IN THE COURT OF APPEALS OF IOWA

No. 6-426 / 05-1159
Filed October 11, 2006

JULIE HANSEN,
Plaintiff-Appellant/Cross-Appellee,

vs.

LINN COUNTY, IOWA,
Defendant-Appellant/Cross-Appellant.

Appeal from the Iowa District Court for Linn County, David L. Baker, Judge.

The plaintiff appeals and the defendant cross-appeals from the order granting the plaintiff's motion for new trial. **REVERSED.**

T. Todd Becker of Tom Riley Law Firm, P.L.C., Cedar Rapids, for appellant.

Harold L. Denton, County Attorney, and Jeffrey L. Clark, Assistant County Attorney, for appellee.

Heard by Vogel, P.J., and Vaitheswaran, J., and Schechtman, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9208 (2005).

VOGEL, P.J.

The plaintiff, Julie Hansen, appeals and the defendant, Linn County, cross-appeals from the order granting the plaintiff's motion for new trial. We reverse.

Background Facts and Proceedings.

This personal injury action arises out of a two-vehicle collision that occurred on May 31, 2001. While waiting to make a left turn Hansen's vehicle was rear-ended by a Linn County bus. When police arrived, Hansen informed officers her neck hurt, but that she could drive herself to the hospital. Upon reaching the hospital and being x-rayed, doctors discovered no broken bones, but x-rays did reveal a degenerative condition in her spine and a previous fracture from many years earlier. Hansen was fitted with a soft collar, given medication, and instructed to follow up with her family doctor.

After consulting her physician, Dr. Bell, Hansen took off approximately one month of work, and she continued physical therapy twice per week from mid-June through August. Toward the end of August, complaining that she was not receiving much relief from physical therapy, Hansen saw an orthopedic surgeon, Dr. Tearse. He felt she had a degenerative joint disease with a whiplash-type injury superimposed on it. Dr. Tearse recommended Hansen continue with physical therapy. Upon her continuation, physical therapist Mike Reiling noted that Hansen had lost considerable range of motion since her last treatment in early-August. Therapy was discontinued in November of 2001; however, upon the order of Dr. Bell, she began another round of therapy in December.

Dr. Bell later sent Hansen to a pain clinic, where she was seen by Dr. Kline who treated Hansen with cervical epidural steroid injections. Between March 5, 2002, and April 14, 2005, Hansen underwent more than a dozen of such procedures. She reported varying degrees of success with each treatment.

On April 10, 2002, Hansen went to the emergency room with numbness and pain in her right arm. An MRI revealed that the disk between her fifth and sixth cervical vertebrae was herniated, compressing the spinal cord and causing pain. As a result, she was referred to a neurosurgeon, who on April 15, 2002, performed a diskectomy and fusion at the C5-6 level. After this surgery, Hansen was off work for one month. However, her pain persisted and she continued to undergo the steroid injections.

On June 3, 2002, Hansen was involved in a second rear-end collision. While waiting in a line of cars, her vehicle was struck by a vehicle driven by Joy Severin. X-rays and an MRI subsequently revealed that no additional damage was done to her recent surgical site.

On September 18, 2002, Hansen filed a lawsuit naming Linn County and the bus driver as defendants. The bus driver was dismissed as a defendant prior to trial. The petition also listed Joy Severin, the driver of the vehicle in Hansen's second rear-end collision, as a defendant. After the issues were joined, a trial was held. The jury assessed damages against Linn County in the amount of $2000 for past medical expense, $4500 for past pain and suffering, and $1728 for past lost wages, but awarded Hansen nothing for future medical expenses, loss of future earning capacity, past loss of function of the body, and future loss of function of the body. The total verdict against Linn County was $8228. The

jury also assessed damages of $471 against Joy Severin, which represented the amount of medical bills Hansen incurred for her emergency room examination following her second accident.[1]

Hansen responded to the verdict by filing a motion requesting a new trial on the issues of damages. She maintained the awards for past medical expenses and past loss of function of the body were inadequate and contrary to the evidence. The court later entered a ruling granting the motion for a new trial on all issues of past damages. Hansen appeals from this ruling, arguing Iowa law requires, in this situation, a new trial on all damage issues, not just on past damages. Linn County cross-appeals, contending the court should not have granted the new trial and that the court erred in prohibiting it from presenting certain expert testimony.

New Trial.

In granting the new trial on the issue of past damages, the court found "a verdict which awards $2000 in medical bills where over $10,000 in medical bills was not controverted does not do substantial justice." It further found that "an award of nothing for past loss of function where the evidence is uncontroverted that there was a loss of function does not do substantial justice." The court concluded by finding the jury's award appeared to have been "influenced by passion or prejudice."

As noted, on appeal Hansen maintains the court erred in failing to grant a new trial on all elements of damage submitted to the jury, rather than simply on past damages. She believes the court's finding of "passion or prejudice" on the

[1] Severin is not involved in this appeal.

part of the jury necessitates a full retrial of the damage issues. Linn County, conversely, contends the new trial should not have been granted at all, or in the alternative that it should indeed be limited in scope. In *Fisher v. Davis*, 601 N.W.2d 54, 57 (Iowa 1999), our supreme court laid out the following standards regarding motions for new trial based on allegedly inadequate damages:

> The district court may grant an aggrieved party a new trial when the jury awards excessive or inadequate damages, or when the verdict is not sustained by sufficient evidence, or is contrary to law. The district court has considerable discretion in ruling upon a motion for new trial based upon the ground that the verdict was inadequate. Whether damages are so inadequate to warrant a new trial is for the district court to decide. And we will not ordinarily disturb its discretion to grant or deny the motion unless an abuse of discretion is shown. We are slower to interfere with the grant of a new trial than with its denial. Whether damages in a given case are adequate depends on the particular facts of the case. The test is whether the verdict fairly and reasonably compensates the party for the injury sustained.

(Citation omitted.)

Upon review of the court's new trial ruling and the record evidence, we conclude the court properly exercised its discretion in concluding that the jury's damage awards for past medical expenses and past loss of function of the body were inadequate. The evidence supports that the medical bills through April 9, 2002, the day before which Hansen awoke to discover pain in her right arm that was the result of a large protruded disk, are undisputed. Moreover, the fact that the jury failed to award any damages for past loss of function of the body is inadequate and does not do substantial justice. There was clear evidence that Hansen suffered from a limited range of motion and stiffness in her neck following the accident. This necessitated a period of time off from work.

The question, however, remains as to the scope of the new trial. Should it be limited to past damages only, or should that scope be expanded to encompass all items of damages, as Hansen asserts? Generally speaking, because "[j]ury determinations of various elements of damages are apt to be influenced by the recovery allowed for other elements of damage," a retrial is not limited to a single issue of damages. *Foster v. Pyner*, 545 N.W.2d 584, 587 (Iowa Ct. App. 1996) (citing *Brant v. Bockholt*, 532 N.W.2d 801, 805 (Iowa 1995)). Our supreme court has stated:

> [T]he granting of partial new trials is a practice not to be commended . . . . As a condition to the granting of a partial new trial, it should appear that the issue to be tried is distinct and separable from the other issues, and that the new trial can be had without danger of complications with other matters . . . . Nor may [only] certain issues be retried unless it appears that the other issues have been rightly settled and injustice will not be occasioned.

Larimer v. Platte, 243 Iowa 1167, 1176, 53 N.W.2d 262, 267 (1952); *accord Woodward v. Horst*, 10 Iowa 120, 123 (1859) (holding partial retrial warranted if convenient, nonprejudicial, and "not attended with too much confusion").

Accordingly, we look to whether here the issue of past damages is "distinct and separable" from that of future damages and whether retrial on only the former can be had without complications. *Larimer*, 53 N.W.2d at 267. We first note that Hansen's motion requested a new trial, and did not limit her request solely to past damages. We find it appropriate to follow our supreme court's guidance in *Brant v. Bockholt*, 532 N.W.2d at 805, when it determined "it would be inappropriate to order retrial of only a single element of damage." There is simply no way to read into the mind of the jury in this case. We have no way of

determining what deliberations and decisions led it to award only a portion of the uncontroverted past medical expenses and nothing for past loss of function of the body. Those decisions could have impacted other damage awards. Accordingly, we conclude the court incorrectly limited the retrial to the issue of past damages, and we order that the retrial include all items of damages.[2]

We assess costs of this appeal to Linn County.

REVERSED.

[2] Because of our remand for a new trial, which will prompt a new scheduling order, we do not address Linn County's cross-appeal relating to the exclusion of an expert's testimony, designated late pursuant to the first trial's scheduling order.