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

GEORGE PARKER	)	
	)	
Plaintiff,	)	
	)	
v.	)	C. A. No.: 04C-10-133 CLS
	)	
NANCY PARKER,	)	
	)	
Defendant.	)	

Submitted: June 9, 2009
Decided: September 2, 2009

On Plaintiff's Motion for a New Trial or Additur. **DENIED.**

On Defendant's Motion for Costs.
GRANTED IN PART; **DENIED IN PART.**

ORDER

Daniel L. McKenty, Esq., Heckler and Frabizzio, Delaware Corporate Center, 800 Delaware Ave, P.O. Box 128, Wilmington, DE 19899-0397, *attorney for Defendant.*

Joseph W. Benson, Esq. and Andrew G. Ahern III, Esq., Joseph W. Benson, P.A., 1701 N. Market St., P.O. Box 248, Wilmington, DE 19899, *attorneys for Plaintiff.*

SCOTT, J.

Introduction

This case arises from a motor vehicle accident that occurred on October 29, 2002. Defendant admitted liability and thus the remaining issue was the extent of Plaintiff's injuries proximately caused by the accident and the reasonable amount of damages. On July 12, 2007, Defendant made an offer of judgment in the amount of $30,000. Plaintiff rejected the offer and trial commenced on April 26, 2009. On April 29, 2009, a jury awarded Plaintiff $3,250.

Plaintiff has filed a motion for a new trial or additur. He asserts that the jury's award of $3,250 is against the great weight of the evidence and is "woefully inadequate."

Defendant has filed a motion for costs. Specifically, she seeks reimbursement for the one hour trial testimony of defense medical expert Dr. Donald Archer in the amount of $2,600.

Discussion

Plaintiff's Motion for New Trial or Additur

In considering a motion for a new trial, the trial court begins with the presumption that the jury's verdict is correct.[1] This presumption reflects the

[1] *Patterson v. Coffin*, 854 A.2d 1158, 2004 WL 1656514, at *2 (Del. 2004) (TABLE); *Young v. Frase*, 702 A.2d 1234, 1236 (Del. 1997).

significant deference given to the jury in its role as fact-finder.[2] A jury's verdict will only be set aside if it is found to be "against the great weight of the evidence."[3] In other words, the trial court cannot grant a new trial unless a review of all of the evidence reveals that "the evidence preponderates so heavily against the jury verdict that a reasonable jury could not have reached the result."[4] Additur is appropriate when the award "is so grossly out of proportion to the injuries suffered as to shock the Court's conscience and sense of justice."[5] With respect to additur, the Court will not reduce a jury award unless it is "so grossly excessive as to shock the Court's conscience and sense of justice; and unless the injustice of allowing the verdict to stand is clear."[6]

The Court is not shocked by the jury's decision in this case; rather it considers the award to be fair and reasonable. Upon consideration of the evidence produced at trial, it was reasonable for the jury to conclude that the injuries proximately caused by the accident were minimal. Dr. Bandera testified that he treated Plaintiff for injuries to his neck, shoulders and lower

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[2] *Young,* 702 A.2d at 1236; *Caldwell v. White,* 2005 WL 1950902, at *3 (Del. Super., May 25, 2005).
[3] *Storey v. Camper,* 401 A.2d 458, 465 (Del. 1979).
[4] *Id.*
[5] *Hall v. Dorsey*, 1998 WL 960774 (Del. Super., Nov. 5, 1998) (quoting *Mills v. Telenczak,* 345 A.2d 424, 426 (Del. 1975)).
[6] *Riegel v. Dastard*, 272 A.2d 715, 717-718 (Del.1970), citing *Bennett v. Barber*, 79 A.2d 363 (Del. 1951).

back with physical therapy. Plaintiff experienced improvement in all areas except his left shoulder. In April 2003, Dr. Bandera referred Plaintiff to Dr. Lewis Sharps for treatment of his ongoing left should pain. Dr. Sharp performed arthroscopic surgery on Plaintiff's left should in June 2003. He noted that the surgery was outpatient, the incision was less than ¼ of an inch long and that the surgery was "very" successful.

Dr. Bandera cleared Plaintiff to return to work as early as September 2004 but it wasn't until December 2005 that Plaintiff returned to work. Plaintiff claimed that he had difficulty returning to work at that time and finally returned to work on a regular basis in March 2006. Dr. Bandera did not see Plaintiff again until October 2006 after Plaintiff fell and re-injured his left shoulder. Although Dr. Bandera noted that the Plaintiff's left shoulder was more fragile due to the injuries Plaintiff sustained as a result of the 2002 accident, he did not related the new injury to the 2002 accident. Plaintiff refused to undergo physical therapy as recommended by his doctors. Dr. Bandera testified that Plaintiff requires two office visits a year but he has not examined Plaintiff since October 2006. He testified that Plaintiff simply comes by and picks up his medications.

Dr. Archer examined Plaintiff in 2007 and found that Plaintiff's physical exam was largely normal. He conceded that Plaintiff suffered some

injury from the 2002 accident and that the treatment by Dr. Bandera and the surgery by Dr. Sharps were reasonable and necessary. He indicated that Plaintiff can treat his residual pain with over-the-counter medications in the future. Before the 2002 accident, Plaintiff worked less than full time as a Teamster. After the accident, he returned working for the Teamsters doing essentially the same type of work only full time with overtime.

Based on the evidence presented, the jury's verdict appears to have been based on the juror's valuation of Plaintiff's injuries. Taking into the account the expert medical evidence and Plaintiff's own testimony, the verdict in this case appears to be reasonable. Therefore, there is no basis to granted Plaintiff a new trial or alter the jury's award.

Defendant's Motion for Costs

Defendant seeks reimbursement for the one hour trial testimony of Dr. Archer in the amount of $2,600. In assessing the reasonableness of medical experts' testimonial fees, this Court has frequently relied upon rates set forth in a 1995 study conducted by the Medical Society of Delaware's Medico-Legal Affairs Committee, as adjusted to reflect increases in the consumer price index for medical care.[7] The Medico-Legal Study reported that fees for a half-day of medical expert testimony ranged from $1,300 to

[7] *See Bond,* 2006 WL 2329364, at *3, (collecting cases); *Gates v. Texaco, Inc.*, 2008 WL 1952164, at *1 (Del. Super., Mar. 20, 2008).

$1,800.[8] Here, the Court finds that there has been an increase of 50.3% in the consumer price index for medical care from the beginning of 1996 to January 2009.[9] Therefore, the applicable range of reasonable half-day testimony fees would be $1,953.90 to $2,705.40.

In light of the price-adjusted rates given by the Medico-Legal Study, the Court finds that Dr. Archer's fee of 2,600 for one hour of trial testimony is unreasonable. Therefore, the Court will reduce Defendant's award for Dr. Archer's testimonial fee to $1,500.

Conclusion

Based on the foregoing, Plaintiff's Motion for a New Trial or Additur is **DENIED** and Defendant's Motion for Costs is **GRANTED in part and DENIED in part**.

IT IS SO ORDERED.

/s/ CALVIN L. SCOTT_
Judge Calvin L. Scott, Jr.

[8] *See Gates,* 2008 WL 1952164, at *1.
[9] *See* Bureau of Labor Statistics, U.S. Dep't of Labor, *Archived News Releases for Consumer Price Index, available at* http:// www.bls.gov/schedule/archives/cpi_nr.htm (last visited July 21, 2009).