NOT DESIGNATED FOR PUBLICATION

WALTER TAYLOR AND ADRIAN TAYLOR	*	**NO. 2001-CA-2019**
	*	**COURT OF APPEAL**
VERSUS		
	*	**FOURTH CIRCUIT**
LAWRENCE EVERAGE AND PATTERSON INSURANCE COMPANY	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
FIRST CITY COURT OF NEW ORLEANS
NO. 97-59260, SECTION "C"
Honorable Michelle Beaty Gullage, Judge Ad Hoc
* * * * * *
Chief Judge William H. Byrnes III
* * * * * *

(Court composed of Chief Judge William H. Byrnes III, Judge Steven R. Plotkin, Judge James F. McKay III)

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AFFIRMED

Plaintiffs-appellants, Walter Taylor and his son Adrian Taylor, appeal an automobile accident personal injury judgment in their favor assigning as the sole error that the trial court abused its discretion in awarding only $3,000.00 in general damages to Walter and only $1,500.00 in general damages to Adrian. We affirm.

Following a judge trial, judgment was rendered in favor of the plaintiffs as follows: $1,490.00 in special damages for medical expenses and $2,000.00 for general damages to Walter; and $1,2750 in special damages for medical expenses and $1,500.00 for general damages to Adrian. Pursuant to plaintiff's motion for a new trial, the trial court modified the original judgment, but only the extent of increasing the general damage award to Walter from $2,000.00 to $3,000.00. In all other respects the trial court left the original judgment as it was.

On January 28, 1997, plaintiffs were stopped at a stop light when the vehicle in which they were riding was struck from the rear by a vehicle driven by the defendant, Lawrence Everage. Plaintiff had just dropped off Mrs. Taylor at Charity hospital where she worked. The only evidence of

damage in the record was for a torn spare tire cover estimated to cost $59.38, for which Walter acknowledged compensation. Walter testified that there was also a scratch on his bumper, but he made no claim for that. The impact could be described as minimal. Neither appellant missed any work or school or noted any lifestyle limitations or modifications related to this accident. Neither plaintiff had anything prescribed for pain relief, stiffness, inflammation or muscle spasm or for any other condition arising out of the accident.

On the day of the accident the plaintiffs went immediately to see a lawyer. From there they went for treatment to the American Medical Group, although they both testified that they experienced no pain until the next day. Walter had this to say about the matter on cross-examination:

> Q. And why did you choose not to go to Charity?
>
> A. Because I did not want to.
>
> Q. Okay. Can you tell us why? Can you explain to the Court why you didn't want to go to Charity Hospital since you had been provided services there before?
>
> A. I just chose not to go.
>
> Q. Immediately following the accident where did you go?
>
> A. Where did I go?
>
> Q. Uh-huh.

A. To the lawyer.

Q. Did you go to the doctor that day?

A. No.

Q. According to the records that we have you, in fact, did go to American Medical Group on the date of the accident, January 28, 1997; do you recall going to the doctor that day?

Upon further cross-examination, Walter admitted that he had been referred to American Medical Group by his attorney. At American Medical Group, Walter was treated by a Chiropractor. At each visit a heat pad (a non-electrical hot cloth) was applied to his neck, knee and back for 20 to 30 minutes, and each of those areas was massaged. He was discharged in July. His son and co-plaintiff went with him on each of his visits to American Medical where he also received treatment. Walter testified that he did not know what his son's injuries were. The only thing that he recalled was that, "At the beginning he told me that his back was hurt." He could not recall whether his son continued to play basketball after the accident

On re-direct examination, when questioned by his own attorney, Walter's answers were such that a reasonable fact finder could find them unconvincing:

Q. Mr. Taylor, on the first day that you went to the doctor were you already having medical problems?

A. No.

Q. The first time – listen what I'm asking. The first time that you went to the doctor were you already having pain?

A. Correct.

Adrian testified that just like his father, his right knee, back and neck were hurt. He received identical treatment at the same time his father did. Adrian gave the following testimony on cross-examination:

Q. So both you and your father both struck your right knee?

A. Yes.

Q. When did you start experiencing pain?

A. Maybe a day after the accident.

Q. And you reported to the medical clinic according [to] the records on the day of the accident; is there any reason why your [sic] reported there if you weren't feeling any pain?

A. No. Treatment.

Q. But you weren't feeling any pain the day of the accident?

A. Uh-uh.

Q. And when you first went to the clinic the only thing you complained of was back pain, isn't that corect, low back pain?

A. Yes.

Q. When did your knee start to hurt you?

A. Before I went back to therapy.

Q. Can you describe for me or can you recall when, how many days after the accident or hours after?

A. About three days after the accident.

Q. I'm sorry?

A. About three days after.

Q. So you just woke up one morning and your knee and your neck was hurting you?

A. Yes.

Q. Did you have any bruise on your knee?

A. No.

Q. Did you tell your father that your knee and your neck was hurting you?

A. No.

Q. You didn't tell anybody in your family you were having those kinds of pains?

A. No.

Q. Did you tell them that your back was hurting?

A. Yes.

Q. When you went to see the doctor did anybody go with you?

A. Yes.

Q. And who was that?

A. My father.

Q. Were you in the same treatment room that he was in ?

A. Yes.

Q. Were you guys kind of laying next to each other?

A. Yes.

Adrian testified that he was able to continue to go to vo-tech school after the accident where he was studying to be an automobile mechanic. He also testified that prior to this accident he had always gone to Charity Hospital for treatment where he had been satisfied with his treatment. When asked if there was any reason he did not go to Charity for treatment for this accident as he had in the past he testified:

A. No.

Q. Do you know why you chose to go to American Medical Group?

A. That's where I wanted to go.

Q. Were you familiar with the doctor there? Had you been there before?

A. No.

Adrian went on to testify that he and his father had, "The exact same

injuries."

Larry Edward Bryant, plaintiffs' Chiropractor testified that he observed no objective findings of injury in either plaintiff.

This is a simple manifest error case. The trial court had the benefit of observing the demeanor of the witnesses. Even from the cold record, the testimony of the plaintiffs at times appears to be evasive and inconsistent. The unconvincing nature of their testimony could have reasonably caused the trial judge to doubt the coincidental nature of the fact that both father and son experienced identical injuries with no objective findings (not even a bruise on the knee) which responded to treatment in the exact same time frame. They were needlessly evasive about how they made their choice of medical provider. Plaintiffs seemed incredibly unaware of each other's symptoms in spite of the fact that they went for treatment together at the same and in the same room on each occasion that they went for treatment. There was not even a dent in plaintiffs' car. Neither plaintiff reported any lifestyle or work limitations as a result of the accident. And, as stated earlier, neither plaintiff was prescribed anything for pain relief, stiffness, inflammation or muscle spasm or for any other problem arising out of the accident. Neither plaintiff reported any mental anguish, anxiety or emotional distress related to the accident. The record is replete with factors

supporting the decision of the trial judge. In fact, had the trial court concluded that the plaintiffs sustained no injuries at all, this Court would be hard pressed to find manifest error in such a finding based on the record before us.

> [T]he role of an appellate court in reviewing general damages 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. Each case is different, and the adequacy or inadequacy of the award should be determined by the facts or circumstances particular to the case under consideration.
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> In Reck, this court disapproved the appellate court's simply reviewing the medical evidence and then concluding that the award for those injuries was excessive, without taking into consideration the particular effect of the particular injuries on the particular plaintiff. This court further disapproved of the use of a scale of prior awards in cases with generically similar medical injuries to determine whether the particular trier of fact abused its discretion in the awards to the particular plaintiff under the facts and circumstances peculiar to the particular case. The initial inquiry is whether the award for the particular injuries and their effects under the particular circumstances on the particular injured person is a clear abuse of the "much discretion" of the trier of fact. [Citations omitted.] Only after such a determination of an abuse of discretion is a resort to prior awards appropriate and then for the purpose of determining the highest or lowest point which is reasonably within that discretion. [Citations omitted.]
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> . . . . [T]he discretion vested in the trier of fact is "great," and even vast, so that an appellate court

> should rarely disturb an award of general damages. Reasonable persons frequently disagree about the measure of general damages in a particular case. It is only when the award is, in either direction, beyond that which a reasonable trier of fact could assess for the effects of the particular injury to the particular plaintiff under the particular circumstances that the appellate court should increase or reduce the award.

Youn v. Maritime Overseas Corp., 623 So.2d 1257, 1260 – 1261 (La.1993).

After reviewing the record as a whole, taking into account the effect of what the trial court could have reasonably concluded were the proven injuries on these particular plaintiffs, we cannot say that the trial judge abused his great and vast discretion in the fixing of plaintiffs' general damages. Following the reasoning of *Youn,* we likewise find that:

> The awards are not obviously the result of passion or prejudice, and they bear a reasonable relationship to the elements of the proved damages. Many rational triers of fact could have decided that a [higher] award is more appropriate, but we cannot conclude from the entirety of the evidence... viewed in the light most favorable to the prevailing party in the trial court, that a rational trier of fact could not have fixed the awards of general damages at the level set by the trial judge or that this is one of those "exceptional cases where such awards are so gross as to be contrary to right reason." Bartholomew v. CNG Producing Co., 832 F. 2d 326 (5th Cir. 1987).

Youn, supra, 623 So. 2d at 1261.

For the foregoing reasons, the judgment of the trial court is affirmed.

AFFIRMED