NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 1502

BRANDON THOMPSON

VERSUS

SHENA ALLEN AND
SAFEWAY INSURANCE COMPANY OF LOUISIANA

Judgment rendered: May 4, 2007

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On Appeal from the 21st Judicial District Court
Parish of Livingston, State of Louisiana
Number 105,614
The Honorable Elizabeth P. Wolfe Presiding

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W. Paul Simpson
Amite, LA

Sean Rabalais
Lafayette, LA

Counsel for Plaintiff/Appellee
Brandon Thompson

Counsel for Defendants/Appellants
Safeway Insurance Company
of Louisiana and Shena Allen

BEFORE: PETTIGREW, DOWNING AND HUGHES, JJ.

DOWNING, J.

MEMORANDUM OPINION

This appeal challenges a trial court's fault allocation and general damage award. We affirm.[1]

On October 12, 2003, a collision occurred between vehicles driven by Brandon Thompson and Shena Allen at the intersection of Louisiana Highway 43 and Old CC Road in Livingston parish. Old CC Road, a narrow, blacktop road, is located directly after a small bridge. Thompson was attempting to make a left-hand turn onto Old CC Road when Allen, who was attempting to pass Thompson on the bridge, collided with his vehicle.

Thompson sued Allen and her insurer, Safeway Insurance Company of Louisiana. At trial, Thompson maintained that approximately 20-30 yards before reaching the intersection, he slowed his vehicle to 35 m.p.h., put his left turn signal on, and looked in his rear view mirror prior to executing the turn. He attested that he did not hear a horn blow prior to impact and did not observe Allen as she was executing the passing maneuver. Allen maintained that she observed the Thompson vehicle going slowly in a 55 m.p.h. speed zone and did not see a blinker activated before attempting to pass the vehicle. She stated that she did not have any warning the vehicle was going to make a left turn until she was driving alongside it, and by that time, it was too late to take evasive measures. Allen insisted she was not aware of the intersection in question. She offered evidence showing that there were no road signs signaling the approaching intersection, and that the area where she attempted to pass Thompson was designated as a passing zone. Both vehicles were totaled as a result of the collision.

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[1] This memorandum opinion is issued in compliance with Uniform Rules-Courts of Appeal Rule 2-16.1.B.

After the accident, Thompson was taken to a hospital emergency room, where he complained of neck, back and shoulder pain. He was treated by a chiropractor on two occasions the following week. He did not seek medical treatment thereafter, citing the expense and his lack of insurance. He testified that he continued to experience sporadic neck pain after the accident and through the time of the trial.

Following the conclusion of the evidence, the court allocated 75% fault to Allen and 25% fault to Thompson. Thompson was awarded general damages in the amount of $12,000.00 and $1,976.75 in medical expenses. This appeal, taken by Safeway and Allen, followed. They maintain that the trial court committed manifest error in allocating 75% fault to Allen and in entering an abusively high general damage award.

Like all factual findings, the standard of review of comparative fault allocations is that of manifest error. **Laborde v. St. James Place Apartments,** 2005-0007, p. 5 (La. App. 1 Cir. 2/15/06), 928 So.2d 643, 647. In order to disturb a trial court's fault allocation, this court must find from the record that a reasonable factual basis does not exist for the ruling. **Stobart v. State through Department of Transportation and Development,** 617 So.2d 880, 882 (La. 1993). After reviewing the record, we find the trial court's assessment of 75% fault to Allen to be entirely reasonable, and we decline to disturb that ruling.

As to the general damage award, it is well settled that the discretion vested in the trier of fact in fashioning such an award is great, and even vast, so that an appellate court should rarely disturb the award. **Youn v. Maritime Overseas Corp.,** 623 So.2d 1257, 1261 (La. 1993), cert. denied, 510 U.S. 1114, 114 S.Ct. 1059, 127 L.Ed.2d 379 (1994). Clearly, the

general damage award is not above that which a reasonable trier of fact could assess, and we may not disturb the award.

For the foregoing reasons, the judgment appealed from is affirmed. All costs of this appeal are assessed to appellants.

AFFIRMED.