IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

GLORIA GLOVER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 09C-07-005 PLA
	)	
JEFFREY N. SCHWING, SR. and	)	
COLE J. VAN GILDER,	)	
	)	
Defendants.	)	

UPON PLAINTIFF'S MOTION FOR NEW TRIAL OR ADDITUR
DENIED

Submitted: March 3, 2011
Decided: March 17, 2011

Kevin G. Healy, Esquire, MORRIS JAMES, LLP, Newark, Delaware, Attorney for Plaintiff.

Stephen P. Casarino, Esquire, CASARINO, CHRISTMAN, SHALK, RANSOM & DOSS, Wilmington, Delaware, Attorney for Defendant Schwing.

Cynthia G. Beam, Esquire, LAW OFFICE OF CYNTHIA G. BEAM, Newark, Delaware, Attorney for Defendant Van Gilder.

ABLEMAN, JUDGE

Plaintiff Gloria Glover brought this action for damages arising from personal injuries sustained as a result of an automobile accident in which she was a passenger in a car driven by Defendant Cole J. Van Gilder. The accident occurred when Van Gilder's vehicle made a left turn and collided with a car driven by Defendant Jeffrey N. Schwing, Sr. At trial, Van Gilder insisted that he had a green arrow, allowing him to turn freely, while Schwing testified that he was driving straight through a green light when he was hit.

Although the evidence at trial was directly conflicting as to which driver had the green light, or whether Van Gilder had a green circle or a green arrow, the jury nonetheless found both defendants liable, presumably based upon the Court's instructions regarding the duty of lookout applicable to anyone operating a motor vehicle and the duty of drivers to avoid operating their vehicles in a careless or imprudent manner.

At trial, Plaintiff continued to assert her claims against both defendants, although she flatly denied that the accident was the fault of the defendant in whose vehicle she was riding. On February 16, 2011, at the conclusion of a three-day trial, the jury found both defendants equally liable for Plaintiff's injuries and returned a verdict of $38,000.00 in damages.

Plaintiff has now filed a Motion for a New Trial on Damages or Additur. While emphasizing that there is no basis to disturb the jury's verdict as to liability,

Plaintiff contends that the jury's award is so grossly out of proportion to the injuries suffered as to shock the Court's conscience and sense of justice. She argues that the amount is inadequate because the jury's award of $38,000.00 leaves only $4,280.22 for pain and suffering after deducting medical expenses that amounted to $33,719.78. Plaintiff argues that the amount awarded for pain and suffering is so negligible that the jury must have ignored the testimony of the three physicians who, she claims, gave extensive uncontroverted evidence concerning Plaintiff's surgeries, therapy, and rehabilitation.

Standard of Review

The standard of review on a motion for a new trial is well settled. The jury's verdict is presumed to be correct and just and is afforded great deference by the Court.[1] In the absence of exceptional circumstances, the Court will yield to the jury's verdict when reviewing a motion for a new trial, and the amount of damages determined by the jury will likewise be presumed to be valid.[2]

An award that is challenged as insufficient will not be disturbed unless its inadequacy "is so clear as to indicate that it was the result of passion, prejudice, partiality or corruption."[3] When any "margin for reasonable difference of opinion

[1] *Mills v. Telenczak*, 345 A.2d 424, 426 (Del. 1975).

[2] *Mitchell v. Haldar*, 2004 WL 1790121, at *3 (Del. Super. Aug. 4, 2004).

[3] *Storey v. Castner*, 314 A.2d 187, 193 (Del. 1973).

exists in the matter of a verdict," the Court will yield to the jury's decision.[4] With respect to additur, the Court will not increase a jury award unless it is "so grossly out of proportion . . . as to shock the Court's conscience and sense of justice" and "unless the injustice of allowing the verdict to stand is clear."[5] In essence, then, a Court will not set aside a jury's verdict unless "the evidence preponderates so heavily against the jury verdict that a reasonable juror could not have reached the result," or the Court is convinced that the jury disregarded applicable rules of law, or the jury's verdict is tainted by legal error committed by the Court during the trial.[6]

Analysis

While the total jury award in this case was only a little over $4,000.00 more than the medical expenses submitted into evidence by Plaintiff, the Court's conscience is not shocked by the jury's verdict, nor does it find the award inadequate under the circumstances. Indeed, there are reasonable explanations for why the jury's verdict was only slightly higher than the plaintiff's claimed medical expenses, leading the Court to conclude that the verdict should not be disturbed.

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[4] *Id.*

[5] *Storey v. Camper*, 401 A.2d 458, 464 n.6 (Del. 1979); *Reigel v. Aastad*, 272 A.2d 715, 718 (Del. 1970).

[6] *Mitchell*, 2004 WL 1790121, at *2.

In the first place, even if the total amount of the medical bills was uncontroverted, the evidence as to whether they were reasonable, necessary, or causally related to the accident was not. Throughout the trial, the defendants disputed whether disc herniations in Plaintiff's neck were caused by the accident or were the result of degenerative disease, since they did not appear on an MRI until almost two years after the accident and had not been identified in a CAT scan taken shortly after Plaintiff sustained the injuries. Thus, the verdict could well reflect the jury's conclusion that only a portion of the medical bills—or none of them—were related to the accident. The evidence of Plaintiff's pre-existing condition may account for the verdict being lower than what Plaintiff expected or hoped to receive.

Plaintiff's attempts to draw comparisons between this case and other cases is unavailing, and in no way dissuades the Court from affording enormous deference to the jury's verdict. Indeed, the exercise of comparing verdicts between different cases has even been described as "dangerous" by another Superior Court judge:

> This Court has previously noted that "[i]t is difficult, if not dangerous, to refer to other cases to argue that a particular verdict is too high or too low." It is inevitable that there will be dissimilar results in personal injury suits because no two juries will judge the effect of a plaintiff's injuries identically.[7]

[7] *Bounds v. Delmarva Power & Light Co.*, 2004 WL 343982, at *8 (Del. Super. Jan. 29, 2004) (quoting *Berl v. Cyrus Trading Corp.*, 1998 WL 109855 (Del. Super. Feb. 19, 1998)).

Moreover, the fact that injuries may have been similar in any two given cases does not address the individual characteristics of different plaintiffs, the nature of their injuries, the persuasiveness of the expert opinions, the credibility of the plaintiff (which is a significant issue in this case, as will be further discussed), or the whole host of factual differences that are necessarily unique to every personal injury claim. While Plaintiff has made an effort to reargue her view of the evidence to the Court and to draw comparisons with other distinctly different verdicts, no one case can ever mirror the circumstances of another, and it is not the province of the Court to substitute its view of the evidence for that of the jury, even if it would have decided the matter differently. As Judge Slights observed in denying a request for additur:

> While certainly not dispositive of the issue, the strict standard of review by which a motion for new trial is measured no doubt recognizes that it is the parties themselves who elect to present their claims to a jury of their peers and, by so doing, it is the parties who activate the machinery which is our jury trial system. When the parties activate the jury trial system, they activate the risk inherent in the system. And, of course, trials by jury implicate the most risky element of dispute resolution—uncertainty.
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> [Plaintiff's] complaint demanded a trial by jury. She got one, and a fair one at that. Now, unhappy with the result, she asks the Court to supplant the jury or, at least, to ignore the product of its deliberative efforts. The Court will not do so in this, or any other case where the trial was fair and the resulting verdict is not "shocking." "[T]hose of us involved in the judicial system cannot [and should not] make litigation risk free."[8]

[8] *Dunkle v. Prettyman*, 2002 WL 833375, at *3 (Del. Super. May 1, 2002) (internal citations omitted) (quoting *Savage v. Cooke*, C.A. No. 94C-01-210, at 3 (Del. Super. Oct. 27, 1995)).

Moreover, even if all of the physicians who testified on behalf of Plaintiff generally agreed either that her injuries were related to the accident or that the accident exacerbated her existing degenerative condition, this circumstance does not alter the Court's view concerning the adequacy of the damages awarded for pain and suffering. If the Court assumes that the jury accepted the physician's testimony as unrefuted and believed that the total medical expenses claimed were reasonable, necessary, and causally related to the accident—in other words, even if the jury awarded the full amount of Plaintiff's outstanding medical expenses—the jury's assessment of pain and suffering may have entailed a very different analysis. When it came to determining an appropriate amount for pain and suffering, the jury may have correctly determined that the nature and extent of these elements of damages are totally subjective and depend upon the impression conveyed by the plaintiff while testifying, and upon whether that testimony was convincing, persuasive, and credible. Every individual reacts to and experiences injury differently, depending upon his or her level of tolerance to pain. The amount of suffering and the curtailment of activities caused by an injury can vary greatly from person to person. It is thus not at all surprising that the jury could have discounted Plaintiff's claims of pain and suffering—particularly given that she had been rather blatantly exposed as not credible with respect to her lawsuit against Defendant Van Gilder, as discussed below. In the final analysis, the fact that

Plaintiff's physicians all agreed upon the nature and extent of her injuries is not necessarily relevant to the jury's valuation of her pain or suffering.

Plaintiff's strategy of continuing to assert her claims against both drivers while disavowing under oath any responsibility on the part of defendant Van Gilder seriously undermined her credibility at trial, and the effects of that strategy may provide a further explanation for the verdict.[9] Even putting aside the ethical ramifications of counsel asserting allegations in the Complaint which Plaintiff directly repudiated at trial, the impact of this strategy—*i.e.*, her decision to sue both defendants so that there would be two possible sources of damages, in essence hedging her bets—was devastating to her believability as a witness. On cross-examination, Plaintiff was questioned almost line-by-line about portions of her Complaint, and denied the validity of its allegations against Van Gilder. Once she was exposed in this manner, the jury certainly had a basis to discredit her claims of pain and suffering, and was thus free to discount the award accordingly.

The relief that Plaintiff requests requires the Court to discount the jury's considered view of the facts, its credibility assessments, and its opinions as to the weight to be given to the testimony of the witnesses. For the Court to deem the

[9] The Court recognizes that attorneys may, and frequently do, plead alternative theories of recovery in their initial pleadings, which is an acceptable practice. Once discovery has been completed and the facts are known, however, it is a dangerous practice to continue to seek damages from a defendant who has been unequivocally exonerated by the plaintiff. That conduct reasonably and understandably affects the jury's assessment of all of the plaintiff's claims.

verdict so inadequate as to require additur or a new trial on damages, it would have to conclude that the jury returned a verdict which is contrary to the weight of the evidence and which shocks the conscience of the Court. This verdict meets neither criterion, and it should therefore stand.

Accordingly, the Motion for a New Trial on Damages or Additur is **DENIED**.

IT IS SO ORDERED.

/s/
Peggy L. Ableman, Judge

Original to Prothonotary
cc: Kevin G. Healy, Esquire
Stephen P. Casarino, Esquire
Cynthia G. Beam, Esquire