

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

Kris Mikkeltborg and)	
Shelly Mikkeltborg,)	
)	
Plaintiffs,)	
)	C.A. No. 99C-09-275 CHT
v.)	
)	TRIAL BY JURY OF
Brunida Gonzalez,)	TWELVE DEMANDED
)	
Defendant.)	

OPINION AND ORDER

**On the Plaintiff Kris Mikkeltborg's
Motion for a New Trial, or in the Alternative,
Additur**

Submitted: December 4, 2002

Decided: March 14, 2003

Donald L. Gouge, Jr., Esquire, HEIMAN, ABER, GOLDLUST & BAKER,
702 North King Street, #600, Wilmington, DE 19801, Attorney
for the Plaintiffs.

Patricia D. Murphy, Esquire, CASARINO, CHRISTMAN & SHALK,
P.A., 800 N. King Street, Suite 200, P.O. Box 1276,
Wilmington, DE 19899, Attorney for the Defendant.

TOLIVER, JUDGE

Presently before the Court is the Plaintiff's Motion for New Trial brought pursuant to Superior Court Civil Rule 59. That which follows is the Court's resolution of the issues so presented.

STATEMENT OF FACTS AND NATURE OF THE PROCEEDINGS

On January 23, 1998, Plaintiff Kris Mikkeltorg was stopped at a traffic light when his vehicle was struck in the rear by the vehicle driven by Defendant Brunida Gonzalez. The collision took place on Route 13, at the Route 13/Route 40 split near New Castle, Delaware. As a result, the Plaintiff claimed injuries to his right shoulder, neck and right knee. Mr. Mikkeltorg brought this action against the Defendant on September 28, 1999.¹

The trial was heard by the Court and a jury on November 6 and 7, 2002. Ms. Gonzalez conceded liability for the accident, and both sides presented medical expert testimony.

¹ On September 28, 2001, the complaint was amended to include Mrs. (Shelly) Mikkeltorg as a co-plaintiff due to her alleged loss of the consortium of Mr. Mikkeltorg.

At the conclusion of the trial, despite Ms. Gonzalez's concession of liability, the jury returned a verdict for the Plaintiff in the amount of \$0. The Plaintiff filed the present Motion for a New Trial on November 13, 2002.

The Plaintiffs assert several grounds upon which a new trial should be granted. They argue that the jury award of \$0 for Mr. Mikkelsen's damages is against the great weight of the evidence, and is so low as to shock the Court's conscience and sense of justice. In addition, they argue that one of the Defendant's medical witnesses failed to state his opinions with reasonable medical probability, as required by Delaware law.

In response, the Defendant claims that while liability for the accident was conceded, proximate cause and damages remained issues for the jury. The Defendant also argues that the Plaintiff gave inconsistent testimony as to the extent and origin of his injuries, which may have influenced the jury's damages award. Consequently, the Defendant declares that the

award is not against the great weight of the evidence, nor should it shock the conscience of the Court.

In support of her position, the Defendant points to her own medical witnesses' testimony regarding the Plaintiff's injuries which cast conceivable doubt as to whether those injuries truly arose from the accident. Given the conflicting evidence, the Defendant contends that the jury, free to accept or reject testimony as it saw fit, was not swayed by the Plaintiffs' case. Finally, the Defendant contends that the Plaintiffs' objection to the introduction of Dr. Lewis H. Sharps' testimony was adequately addressed at trial, as Dr. Sharps took pains to delineate which portions of his diagnoses of the Plaintiff's injuries were and were not given within a reasonable degree of medical testimony.

DISCUSSION

When reviewing a motion for new trial, the jury's verdict

is entitled to "enormous deference".² "In the face of any reasonable difference of opinion, courts will yield to the jury's decision. It follows that, in the absence of exceptional circumstances, the validity of damages determined by the jury should likewise be presumed."³ A jury verdict should not be disturbed unless it is "manifestly and palpably against the weight of the evidence or for some reason, or a combination of reasons, justice would miscarry if it were allowed to stand."⁴ However, "[a] verdict of zero damages is inadequate and unacceptable as a matter of law where uncontradicted medical testimony establishes a causal link between an accident and injuries sustained."⁵

In the instant case, the Defendant admitted negligence. Moreover, the parties were in agreement as to the

² Young v. Frase, Del. Supr., 702 A.2d 1234, 1236 (1997) (citing the Delaware Constitution, Art. IV, § 11(1)(a)).

³ Littrel v. Hanby, 1998 Del. Super. LEXIS 10 at *3-4, citing Young v. Frase, 702 A.2d 1234, 1236-7 (Del. 1997).

⁴ McCloskey v. McKelvey, 174 A.2d 691, 693 (Del. 1961).

⁵ Sullivan v. Sanderson, 2002 Del. LEXIS 795 at *2.

manifestation of a right shoulder injury and a knee injury subsequent to the accident. Although the parties disagree as to whether the Defendant conceded that her negligence was the proximate cause of the Plaintiff's injuries, there was uncontradicted medical testimony provided by Dr. Alfredo F. Fernandez⁶ that established a causal link between the accident and Mr. Mikkelborg's injuries.

The evidence showed that following the January 23 accident, Mr. Mikkelborg complained of injury to his neck, shoulder and knee. He sought and received treatment from Dr. Fernandez for those complaints, which Dr. Fernandez related to the accident in question.⁷ Treatment included physical therapy, MRI testing, injections for pain, and Dr. Fernandez opined that arthroscopic surgery on Mr. Mikkelborg's knee would be required as well.⁸ Although the defense presented

⁶ Dr. Fernandez's testimony was secured at a September 11, 2002 deposition.

⁷ Fernandez Dep. Transcript at 14.

⁸ Id.

testimony that some of Mr. Mikkelborg's injuries may have been pre-existing conditions, the defense's own expert medical witness (Dr. Sharps) related Mr. Mikkelborg's knee injury to the January 23, 1998 accident.

Viewing the testimony introduced at trial, there were indeed some inconsistencies within Mr. Mikkelborg's testimony regarding the onset of his various symptoms. Notwithstanding that fact, there was also uncontroverted evidence that he did suffer injury to his knee, as opposed to his shoulder, because of the negligent conduct of Ms. Gonzalez on January 23, 1998.

Both the Plaintiff and the Defendant zealously litigated their respective interests at trial, and there was evidence upon which a wide range of award could have been supported. However, a knee injury of the type sustained by Mr. Mikkelborg is not so inconsequential as to contemplate an award of zero damages.⁹ Such an award is against the great weight of the

⁹ Bowen v. Dignan, 1999 Del. Super. LEXIS 560 at *5.

evidence, shocks the Court's conscience and sense of justice,
and must be set aside.

CONCLUSION

For the foregoing reasons, the Plaintiff's Motion for New Trial as to the issue of damages only, must be, and hereby is, **granted.**

IT IS SO ORDERED.

Toliver, Judge