

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JEROME KOSSOL,	§	
	§	No. 3, 2000
Plaintiff Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
JOHN T. DUFFY, JR.,	§	in and for New Castle County
	§	C.A. No. 97JA-07-107
Defendant Below,	§	
Appellee.	§	

Submitted: October 11, 2000

Decided: November 29, 2000

Before **WALSH, BERGER** and **STEELE**, Justices.

O R D E R

This 29th day of November, 2000, upon consideration of the briefs of the parties, it appears to the Court that:

1) Jerome Kossol appeals from a decision of the Superior Court denying his motion for a new trial after the jury returned a zero verdict in his personal injury action. Kossol argues that the jury was not free to ignore uncontroverted medical evidence that he was injured as a result of the accident.

2) In July 1995, Kossol was involved in a multi-car accident while stopped in traffic. William Duffy was driving a car that struck a second car; the second car struck a third car; and the third car struck the car Kossol was driving. Kossol

sought medical attention for neck pain the day after the accident and continued receiving treatment from Dr. Carl Smith periodically for several years thereafter.

3) Kossol also was involved in four other motor vehicle accidents – two before the 1995 accident and two after. There was conflicting medical testimony about whether Kossol’s back and neck injuries from the first two accidents had resolved completely by the time of the 1995 accident. There also was considerable conflicting and inconsistent testimony from Kossol and all of his witnesses concerning Kossol’s employment history, earnings, injuries and treatments.

4) The jury, having heard the many inconsistencies, apparently discredited Kossol’s testimony and the testimony of his witnesses. Kossol argues that the jury was not free to disregard the medical testimony because all of the medical experts agreed that he was injured in the 1995 accident. Kossol relies on *Maier v. Santucci*,¹ where this Court held that, “once the existence of an injury has been established as causally related to the accident, a jury is required to return a verdict of at least minimal damages.”²

5) *Maier* is distinguishable. In that case, the medical experts for both sides agreed that Maier had suffered an injury as a result of the accident. Here,

¹ Del. Supr., 697 A.2d 747, 749 (1997).

² *Ibid.*

Dr. Townsend, the defense expert, formed a medical opinion based on Kossol's subjective complaints. Dr. Townsend testified that, "based on [Kossol's] complaints at the time of the first accident, he sustained cervical and lumbosacral strain And ... at the time of the 1995 incident he had exacerbation of those complaints." It is settled law that, when an expert's opinion is based on a patient's subjective complaints, and the jury does not find the patient credible, the jury may reject the expert's opinion.³

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

By the Court:

/s/ Carolyn Berger
Justice

³ *Breeding v. Contractors-One-Inc.*, Del. Supr., 549 A.2d 1102, 1104 (1988).