

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

ANNA M. GREENAGE and	:	
JOHN R. GREENAGE,	:	
	:	C.A. No. 95C-06-020
Plaintiffs,	:	
	:	
v.	:	
	:	
JAMES E. WARD and	:	
GEORGE & LYNCH, INC.,	:	
	:	
Defendants.	:	

Submitted: February 20, 2001
Decided: May 10, 2001

Upon Plaintiffs' Motion for Additur or,
in the Alternative, a New Trial. Denied.

Gary R. Dodge, Law Office of Gary R. Dodge, P.A., Dover Delaware, attorneys for
the Plaintiffs.

Mark L. Reardon, Elzufon, Austin, Reardon, Tarlov & Mondell, P.A., Wilmington,
Delaware, attorneys for the Defendants.

WITHAM, J.

Anna Greenage v. Ward and George & Lynch, Inc.
C.A. No. 95C-06-020 WLW
May 10, 2001

ORDER

Before the Court is Plaintiffs' Motion for Additur or, in the alternative, a Motion for a New Trial.

1. Plaintiff Anna M. Greenage was injured in a motor vehicle accident which occurred on July 16, 1993. Mrs. Greenage was driving on Route 13 in Dover when her car was struck by a construction vehicle operated by James E. Ward, agent of George & Lynch, Inc. ("Defendant"). Defendant conceded liability before trial, specifically acknowledging that a vehicle collision occurred as a result of the defendant's negligence. Tragically, throughout her life, Mrs. Greenage has endured a number of accidents and traumatic experiences. At trial, the primary issue was determining which of Mrs. Greenage's injuries were proximately caused by the July 16 accident and then apportioning damages accordingly.

2. The trial lasted for eight (8) days, beginning January 8 and concluding on January 19, 2001. The jury awarded \$18,000.00 to Anna Greenage for personal injuries proximately caused by the July 16, 1993, accident. Plaintiff John R. Greenage, Sr., Anna's husband, was awarded nothing for his consortium claim. Pursuant to *Superior Court Civil Rule 59*, Plaintiffs brought a motion for additur, or in the alternative, a motion for a new trial.

3. In determining the Motion for Additur and the alternative Motion for a New Trial, the Court must give enormous deference to the jury's verdict. The Supreme Court recounted the standard of review for jury verdicts in *Young v. Frase*, as follows:

Anna Greenage v. Ward and George & Lynch, Inc.
C.A. No. 95C-06-020 WLW
May 10, 2001

Under Delaware law, enormous deference is given to jury verdicts. 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. Accordingly, a jury award should be set aside only in the unusual case where it is "clear that the award is so grossly out of proportion to the injuries suffered as to shock the Court's conscience and sense of justice."¹

In light of the deference given to jury verdicts, in motions for additur or a new trial, the trial court's role is to affirm the jury's verdict unless "on a review of all the evidence, the evidence preponderates so heavily against the jury verdict that a reasonable jury could not have reached the result."² Thus, a jury has great latitude and a verdict will be set aside only where the findings are inconceivable and a great injustice has occurred.³

¹ *Young v. Frase*, Del. Supr., 702 A.2d 1234, 1236-1237 (1997).

² *Storey v. Camper*, Del. Supr., 401 A.2d 458, 465 (1979).

³ *Grand Ventures v. Whaley*, Del. Supr., 632 A.2d 63 (1993).

Anna Greenage v. Ward and George & Lynch, Inc.
C.A. No. 95C-06-020 WLW
May 10, 2001

4. Plaintiffs concede that the evidence presented at trial was such that the jury could reasonably have concluded in favor of the defendant on a number of issues. However, Plaintiffs claim that the evidence does not support the jury's award with respect to the nerve damage and resulting substantial radicular pain which Plaintiffs claim was caused by this accident and objectively proven. Electromyography, electrical nerve conduction tests "EMG," performed six weeks after the accident and two more times in September and October of 1994 showed injury to the L4-5 nerve. According to the Plaintiffs, the resulting injury to the L4-5 nerve was reflected in the \$58,704.05 of medical expenses presented to the jury.

5. At trial, Plaintiffs presented reports, letters and testimony to demonstrate that many of Mrs. Greenage's ailments stemmed from the L4-5 nerve damage. The Plaintiffs' experts further stated that the L4-5 nerve damage was not evident until after the July 16 automobile accident. The jury considered a letter written by Dr. Mandel interpreting the EMG performed six (6) weeks after the July 16 accident. According to Dr. Mandel, the EMG showed "very slight acute changes in a left L5 area consistent with the recent trauma to her back and, what appears to be, a neural foraminal encroachment on the left side at the L4-5 area." Two additional EMG tests performed in September and October of 1994 showed acute and chronic injury to the L4-5 region.

6. Plaintiffs' other doctors testified to similar findings with respect to the L4-5 region. Dr. Barolat, a neurosurgeon, testified that the EMG results were objective proof of Mrs. Greenage's subjective complaints. According to Dr. Barolat,

Anna Greenage v. Ward and George & Lynch, Inc.
C.A. No. 95C-06-020 WLW
May 10, 2001

the swelling and color change in her lower extremities was additional objective proof of the L4-5 injury. Similarly, Dr. Myers, another neurosurgeon, found the EMG to be significant and corroborative of Mrs. Greenage's subjective complaints. Dr. Costello, a pain management physician, also found the nerve root impingement at L4-5 to be the source of Mrs. Greenage's low back and lower extremity radicular pain. Dr. Feehrey, a podiatrist, reported that Mrs. Greenage's foot drop was a product of the nerve change at L4-5. Plaintiffs argue that these doctors' opinions amount to objective proof that Mrs. Greenage sustained nerve damage and resulting substantial radicular pain due to the July 16 accident. Based on this evidence, Plaintiffs claim that the jury lacks support for the verdict they reached.

7. In rebuttal, Defendants argue that the evidence of Mrs. Greenage's pre-existing injuries is the basis of the jury's verdict. Even if the jury accepts the Plaintiffs' doctors reports concerning the extent of Mrs. Greenage's L4-5 nerve injury, that does not make George & Lynch responsible or the proximate cause of that injury. Defendants agree that the jury was presented with testimony of Mrs. Greenage's L4-5 nerve damage and the resulting pain. However, the Defendants argue that the jury was also presented with evidence that questioned the doctors' opinions which claim that the July 16 accident was the proximate cause of the L4-5 nerve injury. According to the Defendants, the evidence presented at trial showed that Mrs. Greenage's doctors offered proximate cause opinions without knowledge of the extent of her pre-existing injuries and prior medical treatments.

8. In Dr. Mandel's letter interpreting the results of the first EMG, the doctor

Anna Greenage v. Ward and George & Lynch, Inc.
C.A. No. 95C-06-020 WLW
May 10, 2001

writes that Mrs. Greenage “denied ever having had similar complaints in her legs prior to the time of this accident.” The Defendant presented the jury with a contradictory medical report from Dr. Feehrey, Mrs. Greenage’s podiatrist. Dr. Feehrey’s report, from Mrs. Greenage’s July 8, 1993 visit, states that Mrs. Greenage developed left hip and knee soreness in April of 1993. This report further states that hip and knee soreness progressively worsened. Therefore, contrary to Dr. Mandel’s proximate cause opinion, the jury heard that this leg pain began before the July 16 accident. Similarly, Dr. Funk, Mrs. Greenage’s primary treating physician, was unaware of physical therapy she underwent for low back pain radiating into the legs in April and May of 1993. Dr. Costello, Dr. Barolat and Dr. Myers also testified to relying on Mrs. Greenage’s inaccurate medical history in forming their opinions. Based on this proximate cause evidence, Defendants claim that the jury accepted the more complete medical history presented through the Defendants' case.

9. Witness credibility is an issue for the fact finder to resolve, not the Court. In *Feliciano-Rios v. Bleiler*, the Court stated that “where a doctor relies upon a patient’s complaints for an opinion and the patient’s credibility is doubtful, the jury is entitled to reject the doctor’s testimony.”⁴ After hearing the evidence in the immediate case, the jury was left with a decision regarding which of Mrs. Greenage’s injuries were attributable to the Defendant sand which were pre-existing. The jury evaluated the evidence and did not believe that the Defendants were the proximate

⁴ *Feliciano-Rios v. Bleiler*, Del. Super., 96C-03-124, Herlihy, J., (Oct. 22, 1998), Mem. Op. at 2.

Anna Greenage v. Ward and George & Lynch, Inc.
C.A. No. 95C-06-020 WLW
May 10, 2001

cause of all of Mrs. Greenage's L4-5 nerve damage. However, the jury did find that the Defendants were the proximate cause of Mrs. Greenage's injuries to a limited extent, as they awarded her \$18,000.00. The evidence does not preponderate so heavily against the jury's verdict that it is unreasonable; therefore, the verdict will not be disturbed.

For the reasons stated herein, Plaintiffs' motion for additur or alternatively a new trial is DENIED.

IT IS SO ORDERED.

J.

dmh

oc: Prothonotary

xc: Order Distribution