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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-558 / 89-602

PEGGY S. VERZANI and **BRADLEY R. VERZANI**,

Plaintiffs-Appellees,

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vs.

RONALD A. VANDEPOL,

Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, Michael S. Walsh, Judge.

In this negligence action arising from a traffic accident, defendant appeals from judgment upon a jury verdict for plaintiffs. Defendant asserts the district court erred by failing to give an instruction limiting the plaintiffs' recovery for lost wages to the amount stated in the plaintiffs' answers to interrogatories and by allowing the jury to consider loss of future earning capacity as an element of damages. Defendant also contends the amount of the verdict was excessive and was not supported by the evidence. **AFFIRMED.**

Michael R. Hellige and Scott A. Hindman of Shull, Cosgrove, Hellige, DuBray & Lundberg, Sioux City, for the appellant.

Edward J. Keane and Daniel L. Flaherty of Margolin, Gildemeister, Willia, Mugan & Keane, Sioux City, for the appellees.

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

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Peggy Verzani's automobile was hit from behind in a traffic accident. She was unaware she incurred any specific injuries at the time of impact, but she later received treatment from a chiropractor for pain she attributed to the accident.

Verzani and her husband later filed this negligence suit against the other driver, Ronald Vandepol. The suit was tried to a jury, which awarded damages of $216,710 to Peggy Verzani and $12,000 to her husband. Vandepol has appealed from the resulting judgment.

Vandepol contends the district court erred by failing to give an instruction limiting the plaintiffs' recovery for lost wages to the amount stated in the plaintiffs' answers to interrogatories and by allowing the jury to consider loss of future earning capacity as an element of damages. He argues the plaintiffs' answers to interrogatories did not alert him such damages would be claimed. Vandepol also contends the amount of the jury's verdict was excessive and was not supported by the evidence.

I. **Jury Instructions on Damages.** Vandepol contends he should be granted a new trial because he was not given a fair chance to meet Verzani's evidence at trial. Specifically, he contends the district court should have limited plaintiffs' recovery for lost wages to the amount set out in their interrogatories and the court should not

have allowed the jury to consider Peggy's loss of future earning capacity as an element of damages.

Vandepol's arguments center on plaintiffs' failure to update or supplement their interrogatory answers. In April 1988 plaintiffs provided answers in response to questions posed by Vandepol regarding Peggy Verzani's claims for lost wages and earning capacity. Interrogatory number eighteen required plaintiffs to state the "amount claimed as loss of earnings to date" and the "amount claimed as future loss of earnings."

With regard to the loss of earnings to date, plaintiffs answered, "I lost approximately $2,914.76 while I was employed at KMEG as [a] sales assistant." With regard to a claim for future loss of earnings, plaintiffs responded, "[a]n amount that is fair and reasonable compensation is yet to be determined." The answers to interrogatory eighteen also set forth the dates Peggy Verzani missed work, her level of monthly income, and the fact that she had been terminated from her employment on February 27, 1987, because she was no longer able to perform her duties as a sales assistant.

Trial was held in January 1989. Plaintiffs did not update or supplement their interrogatory answers prior to trial.

At the conclusion of the trial, Vandepol sought to have jury instruction number fourteen modified to limit any amount of lost wages to $2,914.76--the amount listed in

plaintiffs' answer to interrogatory eighteen. He also sought to have the jury instruction on loss of future earning capacity struck. The court rejected both requests.

Iowa Rule of Civil Procedure 122(d)(2)(B) provides a party is under a duty "seasonably to amend a prior response" if the party obtains information upon the basis of which the party knows the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment. The purpose of this rule is to avoid surprise and to permit the issues to become both defined and refined before trial. White v. Citizens Nat'l Bank of Boone, 262 N.W.2d 812, 816 (Iowa 1978). We have previously recognized that discovery should expedite the disposition of litigation by educating the parties in advance of trial of the real value of their claims and defenses. Barks v. White, 365 N.W.2d 640, 643 (Iowa App. 1985).

A party defending a claim is clearly entitled upon appropriate pretrial request to be informed of the amount of the claim. Gordon v. Noel, 356 N.W.2d 559, 564 (Iowa 1984). There is no indication that at the time plaintiffs completed the interrogatory their answers were incorrect or not completed to the best of their ability. At issue is whether a failure to supplement those answers should have limited the amount of damages the jury was instructed it could award.

Each party concedes our scope of review is for abuse of discretion by the trial court in failing to limit plaintiffs' recovery to the lost wages set forth in their interrogatory answers. Abuse of discretion has been previously recognized as the appropriate standard for cases involving sanctions for noncompliance with discovery rules and for the exclusion of evidence for failure to supplement interrogatories. Miller v. Bonar, 337 N.W.2d 523, 527 (Iowa 1983); Barks, 365 N.W.2d at 644.

The record in this case reveals Vandepol knew through plaintiffs' answer to interrogatory eighteen and Peggy Verzani's deposition on August 15, 1988, that she had been terminated from her job due to her inability to perform the duties of her employment. At the time of her deposition, it was also revealed Peggy had been unable to obtain subsequent employment.

The failure of a trial court to exclude evidence of damages not disclosed in answers to interrogatories has been held not to be an abuse of discretion even when the failure to update the answers may have been sufficient grounds for the imposition of sanctions. Miller, 337 N.W.2d at 527. Similarly, an answer in an interrogatory of damages incurred "to date" has been construed not to be a limitation on the amount of recovery a plaintiff may get. Nash v. Schultz, 417 N.W.2d 241, 245 (Iowa App. 1987). The case before us does not involve a situation in which a plaintiff has refused to provide any information regarding

the amount of damages claimed. See Gordon, 356 N.W.2d at 564. From our review of the circumstances in this case, we cannot find an abuse of discretion by the trial court in declining to limit the damages to plaintiffs' responses to interrogatory eighteen.

II. Excessiveness of Verdict. Vandepol claims he is entitled to a new trial because the jury verdict was not supported by sufficient evidence, was excessive, appears to have been the result of passion or prejudice, and fails to do substantial justice between the parties. Iowa R. Civ. P. 244(d), (f). In his brief, Vandepol insinuates the jury should have only been instructed on damages for past medical expenses and past pain and suffering and not on future medical expenses or future loss of body function. We note no objections were made to the latter instructions before the trial court and none will be considered on appeal. Kellar v. Peoples Natural Gas Co., 352 N.W.2d 688, 692 (Iowa App. 1984).

Appellate courts are loathe to interfere with jury verdicts. The principles governing our review of verdicts claimed to be excessive are well established:

> In considering a contention that the verdict is excessive, the evidence must be viewed in the light most favorable to the plaintiff. Fixing the amount of damages is a function for the jury. The court should interfere only when the damage award is "flagrantly excessive or inadequate, so out of reason so as to shock the conscience, the result of passion or prejudice, or lacking in evidentiary support." We have stated that the most important of these reasons is whether there is support in the evidence. A verdict should not be set aside merely because the reviewing court would have

> reached a different conclusion, although the court "has inherent power to set aside a verdict which fails to do substantial justice between the parties."

Sallis v. Lamansky, 420 N.W.2d 795, 799 (Iowa 1988) (citations omitted).

With these principles in mind, we turn to the facts of this case. The record reveals Peggy's injuries have affected her ability to perform the duties of her employment, her household chores, and to engage in the recreational activities she enjoyed before the accident. She continues to suffer from headaches, nausea, and neck and back pain. Dr. Hagen testified Peggy has sustained permanent physical injuries and her damaged, overstretched ligaments will result in instability for the rest of her life.

Evidence was presented regarding the amount of Peggy's monthly income prior to her termination, and Dr. Hagen testified she would not be able to return to her previous type of employment. He listed a variety of other occupations she could not engage in because they would aggravate her condition.

Evidence was presented regarding the amount of medical expenses Peggy had incurred since the accident. Dr. Hagen's testimony revealed the need for future treatments for Peggy's physical condition.

While this court may not have awarded the Verzanis such a large amount of damages, there is sufficient support in

the evidence for the verdict, and it cannot be said it fails to do substantial justice between the parties. The decision of the district court is affirmed.

AFFIRMED.