STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL L. BAUCHAN and BAUCHAN LAW OFFICES, P.C.,

Plaintiff-Appellant,

and

VIRGILENE K. BAUCHAN

v

Plaintiff-Appellant,

GERALD LEE WATKINS, and WILLIAM D. FROST and NANCY FROST, doing business as P-D TRUCKING

Defendants-Appellees.

UNPUBLISHED
March 13, 1998

No. 189513
Isabella Circuit Court
LC No. 89-004963-NI

MICHAEL L. BAUCHAN,

Plaintiff,

and

VIRGILENE K. BAUCHAN,

Plaintiff-Appellee,

v

GERALD LEE WATKINS, WILLIAM D. FROST and NANCY P. FROST

Defendants-Appellants.

No. 190626
Isabella Circuit Court
LC No. 89-004963-NI

Before: Gribbs, P.J., and Murphy and Gage, JJ.

PER CURIAM.

This is a consolidated action. In Docket No. 189513, Virgilene Bauchan appeals by right from a judgment in her favor for $75,000, which was entered following a jury trial on her claims brought under the no-fault act, MCL 500.3101 *et seq.*; MSA 24.13101 *et seq*. In Docket No. 190626, defendants appeal by right from an order denying their motion for taxation of costs against Virgilene Bauchan. We affirm.

In Docket No. 189513, plaintiff Virgilene Bauchan argues that the trial court abused its discretion when it denied her motion for a new trial on the issue of damages. We disagree. Plaintiff contends that *Hill v Wilson*, 209 Mich App 356; 531 NW2d 744 (1995), requires reversal and a remand for a new trial. Plaintiff wants this Court to read *Hill* as saying that a party who is rear-ended while driving an automobile can never be comparatively negligent. We find *Hill* entirely distinguishable and reject plaintiff's interpretation. In *Hill*, the plaintiff could not rebut the presumption that his injuries were caused by his following of the defendant's vehicle too closely. The decision does not support plaintiff's assertion that the driver of a vehicle that is rear-ended can never be comparatively negligent. Plaintiff's argument confuses the offering of evidence to rebut a presumption with the offering of evidence to establish a valid defense. Here, the jury was instructed to presume that defendants were negligent, and was also instructed concerning plaintiff's comparative negligence. As the trial court noted at the subsequent motion hearing, the evidence at trial supported the jury's findings. We find no abuse of discretion. *Arrington v Detroit Osteopathic Hospital Corp (On Remand)*, 196 Mich App 544, 560, 564; 493 NW2d 492 (1992).

Plaintiff also argues that the trial court erred in denying her motion for additur. Additur is justified only where the verdict is "inadequate," which MCR 2.611(E)(1) provides is a verdict below "the lowest . . .amount the evidence will support." Here there was conflicting testimony by plaintiff, her doctors, and defendant's expert witness. The jury's decision came down to a determination of who was more credible, and this Court will not second guess such a determination. We find no abuse of discretion. *Palenkas v Beaumont Hospital*, 432 Mich 527, 533; 443 NW2d 354 (1989).

In Docket No. 190626, defendants argue that the trial court abused its discretion in denying its motion for taxation of costs against Virgilene Bauchan. We disagree. Although we agree that the record on this matter could have been more clear, it is apparent from the transcript that counsel for plaintiff Virgilene Bauchan indicated an intent to waive her claim of consortium and that defense counsel conceded that she had not pursued the claim. The trial court did not err in denying costs on Virgilene Bauchan's consortium claim.

Affirmed.

/s/ Roman S. Gribbs
/s/ William B. Murphy
/s/ Hilda R. Gage