

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

September 26, 2006

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RE: Donna E. Ryder v. William R. Clough
C.A. 03C-11-019-ESB

Date Submitted: June 15, 2006

Dear Counsel:

This is my decision on plaintiff Donna E. Ryder's ("Ryder") motion for additur or, in the alternative, a new trial on the issue of damages in this personal injury case. Ryder was injured in an automobile accident on December 24, 2001. Defendant William R. Clough ("Clough") admitted that his negligence caused the accident, leaving the issues of proximate cause and damages in dispute. At the conclusion of the evidence, I ruled, as a matter of law, that Ryder's back and neck injuries were, to some degree,¹ proximately caused by Clough's negligence. The jury awarded Ryder \$7,500 in damages. Ryder then filed this motion.

STATEMENT OF FACTS

Ryder, her mother and Eric T. Schwartz, M.D., an orthopedic surgeon, were the only witnesses at trial. Ryder and her mother described the accident and Ryder's injuries and treatment. Dr. Schwartz, who treated Ryder, also described Ryder's injuries and treatment. Ryder was the front

¹Ryder had degenerative disc disease in the thoracic spine before the accident. Dep., Schwartz at 42.

seat passenger in a car driven by her mother. As they slowed down to make a turn, their car was hit in the rear by a car driven by Clough, who was following too closely. The impact from the accident forced Ryder's car into a telephone pole. Ryder went to the emergency room with complaints of neck and lower back pain. She was seen by a doctor, told to see an orthopedic doctor, given prescriptions for an anti-inflammatory and a muscle relaxer, and released the same day.

Ryder is a manager at a Wendy's restaurant. She missed three days of work because of the accident. Ryder saw Dr. Schwartz on January 8, 2002. He diagnosed her with a lumbosacral strain, a cervical strain and mild degenerative disc disease and sent her to physical therapy. She went to physical therapy for less than three months. Ryder told the physical therapist on March 4, 2002, that her neck was not bothering her at all and that her back bothered her only after prolonged bending at work. Ryder was then discharged from physical therapy.

Ryder saw Dr. Schwartz six times in 2002. Her condition improved steadily throughout his treatment of her. Ryder told Dr. Schwartz on September 10, 2002, that her neck was 95% back to normal and that her lumbar spine was 98% back to normal. Dr. Schwartz discharged her from his care and told her to come back on an as-needed basis.

Ryder did not see Dr. Schwartz again until February 9, 2005. She saw him then for a re-evaluation because she was experiencing an increase in pain. Dr. Schwartz ordered an MRI and gave Ryder a prescription for an anti-inflammatory and a muscle relaxer. Ryder saw Dr. Schwartz on April 1, 2005, to discuss the results of her MRI. He told her that her activities may periodically exacerbate her symptoms and that she might need treatment by a physical therapist, chiropractor, or him. Dr. Schwartz again discharged Ryder from his care and told her to come back on an as-needed basis.

Ryder saw Dr. Schwartz on April 19, 2006, for another re-evaluation. She told him that she still has pain, but has learned to live with it. Dr. Schwartz told her that she was not a candidate for surgery, but that she may occasionally need medications and treatments for acute flare-ups of her symptoms.

Dr. Schwartz testified that Ryder, who was 32-years-old at the time of the trial, sustained a moderate permanent impairment of her low back and a mild permanent impairment of her neck. He testified further that her condition would worsen over time and that she might need up to 14 therapeutic treatments a year, as well as two to three prescriptions a year, and two to three office visits a year for the rest of her life. Ryder had special damages of \$1710, representing an MRI at \$1400 and three visits with Dr. Schwartz totaling \$310.

STANDARD OF REVIEW

In deciding a motion for additur or, in the alternative, a new trial, the Court must give enormous deference to the jury's verdict.² The Court starts with the fundamental principle that the jury's verdict is presumed to be correct.³ In a jury trial, the function of the fact finder does not belong to the Court, but rather to the jury.⁴ The jury's verdict should not be disturbed unless it is clearly shown to be the result of passion, prejudice, partiality or corruption, or that it was manifestly in disregard of the evidence or applicable rules of law.⁵ Furthermore, the Court will not upset the verdict of a jury unless "the evidence preponderates so heavily against the jury verdict that a

²*Greenage v. Ward*, 2001 WL 695541, at *1 (Del. Super.).

³*Young v. Frase*, 702 A.2d 1234, 1236 (Del. 1997).

⁴*Caldwell v. White*, 2005 WL 1950902, at *3 (Del. Super.).

⁵*Young*, 702 A.2d at 1237.

reasonable jury could not have reached the result.”⁶ Zero verdicts have been upheld under this standard of review.⁷ The test for additur involves a Court review of the record to determine whether the jury’s award of damages is within a range supported by the evidence.⁸ If there is not a sufficient evidentiary basis for the amount of the award, the Court should grant additur or a new trial.⁹

DISCUSSION

Ryder argues that the jury’s verdict is against the great weight of the evidence and that it should shock the Court’s conscience. I disagree. While Ryder and the other two witnesses offered testimony that, if found to be credible by the jury, would have supported a higher award, there was sufficient evidence to support the jury’s award. Even though Ryder suffered mild to moderate permanent injuries to her neck and back, she only missed three days of work and, after undergoing less than three months of physical therapy, recovered almost completely from her injuries. This is supported by Ryder’s own statements and actions. Ryder told both Dr. Schwartz and her physical therapist that her neck and back were almost back to normal. Ryder has seen Dr. Schwartz three times since he discharged her from his care on September 10, 2002, but she has not returned to physical therapy.

It is obvious that the jury rejected Dr. Schwartz’s testimony about Ryder’s need for up to 14 therapeutic treatments a year, multiple office visits and prescriptions. The jury’s rejection of this is understandable because over the last four years Ryder has not engaged in this kind of treatment. Her

⁶*Storey v. Camper*, 401 A.2d 458, 465 (Del. 1979).

⁷*Hall v. Dorsey*, 1998 WL 960774 (Del. Super.).

⁸*Litrel v. Hanby*, 1998 WL 109826, at *1 (Del. Super.).

⁹*Id.*

actual practice undermined Dr. Schwartz's testimony, as well as her own testimony about her pain and need for treatment. The reality is that Ryder sustained mild injuries, recovered from them almost completely in a short period of time, and has been able to work and lead a normal life largely free of pain except for the occasional flare-ups that have been treated with either over-the-counter medications or prescriptions for anti-inflammatories and muscle relaxers. Given this, I conclude that the jury's verdict is within a range supported by the evidence and does not shock my conscience.

CONCLUSION

Ryder's motion for additur or, in the alternative, a new trial is denied.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley