

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

JUAN RAMIREZ and ROSIE RAMIREZ, )	NO. 63061-0-I
individually and as husband and wife )	
JUAN RAMIREZ as Guardian Ad Litem )	DIVISION ONE
for their minor child, JUAN RAMIREZ )	
JR. )	
Appellants, )	
)	
v. )	
)	
JAMES EASLEY and JANE DOE )	Unpublished Opinion
EASLEY, individually and as husband )	
and wife and the marital community )	Filed: November 16, 2009
comprised thereof, )	
)	
Respondents. )	
)	

Lau, J. — In an action for personal injuries, the plaintiff is entitled to a new trial if the evidence is contrary to the jury’s failure to award noneconomic damages. Here, based on the evidence at trial, the jury could reasonably have determined that Juan Ramirez was not entitled to general damages for the injuries he suffered in an automobile accident. The trial court therefore did not abuse its discretion in denying his motion for a new trial or additur. Because James Easley improved his position

following a trial de novo, the trial court also did not err in denying Ramirez's motion for attorney fees under MAR 7.3. The trial court's judgment is therefore affirmed.

### FACTS

On February 10, 2006, after visiting an Everett credit union, Juan Ramirez, Sr., attempted to drive his pickup out of the parking lot. Juan's five-year-old son Tito was in a child seat next to Juan.<sup>1</sup> Juan waited on the exit ramp behind James Easley, who started to pull out into traffic. But when Easley noticed that he would not be able to make the intended turn, he backed his pickup into Juan's truck. At trial, Juan estimated that he was stopped 10 to 20 feet behind Easley's pickup and that Easley was moving 10 to 15 m.p.h. at the time of the collision. The two men exchanged information in the parking lot for about 20 minutes and then left.

Four days after the accident, Juan visited Dr. Lee Corley, a chiropractor, complaining of headaches and neck, back, and leg pain. Juan told Dr. Corley that he could not say how fast Easley's truck was moving and that he had turned his head to look at Tito at the time of the impact.

Dr. Corley diagnosed a sprain-strain injury to the neck with an acceleration-deceleration injury and a moderate sprain of the cervical spine. Dr. Corley treated Juan with adjustments and massages until July 5, 2006, and then again from November 2006 until January 2007, when Juan reported that his pain had returned. Juan, who was employed as a laminator for a yacht builder, did not seek any other treatment and never missed any work because of his injuries.

Dr. Corley also saw Tito four days after the accident and diagnosed a sprain

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<sup>1</sup> For purposes of clarity, we use the Ramirezes' first names.

injury to the cervical spine. Dr. Corley treated Tito with five cervical adjustments.

On November 9, 2006, Juan filed an action for personal injuries against Easley, seeking recovery for both special and general damages. The complaint also named Tito and Rosie Ramirez, Juan's wife, as plaintiffs. Following mandatory arbitration, the arbitrator awarded Juan a total of \$12,000, with \$4,000 for medical expenses and \$8,000 for general damages.

Easley requested a trial de novo and declined Juan's offer of compromise for \$7,500. The matter then proceeded to a jury trial in December 2008. The jury was instructed that Easley had admitted that he was negligent, but denied his negligence was the proximate cause of the plaintiffs' injuries. The parties also stipulated that Juan's expenses for chiropractic and massage treatment totaling \$5,715.50 were reasonable and necessary, but did not inform the jury of the stipulation. At trial, Juan, Tito, and Rosie requested special and general damages totaling about \$290,000.

The jury returned a verdict in favor Juan for \$1,000. The verdict form did not specify whether the amount was for special or general damages. The jury made no award in favor of Tito or Rosie. The trial court denied Juan's motion for a new trial or additur and eventually entered a judgment in his favor for \$7,608.63, consisting of the agreed \$5,715.50 for Juan's chiropractic treatment, \$1,000 for the jury's verdict, and costs and statutory attorney fees of \$893.13.

### DECISION

Juan contends that the trial court erred when it denied his motion for a new trial or

additur. He argues that the jury's award of \$1,000 failed to compensate him for his undisputed medical expenses or for any general damages and was therefore so inadequate as to establish that the verdict was the result of passion or prejudice. See CR 59(a)(5), (7).

The determination of the amount of damages is within the jury's province, and appellate courts are reluctant to interfere with a jury's damage award. Palmer v. Jensen, 132 Wn.2d 193, 197, 937 P.2d 597 (1997). Consequently, we review the trial court's decision whether to grant a new trial on the basis of inadequate damages for an abuse of discretion. Palmer, 132 Wn.2d at 197. "A trial court abuses its discretion by denying a motion for a new trial where the verdict is contrary to the evidence." Fahndrich v. Williams, 147 Wn. App. 302, 306, 194 P.3d 1005 (2008).

Much of Juan's challenge to the adequacy of the jury's verdict focuses on the jury's award of \$1,000 in isolation. But the trial court's judgment in Juan's favor included special damages of \$5,715.50, based on the parties' stipulated agreement of his medical expenses, plus the jury's award of \$1,000. Because the stipulation resulted in full compensation for Juan's special damages, the trial court concluded that the \$1,000 award should be characterized as general damages.<sup>2</sup> Juan has not challenged or addressed the trial court's interpretation of the parties' stipulation. Under these circumstances, the court's characterization of the jury's award was not unreasonable.

Moreover, even if we assume that the jury's award did not include general

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<sup>2</sup> The trial court also suggested that the jury might have ignored an instruction to disregard insurance payments and awarded the \$1,000 solely as general damages. But nothing in the record supports the court's speculation.

damages, Juan has not demonstrated an abuse of discretion. Although Juan testified that he suffered headaches and neck, back, and leg pains after the accident, he could recall little about the nature or duration of the pain. He explained that the accident had made it “more difficult” to take walks, go camping or attend church and “a little bit more difficult” to undertake activities with Tito, but he offered no further clarification about how the injuries had affected the enjoyment of his life. Juan also acknowledged that his job constructing yachts involved significant manual labor and that he had not missed a single shift following the accident.

Rosie testified that after the accident, Tito would occasionally wake up screaming and that a doctor had recommended that she “hug him really close.” But she could not say how frequently the “night terrors” occurred or how long they lasted. Tito also wanted to sleep in his parents’ bedroom, causing Juan to move out of the bedroom for an unspecified period. According to Rosie, Juan “seemed kind of withdrawn” and “irritable” after the accident and no longer participated as actively in the family “teamwork.” But she never discussed these matters with Juan and only assumed that they were related to the accident.

Not every plaintiff who sustains an injury is entitled to general damages. See Lopez v. Salgado-Guadarama, 130 Wn. App. 87, 93, 122 P.3d 733 (2005). Here, the jury could have reasonably determined that the evidence of noneconomic damages was vague and highly speculative. Unlike Palmer, cited by Juan, the evidence was not contrary to a jury verdict that omitted general damages for Juan and any award in favor

of Tito and Rosie.<sup>3</sup> The trial court therefore did not abuse its discretion in denying Juan's motion for a new trial or additur.

Juan next contends that the trial court erred in subtracting costs and statutory attorney fees when determining whether Easley improved his position at the trial de novo after Easley declined to accept Ramirez's offer of compromise for \$7,500. He argues that he was entitled to an award of attorney fees under MAR 7.3 because the trial court entered a judgment in his favor of \$7,608.63.

MAR 7.3 requires the trial court to assess costs and reasonable attorney fees against a party "who appeals the award and fails to improve the party's position on the trial de novo." For purposes of MAR 7.3, if the appealing party fails to accept a timely offer of compromise, "the amount of the offer of compromise shall replace the amount of the arbitrator's award for determining whether the party appealing the arbitrator's award has failed to improve that party's position on the trial de novo." RCW 7.06.050(1)(b).

But contrary to Ramirez's assertion, the amount of the final judgment entered in his favor is not necessarily controlling. Rather, the trial court should "compare comparables" when determining whether a party failed to improve its position. Tran v. Yu, 118 Wn. App. 607, 612, 75 P.3d 970 (2003), In Tran, we held that the trial court

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<sup>3</sup> See Palmer, 132 Wn.2d at 202 (jury's omission of general damages contrary to evidence where the evidence was undisputed that plaintiff underwent more than a year of painful medical treatments, including pain medication, and suffered from constant low back pain); see also Fahndrich, 147 Wn. App. at 308 (plaintiff sought continuous treatment for pain for more than six years).

properly subtracted statutory costs and CR 37 sanctions before applying MAR 7.3 because these amounts were not part of the arbitrator's award and were therefore not "comparable" to the jury's award of compensatory damages. Tran, 118 Wn. App. at 616. Recently, we applied the Tran analysis to offers of compromise, concluding that "RCW 7.06.050(1)(b) should be read so that any segregated amount of an offer must replace an amount in the same category granted under the arbitrator's award." Niccum v. Enquist, \_\_\_ Wn. App. \_\_\_, 215 P.3d 987, 990 (2009) (trial court properly subtracted costs and fees when determining whether party failed to improve its position).

Consistent with RCW 7.06.050(1)(b), Juan's offer of compromise expressly provided that he would accept \$7,500.00 in lieu of the arbitrator's award and that the offer was "intended to replace the Arbitrator's award." The final judgment of \$7,608.63 consisted of \$6,715.50 in compensatory damages and \$893.13 in costs and statutory attorney fees. The trial court therefore properly compared Juan's offer of \$7,500 with the compensatory amount of \$6,715.50 in determining that Easley had improved his position at trial. The trial court did not err in denying Juan's motion for attorney fees under MAR 7.3, and his request for attorney fees on appeal is denied.

Affirmed.

WE CONCUR:

Dwyer, A.C.J.

Juan, J.  
Grosjean, J.