

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

ALESHIA SUMMERHILL,)	
MARY POWELL, and)	
WILLIE LEE, JR.,)	
)	
Plaintiffs,)	
)	C.A. No. 07C-11-071 PLA
v.)	
)	
JOHN IANNARELLA,)	
DONALD HONEYCUTT, and)	
BARBARA HONEYCUTT,)	
)	
Defendants.)	

Submitted: April 6, 2009

Decided: April 7, 2009

UPON PLAINTIFF POWELL'S
MOTION TO AMEND THE JUDGMENT
DENIED

This 7th day of April, 2009, upon consideration of Plaintiff Mary Powell's ("Powell") Motion to Amend the Judgment, it appears to the Court that:

1. Plaintiff brought this action for personal injuries arising from a car accident in which Defendant John Iannarella's ("Iannarella") vehicle rear-ended a truck driven by Powell. Powell alleged that she experienced back and neck pain as a result of the accident.

2. A one-day jury trial was held on March 23, 2009. At trial, Powell testified that the accident litigated in this case was the second of three successive motor vehicle accidents for which she recently had brought suit. Powell was offered physical therapy sessions following this accident, but did not attend most of them, purportedly because of high blood pressure. Dr. Ali Kalamchi, Defendant's medical expert, testified by deposition that "it's hard to tell whether [Plaintiff] sustained an injury" as a result of the accident with Iannarella, and that to the extent there was any injury, "it's a minor soft tissue injury that she had recovered from within a few months of conservative treatment and rest."¹ The jury returned a verdict in Powell's favor in the amount of \$10.00.

3. Powell has now filed a Motion to Amend the Judgment. Because Powell's motion seeks to have the Court increase the amount of the jury's award, it will be treated as a Motion for Additur.

4. In her motion, Powell argues that the jury's verdict was grossly disproportionate to the injuries suffered, because "[a]ssuming that the jury accepted the facts in the light least favorable to the Plaintiff, then Plaintiff should have been compensated for [a] minor soft tissue injury which necessitated emergency treatment, [and] a short period of physical therapy[.]

¹ Docket 28, Ex. A (Dep. Tr. of Ali Kalamchi, M.D.).

and then resolved.”² In attempting to highlight the severity of her injuries, Plaintiff emphasizes that she lost consciousness after the accident and that emergency medical technicians immobilized her in a cervical collar for transport by ambulance to the hospital. Powell also submits that the verdict of \$10.00 in her favor was essentially identical to a zero verdict, which “would not have been supported by the evidence when both medical experts opined that there was an injury that necessitated medical treatment.”³

5. In response, Iannarella argues that the jury’s findings were supported by the evidence and should be treated as conclusive.⁴ Iannarella disputes that the \$10.00 verdict was out of proportion to Powell’s injuries, particularly in light of the fact that Powell has complaints of back and neck pain allegedly relating to two other motor vehicle accidents.

6. Under Delaware law, it is axiomatic that a jury’s verdict is entitled to enormous deference.⁵ By extension, a jury’s finding as to damages is presumed to be valid.⁶ The jury’s award may not be disturbed

² Docket 28, ¶ 7.

³ *Id.*, ¶ 8.

⁴ Docket 29.

⁵ *See, e.g., Young v. Frase*, 702 A.2d 1234, 1236 (Del. 1997).

⁶ *Id.*

except in the rare case in which it is found so “grossly out of proportion to the injuries suffered as to shock the Court’s sense of justice.”⁷

7. Plaintiff’s argument that a \$10.00 verdict in her favor is the “functional equivalent” of a zero verdict is meritless. However little subjective value a plaintiff assigns to a given verdict, the Court is unable and unwilling to say that any non-zero verdict is the functional equivalent of nothing. Would a verdict of \$1,000 be the “functional equivalent” of zero in a case where the plaintiff believed she was entitled to \$1,000,000?

8. Setting aside such dubious mathematics, the real crux of this motion is Plaintiff’s contention the verdict in this case was unconscionably low in light of her injuries and merits additur. As this Court has previously noted, Delaware juries often seem to struggle with compensating plaintiffs who experience minor soft tissue injuries as the result of low-impact motor vehicle crashes.⁸ In many cases, the result of that struggle is a finding of liability accompanied by a zero verdict, which subsequently results in the granting of additur or a new trial. The jury in this case, however, resolved its apparent struggle: understanding that they could not return a zero verdict after determining that Powell was injured as a result of the litigated accident,

⁷ *Mills v. Talenczak*, 345 A.2d 424, 426 (Del. 1975).

⁸ *See, e.g., McCaleb v. Klein*, 2005 WL 268024, at *2 (Del. Super. Feb. 3, 2005).

they returned a non-zero verdict to reflect their assessment of the extent of Powell's injuries.

10. Simply put, the Court's conscience is not shocked by this result. The jury had ample reason to question Plaintiff's credibility as to the extent and severity of her injuries. The fact that Powell was immobilized and transported by ambulance to the hospital following an automobile accident is hardly probative of the extent of her injuries, as these steps are routine precautionary measures. Dr. Kalamchi testified that Plaintiff's self-reported symptoms were entirely inconsistent with his diagnosis of soft tissue injury, and would, if true, have been indicative of spinal cord compression -- a much more serious injury that would have been objectively verifiable. In other words, Dr. Kalamchi's testimony provided a basis for jurors to conclude that Plaintiff's subjective complaints did not match with an objective expert evaluation of her condition.

11. Plaintiff protests that the verdict of \$10.00 "could only have been based upon passion or prejudice, in this case a dislike of the Plaintiff." The Court disagrees. The jury's verdict could have been -- and indeed, appears to have been -- based upon the jurors' valuation of the plaintiff's injuries, taking into account their assessment of her testimonial credibility and the expert medical evidence. Making this determination is among the

jury's quintessential functions, and there is no basis here for the Court to alter its decision.

12. For the foregoing reasons, Plaintiff's Motion to Amend the Judgment, treated as a Motion for Additur, is hereby **DENIED**.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary

cc: Carol J. Antoff, Esq.
Edward J. Fornias, III, Esq.