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***Re: Bateman v. Lada, C.A. No. 99C-07-285-JRS
On Plaintiff's Motion for Judgment as a Matter of Law -
GRANTED in part and DENIED in part.
On Plaintiff's Motion for a New Trial - GRANTED in part and
DENIED in part.***

Dear Counsel,

Kristie and Mark Bateman ("Plaintiffs") have moved for judgment in their favor as a matter of law pursuant to Delaware Superior Court Civil Rule 50 (at times referred to as the "Rule 50 motion") and for a new trial on damages only pursuant to Delaware Superior Court Civil Rule 59. The trial from which these motions arise involved claims of personal injury following an automobile accident which occurred on August 16, 1997, at the intersection of Route 273 and Route 1 in New Castle

County. It was alleged that the defendant, Christine Lada, failed to stop for a red light and struck the driver's side of the vehicle operated by Ms. Bateman. Mr. Bateman alleged loss of consortium. Ms. Lada admitted fault for the accident but contested proximate cause and damages.

The matter was tried to a jury over two days. At the close of their case, Plaintiffs' moved for judgment as a matter of law on the issue of proximate cause. The Court reserved decision on the motion and allowed the case to go to the jury on all issues.¹ On May 1, 2001, a jury returned a verdict in favor of the defendant upon concluding that the automobile accident did not proximately cause injury to the Plaintiffs. Plaintiffs have renewed their motion for judgment as a matter of law and also have moved for a new trial on damages only on the ground that the jury's verdict is against the great weight of the evidence adduced at trial. For the reasons that follow, the Motion for Judgment as a Matter of Law is GRANTED in part and DENIED in part and the Motion for New Trial is GRANTED in part and DENIED in part.

¹See Del. Super. Civ. R. 50(b).

The Trial

Plaintiffs presented undisputed evidence that immediately after the accident Mrs. Bateman suffered cuts and abrasions around her mouth and swelling around her left elbow. Mrs. Bateman described these injuries during her testimony and they were confirmed in the medical records of the hospital emergency room where she received treatment immediately after the accident. The defendant made no effort to question whether these injuries were, in fact, sustained or whether they were caused by the accident. Accordingly, Plaintiffs correctly observe in their motion that, at the very least, the jury was presented with incontrovertible evidence that Mrs. Bateman sustained some injury as a proximate result of the accident.

Plaintiffs also presented the testimony of Dr. Peter Bandera, Mrs. Bateman's treating physiatrist, who opined that Mrs. Bateman suffered palpable swelling and sclerosis at and around the facet joints of her low back along with muscle spasms in the same area. Dr. Bandera also described an audible "clicking" in Mrs. Bateman's left elbow. He characterized these findings as "objective" signs of injury in the sense that Mrs. Bateman could not consciously create or magnify the symptoms. In addition to this evidence, both Mrs. Bateman and Dr. Bandera described at some length the complaints of pain and disability registered by Mrs. Bateman after the accident. Mr.

Bateman also described his wife's disability after the accident and explained how this disability has affected his own life.

The defendant cross examined Mrs. Bateman and Dr. Bandera extensively (and effectively) with respect to the extent of Mrs. Bateman's injuries during which inconsistencies between complaints and activity were revealed and the subjective nature of most of the complaints of pain was emphasized. She did not, however, present any affirmative evidence during her case in chief (e.g. biomechanical or medical testimony) to rebut Mrs. Bateman's claims of injury.

At the close of the evidence, the Court read several jury instructions which emphasized the jury's role in determining the credibility of witnesses and assessing damages. The Court advised the jury that they could reject the testimony of a witness if it determined that the witness was not credible. (D.I. 24 at 11) The Court also instructed the jury that they could disregard the testimony of an expert if they questioned "the reliability of the information supporting the expert's opinions." (*Id.* at 11, 14) The jury was instructed that they should determine what amount, if any, to award plaintiffs for damages proximately caused by the accident, and that damages must be proven to a degree of reasonable probability. (*Id.* at 3, 20) With respect to proximate cause, the jury was instructed that "harm" "directly produced" by the

accident, and “but for” the accident would not have occurred is, by law, harm “proximately caused” by the accident. (*Id.* at 17)

The jury deliberated for several hours before returning a verdict for the defendant. Specifically, the jury answered “no” to the special interrogatory which asked: “Do you find that the automobile accident on August 15, 1997, proximately caused injuries to the plaintiff, Kristie Bateman?” Plaintiffs then renewed their Motion for Judgment as a Matter of Law thereby preserving it for consideration along with their Motion for New Trial.

The Motion for Judgment as a Matter of Law

“[A] motion for judgment notwithstanding the verdict and a motion for new trial serve entirely different purposes, and the two cannot be considered interchangeable.”² The question raised by a motion notwithstanding the verdict - - the post-trial version of the motion for judgment as a matter of law - - is “whether, under any reasonable view of the evidence, the jury could have found for the

²*Peters v. Gelb*, Del. Supr., 314 A.2d 901, 904 (1973).

defendant.”³ The evidence must be viewed in the light most favorable to the non-moving party.⁴

While much of the Plaintiffs’ damages presentation was contested, there was no contest offered with respect to the injuries Mrs. Bateman sustained which were visibly apparent immediately after the accident: the cuts and abrasions in and around her mouth and the swelling around her left elbow. These injuries were described by Mrs. Bateman and confirmed in the medical records. They were incontrovertibly linked to the automobile accident. Thus, contrary to the jury’s determination that Mrs. Bateman sustained no injuries as a proximate result of the accident, the evidence, even when viewed in the light most favorable to the defendant, revealed clearly that Mrs. Bateman did sustain some injuries in the accident. The jury’s determination with respect to proximate cause, therefore, cannot be reconciled with any rational view of the evidence presented at trial.

³*Duphily v. Del. Elec. Coop.*, Del. Supr., 662 A.2d 821, 836 (1995).

⁴*Parks v. Ziegler*, Del. Supr., 221 A.2d 510 (1966).

The Court's analysis of the Rule 50 motion is not yet complete, however. Plaintiffs' motion for judgment as a matter of law as articulated during trial sought a determination that the issue of proximate cause should be removed from the jury entirely. From Plaintiffs' perspective, not only were the injuries which were visibly apparent on Mrs. Bateman proven beyond controversy, the injuries addressed by Dr. Bandera, and purportedly demonstrated by objective standards, were likewise proven, as a matter of law, to be proximately caused by the accident. With this proposition the Court cannot agree. The jury was instructed that they could accept or reject the testimony of Dr. Bandera as they saw fit to the extent they found the testimony to lack credibility. This view of the jury's prerogative is consistent with long-standing Delaware law.⁵ Based on the record in this case, the Court cannot conclude that the jury should have been denied the opportunity to weigh the testimony regarding Mrs. Bateman's soft tissue injuries and determine whether the evidence credibly established that such injuries existed and that they were proximately caused by the accident.

Based on the foregoing, the motion for judgment as a matter of law is

⁵See *Crowder v. Latney*, Del. Super., C.A. No. 93C-05-042, Herlihy, J. (Dec. 1, 1995)(Mem. Op.)(citing *Longoria v. State*, Del. Supr., 168 A.2d 695, 704 (1961)).

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GRANTED to the extent that Plaintiffs did present irrefutable evidence that the cuts and abrasions on Mrs. Bateman's face and the swelling around her elbow were

proximately caused by the accident. The motion is DENIED, however, with respect to the other injuries Plaintiffs alleged were proximately caused by the accident.

The Motion for New Trial

The Court must now consider what is to be done with this litigation. The Court has determined that the jury's verdict with respect to proximate cause, at least in part, is not consistent with a rational view of the evidence. By all accounts, however, the injuries which are the subject of the Court's concern - - cuts, abrasions, and swelling - - are minor and, perhaps, not compensable in the minds of reasonable jurors. Plaintiffs have moved for a new trial but suggest that the trial should be limited to the issue of damages only. The Court will consider this motion in the context of its ruling on the Rule 50 motion.

When considering a motion for new trial under Rule 59, the Court must appreciate that “[t]raditionally, the court’s power to grant a new trial has been exercised cautiously with extreme deference to the findings of the jury.”⁶ Further, “when the case involves a controverted issue of fact in which the evidence is conflicting and out of the conflict may be gathered sufficient evidence to support

⁶*Maier v. Santucci*, Del. Super., 697 A.2d 747, 749 (1997)(citation omitted).

a verdict for either party, the issue of fact will be left severely to the jury....”⁷ The Court will not upset the verdict of a jury unless “the evidence preponderates so heavily against the jury verdict that a reasonable juror could not have reached the result.”⁸

⁷*Storey v. Camper*, Del. Supr., 401 A.2d 458, 462 (1979).

⁸*Id.* at 465.

To appreciate fully Plaintiffs' motion for new trial it must be placed in its proper context. This is not a case where the jury considered only the so-called "MIST"⁹ damages presentation, composed principally of injuries proven by the plaintiff's subjective complaints of pain, and determined that the injuries alleged either did not exist or were not compensable. This Court has considered such cases frequently on motions for new trial and has demonstrated its unwillingness to disturb a jury's "no proximate cause" or "zero damages" verdicts.¹⁰ Indeed, had the jury in this case found that the accident proximately caused injury to Mrs. Bateman, but nevertheless declined to award damages to the Plaintiffs, the Court would be faced with a very different situation.¹¹ And it is quite likely the Court would be

⁹"MIST" is an acronym frequently used among the personal injury bar to describe Minor Impact Soft Tissue injury cases.

¹⁰*See e.g., Mulford v. Haas*, Del. Super., C.A. No. 98C-12-296 JRS, Slights, J. (April 25, 2001)(Letter Op. at 9)("in upholding the jury's [zero] verdict in this case, the Court takes comfort in the fact that the cases in Delaware, including those of our highest court, which likewise have upheld "zero damages" verdicts under circumstances similar to those *sub judice* are now legion")(citations omitted). These decisions recognize that it is within the jury's province to accept or reject the testimony of the plaintiff or the plaintiff's expert(s) with regard to plaintiff's injuries, even when supported by purportedly "objective" findings of injury. *See Szewczyk v. Doubet*, Del. Supr., 354 A.2d 426, 430 (1976). The Court's instructions in this case were consistent with this notion in that they emphasized the license with which the jury operates when assessing the credibility of witnesses, including experts.

¹¹*Id.* (Court upheld jury's decision not to award damages for swollen finger and bruises).

announcing a very different decision.¹² But the jury did not find proximate cause, even in the face of undisputed evidence of clear, objective and *visible* injuries to Mrs. Bateman. The Court cannot countenance this result notwithstanding the extreme deference typically accorded to the jury's verdict.¹³

¹²To be sure, if the jury had found proximate cause but declined to award damages, then the Court could consider several options including upholding the verdict, granting a new trial on damages only, or even additur. See *Hall v. Dorsey*, Del. Super., C.A. No. 96C-06-045 WTQ, Quillen, J. (Nov. 5, 1998)(noting that additur in the context of a "zero damages" verdict is appropriate in certain circumstances). As explained below, however, the jury's failure to follow the Court's instructions with respect to proximate cause limits the remedial options available to the Court.

¹³Compare *Greenage v. Ward*, Del. Super., C.A. No. 95C-06-020-WLW, Witham, J. (May 10, 2001)(Mem. Op. at 3)("enormous deference is given to jury verdicts")(citation omitted) with *Connell Ltd. Partnership v. CitiSteel USA, Inc.*, Del. Super., C.A. No. 89C-11-123 JEB, Babiarz, J. (Nov. 6, 1995)(Letter Op. at 2)(granting motion for new trial upon concluding that jury misunderstood fundamental principles of law).

The jury's verdict in this case is contrary to the great weight of the evidence in that it demonstrates a fundamental misunderstanding of the concept of proximate cause. Clearly, the great weight of the evidence established that the automobile accident "directly produced harm" to Mrs. Bateman, at the very least, in the form of a cut lip and swollen elbow. (*See* D.I. 24 at 17). The jury's misapplication of this important legal principle with respect to Mrs. Bateman's visible injuries raises credible and substantial doubt as to whether the jury properly applied the Court's instruction on proximate cause to the evidence presented regarding to Mrs. Bateman's other injuries. A new trial is the only remedy to address the lack of rational process associated with the jury's verdict in this case.¹⁴

Conclusion

For the reasons stated herein, the Plaintiffs' Motion for Judgment as a Matter of Law is GRANTED in part and DENIED in part. Plaintiffs' Motion for New Trial is GRANTED in part and DENIED in part. The new trial will not be limited to the issue of damages. Rather, at the new trial, the jury will be instructed that plaintiffs have established as a matter of law that Mrs. Bateman suffered cuts,

¹⁴*Id.*

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abrasions and a swollen elbow as a proximate result of the accident. The jury will also be instructed that Mrs. Bateman has alleged that she sustained other injuries in the accident and that they may accept or reject such claims in accordance with the instructions on the law and their application of those instructions to the evidence presented. Finally, the jury will be instructed that they should award such damages, if any, for the injuries alleged and proven as they deem appropriate in accordance with the Court's instructions on damages.

IT IS SO ORDERED.

Judge Joseph R. Slights, III

Original to Prothonotary