 95, 99 (Iowa App. 1984). However, a court must determine whether a verdict fairly and adequately compensates a plaintiff for damages suffered. Id. The inadequacy of damages may be cause for setting aside a jury verdict and granting a new trial in a proper case. Householder v. Town of Clayton, 221 N.W.2d 488, 492 (Iowa 1974). Whether damages are so inadequate as to warrant a new trial is usually left for the trial court to decide, and its discretion in granting or refusing to grant a new trial will not ordinarily be disturbed on appeal unless an abuse of discretion is found. Id. at 493. Where the verdict is within a reasonable range as indicated by the evidence the courts should not interfere with what is primarily a jury question. Cowan v. Flannery, 461 N.W.2d 155, 158 (Iowa 1990).

A jury has a right to reject the opinion of plaintiff's physicians and the expenses associated with their treatment. Miller v. Eichhorn, 426 N.W.2d 641, 643 (Iowa App. 1988). In this case the jury could have found that Johnson's back injuries were caused by a preexistent condition. The jury could also have found that Johnson suffered only from depression, which was not caused by the accident, and that her depression caused her to exaggerate her symptoms. We conclude the award of damages is supported by the evidence.

V. We affirm the district court's ruling denying plaintiff's motion for a new trial. Costs of this appeal are assessed to plaintiff.

AFFIRMED.