

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

CAROLYN BOND, )  
)  
Plaintiff, )  
) C.A. No. 05C-05-185 MJB  
v. )  
)  
JAMES YI )  
)  
Defendant. )

Submitted: June 29, 2006  
Decided: August 10, 2006

Upon Motion for New Trial or Additur. **DENIED.**

**ORDER**

Glen C. Ward, Esquire, Robinson, Grayson & Dryden, P.A., Wilmington,  
Delaware, Attorney for Plaintiff.

Gerald J. Hager, Esquire, McCullough & McKenty, P.A., Wilmington,  
Delaware, Attorney for Defendant.

BRADY, J.

## **Facts and Procedural History**

This action arose out of a motor vehicle collision on July 11, 2003 in which Carolyn Bond (“Ms. Bond”) sustained injuries. Liability for the collision was admitted prior to trial. The only issues for the jury’s determination were whether the collision proximately caused injury to Ms. Bond and whether the medical expenses claimed were reasonable and necessary. Prior to trial, James Yi (“Mr. Yi”) filed an Offer of Judgment with the Court in which Ms. Bond was offered \$5,001.00 to settle the case. Ms. Bond chose not to accept the settlement offer and proceed to trial.

At trial, Ms. Bond sought recovery of a medical bill in the amount of \$290.00 for treatment in September, 2005 and May, 2006. Ms. Bond also sought recovery for pain and suffering due to the collision. The trial was held May 8 through May 9, 2006. On May 9, 2006 the jury returned a verdict in favor of Ms. Bond in the amount of \$1,490.00. Ms. Bond moved for a new trial, or in the alternative, additur, on the grounds that the jury verdict of \$1,490.00 was grossly inadequate as compensation for Ms. Bond’s injuries. This is the Court’s decision on that Motion.

## Applicable Law

### Motion for a New Trial or Additur

“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.”<sup>1</sup> “A jury verdict is presumed to be correct and just, but when 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, it will be set aside.”<sup>2</sup> The Delaware Supreme Court concisely stated the circumstance in which a trial court may set aside a jury verdict in *Young v. Frase*:

A jury award will meet this standard when it is so inadequate that it must have been based on passion, prejudice or misconduct rather than on an objective consideration of the trial evidence. Therefore, as a practical test, a court presented with a request for additur must review the record and determine whether the jury’s award of damages is within the range supported by the evidence. As long as there is a sufficient evidentiary basis for the amount of the award, the jury’s verdict should not be disturbed by a grant of additur or a new trial as to damages.<sup>3</sup>

This is the standard by which this Court analyzes the motion before it.

A review of the record in this case, as to relevant facts for purposes of resolving this Motion, establishes that Ms. Bond was involved in two

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<sup>1</sup> *Young v. Frase*, 702 A.2d 1234, 1236 (Del. 1997); *see also Storey v. Camper*, 401 A.2d 458, 465 (Del. 1979) (“...a trial judge is only permitted to set aside a jury verdict when in his judgment it is at least against the great weight of the evidence. In other words, barring exceptional circumstances, a trial judge should not set aside a jury verdict on such ground 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.”)

<sup>2</sup> *Mills v. Telenczak*, 345 A.2d 424, 426 (Del. 1975).

<sup>3</sup> *Young v. Frase*, 345 A.2d at 1237.

previous automobile collisions; that she was diagnosed by her expert, Dr. Diamond, as having permanent injuries in the cervical and thoracic regions as a result of those previous collisions; that Ms. Bond contradicted that diagnosis with her own testimony that those injuries had fully resolved prior to the 2003 collision; that Dr. Diamond testified at this trial that Ms. Bond suffered permanent injuries in the lumbar, cervical and thoracic region as a result of the 2003 collision; that Ms. Bond attended physical therapy for several months immediately following the 2003 collision; that Ms. Bond never missed a day of work as a result of the 2003 collision; that she currently takes over-the-counter medication daily and valium 4 or 5 times per month and uses stretching exercises as well to treat at home; that she had no neck or upper back pain for the 6 months preceding the trial; that the defense expert contradicted Ms. Bond's expert and said there was no permanency as to these injuries; and finally, as evidenced by the medical bills for which compensation was sought, Ms. Bond had gone eight months between the appointments immediately preceding trial without seeking any medical attention.

An examination of the evidence produced at trial shows the jury could reasonably have concluded that the injuries Ms. Bond received in the 2003 collision caused temporary aggravation of previous, permanent injuries and

that the problems of which Ms. Bond complained on a continuing basis were related to the two previous collisions in which she had been involved.

Regardless of any different opinion the Court or counsel may reach, it is clear a reasonable jury could so conclude, based on the evidence.

Considering all the evidence, it cannot be said that the verdict is so clearly disproportionate as to damages related to the injuries resulting from the 2003 collision that the verdict should be amended or set aside.

Given the great deference that must be given to the jury verdict, the Court finds there was a sufficient evidentiary basis for the \$1,490.00 jury award to Ms. Bond.

**Conclusion**

Based on the foregoing, the Motion for New Trial or Additur is **DENIED.**

**IT IS SO ORDERED.**

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/s/  
M. Jane Brady  
Superior Court Judge