

Third District Court of Appeal

State of Florida, January Term, A.D. 2011

Opinion filed April 20, 2011.
Not final until disposition of timely filed motion for rehearing.

No. 3D09-3308
Lower Tribunal No. 08-10010

Ana and Ermes Aguilera,
Appellants,

vs.

Equity One, LLC,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Margarita Esquiroz, Judge.

Hicks, Porter, Ebenfeld & Stein, Kacey Bennett, Irene Porter and Shannon Kain, for appellants.

Cole Scott & Kissane and Scott A. Cole, Erin K. Loeb and John S. Penton, Jr., for appellee.

Before CORTIÑAS and LAGOA, JJ., and SCHWARTZ, Senior Judge.

SCHWARTZ, Senior Judge.

Mrs. Aguilera, a nurse's aide, who was injured in a fall-down accident on appellee-defendant's premises, and her husband appeal from a judgment in their favor, pursuant to a jury verdict containing awards for several elements of damage, but which found her 90% and defendant 10% liable. Of the several issues presented, we find error only in the trial court's failure to grant a new trial on the issues of her loss of future earnings and her husband's alleged loss of consortium after the jury returned a verdict as to those items for zero damages. As to these elements, the evidence is uncontradicted that at least some damages were established as a result of the severe injuries sustained to the wife's right shoulder and arm. See *Peterson v. Sun State Int'l Trucks, LLC*, ___ So. 3d. ____, 36 Fla. L. Weekly D257 (Fla. 2d DCA Case No. 2D08-5529, opinion filed Feb. 2, 2011) (where husband of plaintiff presented substantial, undisputed evidence sufficient to require an award of at least nominal damages, a zero verdict for loss of consortium claim was inadequate); *Big Lots Stores, Inc. v. de Diaz*, 18 So. 3d 1065, 1068 (Fla. 3d DCA 2009) (finding that undisputed evidence presented on plaintiff's loss of consortium claim was sufficient to "require an award of at least nominal damages"); *Tavakoly v. Fiddlers Green Ranch of Fla., Inc.*, 998 So. 2d 1183, 1185 (Fla. 5th DCA 2009) ("[I]t is . . . well settled that where sufficient undisputed evidence is presented on a consortium claim that would require an award of at least nominal damages, a zero verdict is inadequate as a matter of law."); *Watson v.*

Builders Square, Inc., 563 So. 2d 721, 722 (Fla. 4th DCA 1990) (where appellants proved that Mrs. Watson suffered a permanent injury which affected her ability to work, a zero verdict for loss of future earning capacity was inadequate). We reject, however, the same contention as to the zero award for future medical expenses. See *Smith v. Fla. Healthy Kids Corp.*, 27 So. 3d 692, 694 (Fla. 4th DCA 2010) (“It is not necessary to grant a new trial in all cases where the jury returns a zero verdict. In fact, where conflicting evidence exists concerning damages and reasonable men could believe that the plaintiff sustained no damage, a zero verdict will be upheld.” (quoting *Surety Mortg., Inc. v. Equitable Mortg. Res., Inc.*, 534 So. 2d 780, 781 (Fla. 2d DCA 1988)); *True Love v. Blount*, 954 So. 2d 1284 (Fla. 2d DCA 2007)).

Accordingly, the judgment below is for the most part affirmed and the cause remanded for a new trial as to the issues of the wife’s loss of future earnings and the husband’s loss of consortium, as to which the jury awards will be reduced by 90% comparative negligence.

Affirmed in part; reversed in part.