

**HELLENOR HAYMOND
THOMPSON, WIFE OF/AND
GERALD THOMPSON**

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NO. 2001-CA-2150

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COURT OF APPEAL

VERSUS

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FOURTH CIRCUIT

**LLOYD VAUGHN, JR.,
NATIONAL CAR RENTAL
SYSTEM, INC. AND
ALLSTATE INSURANCE
COMPANY**

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STATE OF LOUISIANA

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2000-3097, DIVISION "K-14"
Honorable Louis A. DiRosa, Judge Pro Tempore

Judge Max N. Tobias, Jr.

(Court composed of Judge Joan Bernard Armstrong, Judge Terri F. Love,
Judge Max N. Tobias, Jr.)

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AFFIRMED.

This appeal by Allstate Insurance Company (“Allstate”) arises out of a 26 November 1999 automobile accident. The trial court awarded plaintiff, Gerald Thompson, damages in the total amount of \$17,375.00 against Allstate subject to a credit of \$11,245.00. Allstate argues that the amount awarded is excessive. For the following reasons, we affirm the judgment of the trial court.

Mr. Thompson and his wife were involved in a rear-end collision as they were stopped for a red light. Their vehicle was struck by a vehicle owned by National Car Rental (“National”) and operated by Lloyd Vaughn, Jr. As a result of the accident, Mr. Thompson sustained injuries to his head, neck, and lower back. Joseph Guenther, M. D., and Brij Mitruka, M. D., treated Mr. Thompson from 30 November 1999 until 8 March 2000, at which time he was discharged.

Mr. Thompson was involved in a subsequent automobile accident on 5

April 2000 and returned to Dr. Mitruka, reporting pain in his low back and right leg. He reported to Dr. Mitruka that he had fully recovered from the November 1999 accident and that the pain he was now experiencing were new injuries related to the second accident.

After one visit to Dr. Mitruka, Mr. Thompson's attorney referred him to Daniel Seltzer, M. D. Mr. Thompson told Dr. Seltzer that he had not fully recovered from the first accident and that the April 2000 accident aggravated this prior injury. A MRI of the plaintiff's lumbar spine was normal. Dr. Seltzer treated Mr. Thompson until 21 August 2000, when he was released from care.

A bench trial took place on 10 October 2000. The stipulated special damages totaled \$6,875.00. Allstate had previously made medical payments of \$1,245.00 and the plaintiff received \$10,000.00 from Mr. Vaughn's insurer, which exhausted his liability insurance.

On 13 July 2001, the trial court rendered judgment in favor of the plaintiff and against Allstate in the net amount of \$6,130.00, together with legal interest from the date of judicial demand, and costs. In its reasons for judgment, the trial court stated:

In March of 2000 he [the plaintiff] was discharged

from medical care but was still experiencing pain and continued to take his medication even after being discharged. While this situation was occurring, plaintiff was involved in a second accident in April, 2000 and believed that he was not injured. He returned to Dr. Seltzer and complained of continued pain from the first accident. **This court feels that the plaintiff is truthful in his testimony, because he told the doctor that his pain was continuing from the first accident** and made no legal claim whatever in this instance because he was “not hurt” in the second accident. (Emphasis added.)

Allstate argues that the trial court committed manifest error by finding that the treatment received by Mr. Thompson after 8 March 2000 was related to the 26 November 1999 accident and in awarding \$17,365 for a three-month soft tissue injury. It points to inconsistencies in the statements made by Mr. Thompson to his treating physicians and at trial.

We apply the manifest error/clearly wrong standard to the factual findings of the trial court. As for the award of damages, the trier of fact is given great, even vast, discretion in awarding general damages. *Youn v. Maritime Overseas Corp.*, 623 So. 2d 1257 (La. 1993).

The trial court found that the second accident aggravated the injuries sustained by the plaintiff in the accident at issue. This finding is supported by the deposition testimony of Dr. Mitruka, filed into the record by Allstate. Despite the inconsistencies found in the plaintiff’s testimony, the trial court

judged his credibility and found him honest and truthful. No manifest error is present.

We also find that the trial court did not abuse its vast discretion in its award of general damages, in light of the aggravation of the pre-existing injury. Accordingly, we affirm the judgment and assess all costs to the defendant.

AFFIRMED.