

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 CA 2019

ALLEN J. HEBERT, JR.

VERSUS

ANTHONY ZAMORA AND TERREBONNE PARISH
CONSOLIDATED GOVERNMENT

Judgment Rendered: JUN 11 2013

Appealed from the
32nd Judicial District Court
In and for the Parish of Terrebonne, Louisiana
Trial Court Number 162,893

Honorable Randall L. Bethancourt, Judge

Joseph J. Weigand, Jr.
Houma, LA

Attorney for Appellant
Plaintiff – Allen J. Hebert, Jr.

David B. Allen
Houma, LA

Attorney for Appellees
Defendants – Anthony Zamora
and Terrebonne Parish
Consolidated Government

BEFORE: PARRO, WELCH, AND DRAKE, JJ.

WELCH, J.

In this appeal, plaintiff, Allen J. Hebert, Jr., contests the amount of a damage award entered in his favor against defendants, Anthony Zamora and the Terrebonne Parish Consolidated Government (Parish). We affirm and issue this memorandum opinion in compliance with Uniform Rules—Courts of Appeal Rule 2-16.1B.

DISCUSSION

On May 29, 2010, Mr. Hebert was driving a Chevrolet Tahoe on Louisiana Highway 659 in Terrebonne Parish and came to a stop at an intersection. Mr. Zamora, who was driving a transit bus owned by the Parish, was following behind Mr. Zamora's vehicle and also came to a stop behind the Hebert vehicle. At some point, Mr. Zamora released his foot from the brake and struck the rear of the Hebert vehicle.

The fact of the accident was not disputed at trial, and the Parish admitted to liability. Mr. Hebert's attorney acknowledged at the outset of the trial that the impact did not damage Mr. Hebert's vehicle; instead, Mr. Zamora's bus hit the trailer hitch on Mr. Hebert's vehicle. Mr. Hebert claimed that the impact pushed his vehicle forward. It was also undisputed that the sixty-five-year old Mr. Hebert had a pre-existing back condition and also suffered from degenerative arthritis in his back and knees. Mr. Hebert asserted that although he had been treated for back pain and "right-side" pain prior to the accident, after the accident, he began to experience pain on the left side of his body, which he testified he did not have prior to the accident. Mr. Hebert sought to demonstrate that he sustained left-side nerve damage as a result of the accident. He introduced medical bills representing the cost of chiropractic treatments he had after the accident, and he asked that the court award him future medical damages for continued chiropractic visits in the amount of \$61,000.00.

The only matter disputed at the trial was the extent of Mr. Hebert's injuries as a result of the minor impact. Following a bench trial, the trial court awarded Mr. Hebert damages in the amount of \$20,000.00 for past, present, and future pain and suffering and \$46,468.24 for past medical costs, taxed an expert witness fee as costs, and cast the Parish for all costs. The trial court adopted the defendants' pre-trial memorandum, opening statement, and closing arguments as its reasons for judgment. Mr. Hebert filed a motion for a new trial, which was denied.

In this appeal, Mr. Hebert contends that the trial court erred in not awarding future medical expenses. He further claims that the pain and suffering award is inconsistent because the trial court's award was based on a six-month injury (as was argued in the defendants' pre-trial memorandum and adopted by the court), while the past medical expense award spanned a time period of twenty-two months from the date of the injury through the date of trial. Mr. Hebert submits that because the findings are inconsistent, this court should determine the degree of injury and quantum, and suggests that this court increase his pain and suffering award to \$50,000.00.

It is well settled that the trier of fact is given great discretion in the assessment of quantum, both general and special damages. **Guillory v. Lee**, 2009-0075 (La. 6/26/09), 16 So.3d 1104, 1116. Furthermore, the assessment of quantum, or the appropriate amount of damages, is a determination of fact, one entitled to great deference on review. *Id.* Because the discretion vested in the trier of fact is so great, and even vast, an appellate court should rarely disturb an award on review. The role of an appellate court is not to decide what it considers to be an appropriate award, but rather, to review the exercise of discretion by the trier of fact. *Id.*

After thoroughly reviewing the record, we find no abuse of the trial court's vast discretion in its assessment of quantum with respect to both the special

damage and general damage awards. Nor do we find the awards to be contrary to the evidence contained in the record. Accordingly, we decline to disturb the awards entered by the trial court.

CONCLUSION

For the foregoing reasons, the judgment appealed from is affirmed. All costs of this appeal are assessed to appellant, Allen J. Hebert, Jr.

AFFIRMED.