IN THE SUPREME COURT OF THE STATE OF DELAWARE

RUTH STREETIE,	)	
	)	No. 223, 2011
Plaintiff Below,	)	
Appellant,	)	Court Below: Superior Court
	)	of the State of Delaware in
v.	)	and for New Castle County
	)	
PROGRESSIVE CLASSIC	)	C.A. No. 09C-06-103
INSURANCE COMPANY,	)	
	)	
Defendant Below,	)	
Appellee.	)	

Submitted: October 12, 2011
Decided: December 13, 2011

Before **STEELE**, Chief Justice, **BERGER** and **JACOBS**, Justices.

O R D E R

This 13th day of December 2011, it appears to the Court that:

1. After a trial on Ruth Streetie's Uninsured Motorist claim against her insurer, Progressive Classic Insurance Company, a jury awarded Streetie a judgment in an amount exactly equal to the medical expenses she incurred during a particular time period. Streetie moved for a new trial, arguing that the judgment was inadequate as a matter of law because it failed to award her damages for pain and suffering. The trial judge denied her Motion. Because a jury that assesses evidence of causation and damages may award an amount equal to the medical

bills as an award for both the medical bills and pain and suffering, we affirm the trial judge's denial of the motion for a new trial.

2. Ruth Streetie was in two traffic accidents, one in 2006 and one in 2008. In the instant complaint, she sought to recover for the harm the person who rear-ended her in 2006 caused. After settling with the driver who caused the 2006 accident for $25,000, the amount of the driver's policy limit, Streetie filed this action against Progressive.

3. At trial, Streetie's expert witness testified that Streetie underwent surgery late in 2010 because of the 2006 accident. On cross examination, Streetie's expert admitted Streetie failed to provide him with two important pieces of information. First, Streetie never gave him her medical records. Among those records was a report from less than two months before the 2006 accident suggesting that Streetie's neck already caused her enough problems to justify the use of a prescription anti-inflammatory medication. Second, Streetie's expert witness admitted no one ever informed him about the second accident in 2008.

4. Progressive's expert witness testified that Streetie may have exacerbated a preexisting condition in the 2006 accident. But he noted that the "only evidence of such exacerbation was Plaintiff's subject[ive] complaints."[1]

[1] *Streetie v. Progressive Classic Ins. Co.*, 2011 WL 1259809, at *2 (Del. Super. Apr. 4, 2011).

5. After trial, the jury returned a verdict in favor of Streetie for $9,179, the exact amount of the medical expenses she incurred between the accidents in 2006 and 2008. The jury found that Streetie's 2006 accident did not proximately cause her 2010 surgery.

6. Streetie moved for a new trial, arguing that "a jury award that compensates for medical expenses but fails to award pain and suffering damages is grossly inadequate as a matter of law."[2] The trial judge denied the motion. He emphasized that the jury considered both the issues of causation and damages. Streetie appealed.

7. This Court reviews a decision on a motion for a new trial for abuse of discretion.[3]

8. Under Super. Ct. Civ. R. 59, juries have significant discretion to determine the appropriate measure of an award. This Court has held that analysis of a motion for a new trial begins with a presumption that the jury's verdict is correct.[4] The reviewing judge should only set aside a jury's verdict if it is

[2] *Id.*

[3] *Maier v. Santucci*, 697 A.2d 747, 749 (Del. 1997); *Storey v. Camper*, 401 A.2d 458, 465 (Del. 1979) (citing *Chavin v. Cope*, 243 A.2d 694, 695 (Del. 1968)); *Trowell v. Diamond Supply Co.*, 91 A.2d 797, 801-02 (Del. 1952)).

[4] *Dunn v. Riley*, 864 A.2d 905, 906 (Del. 2004).

"manifestly and palpably against the weight of the evidence."[5] The jury's verdict should stand unless it is "so grossly out of proportion to the injuries suffered as to shock the Court's conscience and sense of justice . . . ."[6]

9. Streetie cites two cases for the proposition that a jury may not issue an award in an amount corresponding to the medical bills claimed as damages, because the jury must award some amount for pain and suffering. Because the jury awarded Streetie the amount she spent on treatment after the 2006 accident but before her 2008 accident, Streetie claims this Court must conclude that the jury decided the insurer should pay but mistakenly only provided compensation for financial costs incurred.

10. Neither of the cases Streetie relies on in support of the existence of this rule in fact establish it. In *Maier v. Santucci*, this Court reversed a trial judge's denial of a motion for a new trial where a jury awarded no damages – that is, found damages at zero dollars – even though the trial court had directed a verdict on liability in the plaintiff's favor.[7] "[T]he trial court's grant of a directed verdict on liability required the jury to focus only on whether the plaintiff had sustained an

[5] *Burgos v. Hickock*, 695 A.2d 1141, 1145 (Del. 1997).

[6] *Mills v. Telenczak*, 345 A.2d 424, 426 (Del. 1979).

[7] *Maier v. Santucci*, 697 A.2d 747, 748 (Del. 1997).

injury as a result of the accident and to award appropriate damages."[8] Both experts agreed that the plaintiff suffered some degree of injury from the accident.[9] *Maier* illustrates the proposition that, "While a jury has great latitude, 'it cannot totally ignore facts that are uncontroverted and against which no inference lies.'"[10] *Maier* did not even address a situation in which both causation and damages were disputed, much less create a categorical rule governing how to deal with jury verdicts that might be interpreted to award only compensatory damages but nothing for pain and suffering.

11. Although *Coleman v. White* presented a factual setting similar to Streetie's, the motions filed in Superior Court differed. In *Coleman*, the jury awarded a judgment equivalent to the amount of medical bills. Faced with motions for either additur or a new trial, the trial judge granted additur, and refused to grant a new trial. But *Coleman* created no categorical rule stating that a jury's award is necessarily inadequate as a matter of law whenever the amount of the judgment matches some number from the record. As the trial judge in *Streetie* stated, personal injury cases are "inherently fact sensitive," so "this Court does not view *Coleman* as announcing a precedential rule that the 'only logical way' to interpret

[8] *Id.*

[9] *Id.*

[10] *Id*. at 749 (citing *Haas v. Pendleton*, 272 A.2d 109, 110 (Del. 1970)).

awards such as the instant award is that the jury failed to adequately compensate the plaintiff for pain and suffering."[11]

12. Juries need not award a plaintiff either everything requested by the complaint or nothing. Presented with appropriate facts, a jury may find that a defendant should pay for some, but not all, of the harm plaintiff suffered. As the trial judge stated, "the amount of the jury's award was dependent upon the extent to which the jury found that Plaintiff's injury was caused by the instant accident."[12] A jury could justifiably then determine the amount the defendant owed for damages as the same amount as the measure of economic harm. Again, as the trial judge found, "the jury may well have concluded that the amount of $9,179 completely compensated Plaintiff for both economic and noneconomic damages, in proportion to the extent Defendant was the cause of her injuries."[13]

13. Based on the evidence of past suffering, and Streetie's failure to inform her expert witness of her history, the jury could have reasonably concluded that Streetie's 2006 accident did not exclusively cause her injuries. The trial judge found that Streetie "had a significant history of back and neck issues, and, on cross-examination, it was revealed that her testifying expert (also her treating

[11] *Streetie*, 2011 WL 1259808, at *13, n. 124.

[12] *Streetie*, 2011 WL 1259808, at *14.

[13] *Id*.

physician) had not been provided certain records regarding [her] pre-accident condition."[14]

14. Two features of Streetie's case justify a jury finding that the accident proximately caused something less than all of the harm Streetie claims to have suffered. These two factual issues mean the jury award was not "manifestly and palpably against the weight of the evidence."[15] First, the expert testimony supporting Streetie's injuries resulted from her subjective complaints, and did not depend upon an independent objective test performed by the expert. "It is well-settled law that a jury may reject an expert's medical opinion when that opinion is substantially based on the subjective complaints of the patient."[16] Second, before the accident, Streetie received treatment for neck and shoulder pain.

15. A jury could reasonably conclude, then, that some portion of Streetie's medical expenses after the 2006 accident would have been incurred even if the accident had never happened.

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[14] *Streetie*, 2011 WL 1259809, at *14.

[15] *Hickok*, 695 A.2d at 1145.

[16] *Amalfitano v. Baker*, 794 A.2d 575, 578 (Del. 2001).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice