

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

November 28, 2011

Edward C. Gill, Esquire
Law Office of Edward C. Gill, P.A.
16 North Bedford Street
P.O. Box 824
Georgetown, DE 19947

Brian T. McNelis, Esquire
Young & McNelis
300 South State Street
P.O. Box 1191
Dover, DE 1990e

RE: Andrea Deis v. State Farm Mutual Automobile Insurance Company
C.A. No. S10C-09-013-ESB
Letter Opinion

Date Submitted: August 9, 2011

Dear Counsel:

This is my decision on the Plaintiff's Motion for a New Trial in this personal injury action that arose out of a motor vehicle accident that occurred on November 25, 2008. The Plaintiff is Andrea Deis. The Defendant is State Farm Mutual Automobile Insurance Company. Deis was involved in a motor vehicle accident with Tomeko Joyner. Joyner was driving southbound on County Route 297. Deis was driving northbound on the same road. An accident occurred when Joyner turned left in front of Deis, causing Deis to run into her. Deis settled with Joyner for the full limits of her insurance policy, which was \$15,000.00. She then filed this action against her own insurance carrier, Defendant State Farm Mutual Automobile Insurance Company, arguing that Joyner was an underinsured motorist because her insurance policy did not fully compensate Deis for her injuries. The case went to trial on August 1, 2011. Even though State Farm admitted that Joyner was responsible

for the accident and Deis' doctor testified that she had suffered a painful neck injury in the accident, the jury did not award Deis any compensation. Deis now argues that the jury's verdict is against the great weight of the evidence and that she is entitled to a new trial. State Farm argues that Deis' injuries were so minimal that she was not entitled to any compensation. I have concluded that Deis' injuries are substantial enough to justify an award of compensation. Therefore, I have granted her Motion for a New Trial.

Background

The facts in the case are not in dispute. Deis suffered a "whiplash" type injury to her neck in the accident that took about six months to heal. She also suffered minor injuries to her knee and face when they hit her car's console and visor, respectively. Deis was taken to a hospital, treated for her injuries and released the same day. Her discharge summary states that she was diagnosed with cervical radiculopathy, which in layman's terms is a pinched nerve in the neck. A neurologist performed an electromyography study on Deis after she was released from the hospital. The study confirmed her earlier diagnosis.

Deis then sought treatment for her injuries with Mohammed Mehdi, M.D., a board certified anesthesiologist and pain management specialist. He had been treating her for low back pain before the accident. Deis continued to suffer neck pain and headaches after the accident. Dr. Mehdi treated her with pain medication and trigger point nerve injections to reduce the inflammation in her nerves. Deis also underwent physical therapy and saw a chiropractor.

Dr. Mehdi told the jury that Deis suffered a cervical strain and an aggravation of her pre-existing low back problem in the accident. He testified further that it took about six

months for her pain to return to normal. Deis, who was 27 at the time of the accident, told the jury about the pain that she had suffered and how it affected her life. She had to quit her job as a waitress and was unable to do many of the active things that she normally did, such as boating and riding jet skis. She also had headaches, trouble sleeping and numbness and tingling in her arms. Two other witnesses who knew Deis testified about how the accident affected her. State Farm did not have any witnesses at trial.

Standard of Review

A Motion for a New Trial is controlled by Superior Court Civil Rule 59, which states, in applicable part, as follows:

A new trial may be granted as to all or any of the parties and on all or part of the issues in an action in which there has been a trial for any of the reasons for which new trials have hereto forth been granted in the Superior Court.

When considering a Motion for a New Trial, the court starts with the fundamental principle that the jury's verdict is presumed to be correct.¹ In a jury trial, the function of the fact finder does not belong to the court, but rather to the jury.² The jury's verdict should not be disturbed unless it is clearly shown to be the result of passion, prejudice, partiality or corruption, or that it was manifestly in disregard of the evidence or applicable rules of law.³ A jury verdict should be set aside only in the unusual circumstances where the award is so grossly out of proportion to the injuries suffered as to shock the court's conscience and

¹ *Young v. Frase*, 702 A.2d 1234, 1236 (Del. 1997).

² *Caldwell v. White*, 2005 WL 1950902, at *3 (Del. Super. May 25, 2005).

³ *Young*, 702 A.2d at 1237.

sense of justice.⁴ Furthermore, the court will not upset the verdict of a jury unless “the evidence preponderates so heavily against the jury verdict that a reasonable jury could not have reached the result.”⁵ Zero verdicts have been upheld under this standard of review.⁶ However, a jury “cannot totally ignore facts which are uncontroverted and against which no inference lies,”⁷ and on that basis award zero damages. “Once the existence of an injury has been established as casually related to the accident, a jury is required to return a verdict of at least minimal damages.”⁸

Discussion

Given this test, I have concluded that Deis is entitled to a new trial because it is uncontroverted that she suffered injuries that were caused by the accident for which the jury gave her no compensation. I have also concluded that Deis’ injuries were not so minimal as to justify an award of no compensation. Deis suffered a painful injury to her neck that required treatment by a pain management specialist, a physical therapist and a chiropractor. Her neck injury was severe enough to take six months to heal. Deis’ neck pain and headaches were bad enough to cause her to quit her job, have trouble sleeping and be unable to fully engage in what had previously been a very active lifestyle.

State Farm argues that I should grant *additur* in this case even though Deis has not

⁴ *Id.* at 1236-37.

⁵ *Storey v. Camper*, 401 A.2d 458, 465, (Del. 1979).

⁶ *Hall v. Dorsey*, 1998 WL 960774 (Del. Super. Nov. 5, 1998).

⁷ *Amalfitano v. Baker*, 794 A.2d 575, 578 (Del. 2001).

⁸ *Maier v. Santucci*, 697 A.2d 747, 749 (Del. 1997).

asked me to do so. State Farm also argues that, given what it believes to be the minimal nature of Deis' injuries, I could not possibly grant *additur* of more than \$15,000.00, making a second trial unnecessary because the award to Deis would be less than what she recovered from Joyner. I disagree. Deis suffered a painful injury that took a long time to heal and interfered with her life in a meaningful way, making an award to her of more than \$15,000.00 a reasonable possibility in a second trial. While granting *additur* is an appropriate thing to do in many cases, I will decline to do so in this case.⁹ Given the nature of Deis' injuries, I believe that it would be better for a second jury to determine her damages.

Conclusion

The Plaintiff's Motion for a New Trial is granted.

IT IS SO ORDERED.

Very truly yours,

/S/ E. Scott Bradley

E. Scott Bradley

⁹ *Reid v. Hindt*, 976 A.2d 125 (Del. 2009).