

**NOT DESIGNATED FOR PUBLICATION**

**KENJI GREEN** \* **NO. 2000-CA-1592**  
**VERSUS** \* **COURT OF APPEAL**  
**GENERAL ACCIDENT** \* **FOURTH CIRCUIT**  
**INSURANCE COMPANY, FISK** \* **STATE OF LOUISIANA**  
**ELECTRIC COMPANY AND** \*  
**ROBERT J. CAREY** \*  
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**APPEAL FROM**  
**ST. BERNARD 34TH JUDICIAL DISTRICT COURT**  
**NO. 83-989, DIVISION "D"**  
**HONORABLE KIRK A. VAUGHN, JUDGE**  
\* \* \* \* \*  
**JUDGE MAX N. TOBIAS, JR.**  
\* \* \* \* \*

(Court composed of Judge Steven R. Plotkin, Judge Michael E. Kirby, Judge Max N. Tobias, Jr.)

**J. PAUL DEMAREST**  
**ELIA DIAZ-YAEGER**  
**FAVRET, DEMAREST, RUSSO & LUTKEWITTE**  
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**AFFIRMED**

General Accident Insurance Company, Fisk Electric Company (“Fisk Electric”), and Robert J. Carey (“Carey”) (collectively, “Defendants/Appellants”) suspensively appeal the 30 September 1999 judgment of the trial court in favor of Plaintiff/Appellee, Kenji Green (“Green”). A bench trial was held in this soft-tissue, personal injury matter on 24 August 1999. Damages were stipulated not to exceed \$50,000. The primary issue before the trial court was causation. The court issued judgment in Green’s favor in the sum of \$50,000, plus interest and costs.

Defendants/Appellants raise the following two assignments of error:

1. The trial court erred in finding Green sustained a herniated disc injury as a result of the accident.
2. The trial court abused its discretion in awarding \$50,000.

For the following reasons, we affirm the trial court’s determinations.

This matter arises from a 23 January 1997 automobile accident in St. Bernard Parish on Hannan Boulevard. Carey was operating a pickup truck owned by his employer, Fisk Electric. His vehicle struck the rear end of a

car in which Green was a guest passenger. As a result of that impact, the car in which Green was riding struck a light post and was totaled.

The trial court heard the live testimony of numerous witnesses, including Green, his parents, Dr. Michael Brantmeier, Dr. Carey Berthold, Dr. Lander Pearce, and Dr. Robert Shackleton. The trial court also had Green's medical records, including the results of an MRI, and the supporting deposition testimony of various treating and evaluating physicians. We find that the trial court had ample evidence before it to indicate that Green sustained a mild herniated disc injury at the L4-5 as a result of the accident in question. Although the court also heard evidence of a prior incident involving Green, the severity of that incident is open to interpretation. Moreover, the medical testimony of Dr. Raul Diaz and Dr. Shackleton reminds us that the only way to prove or disprove whether Green had a herniated disc prior to the accident of 23 January 1997 is for Green to have had an MRI prior to that event. No such MRI is available.

A reviewing court must rely on the evaluative skills of the trial judge and give deference to the trial judge's superior opportunity to evaluate the weight and credibility of the evidence presented. The trier of fact's choice

between two permissible views of the facts presented is never reversible on appeal. *Rossell v. ESCO*, 549 So.2d 840 (La. 1989). In the matter before us, we find the trial court's determination of causation to be sufficiently supported by the record.

Defendants/Appellants further maintain that the sum awarded to the plaintiff by the trial court is excessive and "an abuse of discretion." To the contrary, we find that the medical evidence is overwhelming that Green does in fact have an injury and that the injury did not manifest itself prior to the accident in question. Moreover, Green is a young adult making it likely that he will live with the negative results of the injury for many years. We do not find that the trial court's award of \$50,000 for the disc injury was in any way "an abuse of discretion."

Accordingly, the judgment of the trial court is affirmed, all costs are to be borne by the Defendants/Appellants.

**AFFIRMED**