**NOT DESIGNATED FOR PUBLICATION**

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| **STACY L. MCKIE** | * | **NO. 2001-CA-0950** |
| **VERSUS** | * | **COURT OF APPEAL** |
| **ALLSTATE INSURANCE COMPANY, FELICIA JONES, AND NATIONWIDE MUTUAL INSURANCE COMPANY** | * | **FOURTH CIRCUIT** |
| | * | **STATE OF LOUISIANA** |
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 98-19828, DIVISION "N-8"
Honorable Ethel Simms Julien, Judge
* * * * * *
**Judge David S. Gorbaty**
* * * * * *

(Court composed of Judge Miriam G. Waltzer, Judge Michael E. Kirby, Judge David S. Gorbaty)

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**AFFIRMED**

Stacy L. McKie appeals a judgment of the trial court wherein she was found fifty percent at fault for injuries she sustained in an intersectional collision with Felicia Jones. She also appeals the trial court's award of damages, arguing it is unreasonably low considering the extent of her injuries. For the following reasons, we affirm.

**FACTS:**

On December 11, 1997, Ms. McKie was involved in an automobile accident at the intersection of Calliope Street and Loyola Avenue in New Orleans. Ms. McKie claims that she was stopped at the red light, and then proceeded through the intersection once the light turned green. James Gaus, a passenger in Ms. McKie's vehicle, testified that Felicia Jones ran the red light and collided with Ms. McKie's vehicle. Ms. Jones testified that she had the green light at all times prior to the collision.

Following a bench trial, the trial court found in favor of Ms. McKie and awarded her $20,000, plus medical specials. However, the trial court also found Ms. McKie fifty percent at fault for the accident, and reduced her award accordingly. Ms. McKie appeals that judgment.

**DISCUSSION:**

In her first assignment of error, Ms. McKie argues that the trial court erred in finding her fifty percent at fault for the accident. She contends that her testimony, corroborated by that of her guest passenger, and an unnamed witness who spoke to the investigating officer, proves that she was at a complete stop at a red light, and did not proceed into the intersection until the light turned green. Further, the evidence proves that Ms. Jones ran a red light, and, therefore, she should be held totally responsible for the accident.

In *Coleman v. Riley*, 2000-0673 (La.App. 4 Cir. 2/7/2001), 780 So.2d 1071, a case factually similar to the instant matter, this Court addressed the issue of contributory negligence. Plaintiff Yolanda Coleman was stopped at a red light at the corner of Canal and Broad. When the light turned green for Ms. Coleman's direction of travel, she proceeded into the intersection and was struck by a vehicle driven by Doretha Riley. The trial court found each

party to be fifty percent responsible for the accident, stating:

> Considering the evidence adduced at trial the Court is of the opinion that the automobile accident which forms the basis of this lawsuit was caused equally by the fault of plaintiff, Yolanda Coleman, and the defendant, Dorothea [sic] Riley. Each driver, exercising due care should have seen the other and been able to avoid the collision. Regardless of which vehicle had the red and green signal light, each driver has a duty to proceed across a busy multilane intersection only after determining that it is safe to do so. Both drivers violated that duty and are therefore equally at fault.

*Coleman*, 2000-0673 at pp. 2-3, 780 So.2d at 1073.

This Court, using the manifest error standard of review, opined that the record established a reasonable basis for the trial court's judgment, and, therefore, refused to upset the judgment. Additionally, the Court noted, "a favored driver can still be found contributorily negligent if his or her substandard conduct contributed to the cause of the accident." Id. at p. 4, 780 So.2d at 1074, *citing Thomasie v. Lee*, 97-397, p. 7-8, (La.App. 5 Cir. 10/28/97), 700 So.2d 580, 583-84. The Court's review of the record indicated that there was some evidence that Ms. Coleman's vehicle entered the intersection on a green light, however, the record also contained evidence that Ms. Coleman did not wait until she had a clear view of on-

coming traffic before proceeding.

Similarly, in the case below, Ms. McKie testified that she did not look right or left for on-coming traffic prior to entering the intersection. The trial judge, in written reasons for judgment, specifically found that "plaintiff is at least 50% responsible for her own accident and injury by her failure to look both ways to see if the intersection was clear prior to entering it."

Accordingly, we do not find that the trial court was manifestly erroneous or clearly wrong in finding Ms. McKie fifty percent at fault for the accident.

In her second assignment of error, Ms. McKie avers that the trial court erred in awarding her only $20,000 for a herniated disc. She argues that an MRI revealed that she had a herniated disc at level C5-6, and that her treating physician testified that she would have future problems with her neck due to this injury.

Much discretion is accorded the trier-of-fact in fixing damage awards. Because of this vast discretion, an appellate court should rarely disturb an award of general damages. *Youn v. Maritime Overseas Corp.*, 623 So.2d 1257, 1261 (La. 1993); *Labouisse v. Orleans Parish Sch. Bd.*, 99-1684, p. 3

(La.App. 4 Cir. 3/15/00), 757 So.2d 866, 869, *writ denied* 2000-1070 (La. 5/26/00), 762 So.2d 1112. The initial inquiry made by an appellate court is whether the damage award for the particular injuries suffered and the effects under the particular circumstances is a clear abuse of the "much discretion" of the trier-of-fact. *Youn*, 623 So.2d at 1260; *Labouisse*, 99-1684 at p. 4, 757 So.2d at 869.

The record indicates that Ms. McKie was authorized to return to work four weeks following the accident. She treated with Dr. Faust, an orthopedic for approximately five months. Dr. Faust testified that he first saw Ms. McKie twelve days after the accident, and diagnosed a cervical strain. He prescribed muscle relaxers, pain pills, and an anti-inflammatory medication, and told her to return after New Year's. Ms. McKie did not keep her appointment. Dr. Faust was unaware that Ms. McKie had undergone an MRI. He testified he did not prescribe this test because he did not believe it was necessary. However, Dr. Faust did review the radiologist's report shortly before trial. At trial, he admitted that the report indicated a herniation at C5-6, but added that there was no evidence of nerve root impingement or radiculopathy.

The trial court made the factual finding that Ms. McKie received conservative treatment for approximately five months following the accident. There was no evidence of any residual or radiating pain. After reviewing the record in its entirety, we find no abuse of the trial court's discretion in awarding Ms. McKie $20,000 for her injuries.

Accordingly, we affirm the judgment of the trial court.

**AFFIRMED**