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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-001739-MR

CAROLYN JONES MORGAN — APPELLANT

v.

APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE GREGORY A. LAY, JUDGE
ACTION NO. 02-CI-00532

BETTY MORGAN — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, CHIEF JUDGE; HENRY, JUDGE; PAISLEY,[1] SENIOR JUDGE.

PAISLEY, SENIOR JUDGE: On January 14, 2001, Carolyn Jones Morgan was a passenger in an automobile operated by Doug Morgan when it was struck in the rear by an automobile operated by Betty Morgan. The jury found Doug to be 60% at fault and Betty 40% at fault but did not award Carolyn any damages. Carolyn appeals alleging that the trial court should have directed a verdict on liability and on incurred medical expenses or, in the

[1] Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

alternative, sustained her motion for a new trial. Because we find that there was sufficient evidence upon which a reasonable jury could base its verdict, we affirm.

At the time of the collision the parties were involved in a love triangle. Doug and Betty had recently divorced and Carolyn was Doug's girlfriend.[2] After a conversation between Doug and Betty at a local convenience store, Doug, with Carolyn as his passenger, left the store and departed to his father's home. Betty also left the store following directly behind Doug.

Betty contends that she followed Doug in passing a slower vehicle, but that when she attempted to return to the proper travel lane, Doug applied his brakes causing her to hit the rear of his vehicle. Carolyn and Doug testified that during the chase Betty struck Doug's vehicle on least two separate occasions.

Jimmy Morgan, son of Betty and Doug, testified without objection that he frequently rode with his father and that he was in the "habit" of applying his brakes when a vehicle was following his vehicle. Michael Morgan, also a son of Betty and Doug, testified without objection that Doug told him that he applied his brakes in front of Betty.

Immediately after the accident, Carolyn, who has multiple sclerosis, did not seek immediate medical treatment and

[2] At the time of trial, Carolyn and Doug were married.

was able to drive to her home where she lived with her husband. Two days after the accident, she reported to a nurse at her place of employment, Mrs. Smith's Bakery, that she was having pain but made no mention of the collision. After Carolyn was notified that her supervisory position was being eliminated, she applied for disability benefits on the basis of a degenerative condition but made no reference to having been involved in a collision. From March 2001 until the spring of 2005, Carolyn worked a regular schedule.

The medical testimony was contradictory as to whether Carolyn sustained an injury as a proximate result of the collision or whether her complaints are attributable to her multiple sclerosis and the degenerative changes that pre-existed the collision. Dr. Taylor, Carolyn's treating physician, first saw her on January 16, 2001, and testified that the collision was a substantial factor in causing her injuries and necessitated his continued treatment. Although he found significant degenerative changes in the cervical region that pre-dated the collision, he opined that the collision aggravated or accelerated the cervical and lumbar pain suffered by Carolyn. Two other physicians, Dr. Donald Douglas and Dr. Steven Morton, also found significant degenerative changes in Carolyn's cervical region that were not attributable to the accident. Both physicians admitted that Carolyn's pre-existing

degenerative changes and her multiple sclerosis can cause the pain she described. Dr. Morton testified that when he first saw Carolyn in August 2002, she did not report that she had been involved in an automobile accident and that Carolyn's multiple sclerosis and work, which required carrying trays of baked goods, could cause pain in the neck and tepezius regions. Finally, Dr. Wagner did not express a conclusive opinion about the cause of Carolyn's physical complaints.

At the close of the proof, Carolyn moved the court for a directed verdict on the issue of liability and damages which was denied. The trial court also denied her timely motion for a judgment notwithstanding the verdict, or in the alternative, for a new trial. The standard of review applicable to a denial of a motion for directed verdict and a judgment notwithstanding the verdict is the same. The appellate court is required to consider the evidence in the strongest light possible in favor of the opposing party. *Taylor v. Kennedy*, 700 S.W.2d 415, 416 (Ky.App. 1985). After completion of the evidentiary review, the decision must be affirmed unless the verdict rendered is "'palpably or flagrantly' against the weight of the evidence so as 'to indicate it was reached as a result of passion or prejudice.'" *Lewis v. Bledsoe Surface Mining Co.*, 798 S.W.2d 459, 461-462 (Ky. 1990). Despite Carolyn's attempt to persuade this court that the evidence was conclusively in her favor on

the issues of liability and damages, the record reveals evidence to the contrary.

There is a general duty on all drivers to operate their vehicles in a "careful manner, with regard for the safety and convenience of pedestrians and other vehicles upon the highway." KRS 189.290(1). "A driver of an automobile that strikes another in the rear is not subject to strict liability, but rather must be proven to have violated the duty of ordinary care before he can be found to be at fault." *USAA Casualty Insurance Company v. Kramer*, 987 S.W.2d 779, 782 (Ky. 1999).

Viewed in the light most favorable to Betty, there was no error in the trial court's submission of the issue of liability to the jury. Drawing all reasonable inferences from the evidence, it cannot be said that Betty was negligent as a matter of law. In fact, the reasonable conclusion to reach from the facts is that both Doug and Betty operated their vehicles in a negligent manner. Betty, angered by Carolyn's presence, chased Doug and Doug, irritated by Betty's pursuit, braked in front of her causing Betty's automobile to collide with the rear of his. The jury's verdict finding Doug 60% at fault and Betty 40% at fault was not so palpably or flagrantly against the weight of the evidence so as to indicate that it was reached as a result of passion or prejudice.

The jury awarded zero damages which, Carolyn contends, indicates that the jury either ignored the evidence or acted as the result of passion or prejudice. Although not a common outcome, a zero-damage award is not the basis for a new trial if the evidence sufficiently supports the jury's conclusion that the plaintiff did not suffer any damages as a result of the defendant's tortious conduct. *Thomas v. Greenview Hosp. Inc.*, 127 S.W.3d 663, 672 (Ky.App. 2004), overruled on other grounds *Lanham v. Commonwealth*, 171 S.W.3d 24 (Ky. 2005).

Carolyn submitted $47,247.16 in medical bills incurred between January 16, 2001, and May 2005, the date of the trial. She argues that pursuant to KRS 304.39-020(5)(a), her medical expenses are presumed to have been reasonable. Medical expenses must not only be reasonable but they must be incurred as a result of the accident and when the evidence is not conclusive, a jury is not required to accept the medical bills submitted by the plaintiff. *Thompson v. Piasta*, 662 S.W.2d 223 (Ky.App. 1983). The statutory presumption does not remove from the jury the ability to weigh the evidence and testimony and decide whether the medical expenses are reasonable *and* incurred as a result of the accident. *Lewis v. Grange Mutual Casualty Co.*, 11 S.W.3d 591 (Ky.App. 2000). Although the medical testimony differed as to the extent Carolyn's pre-existing conditions caused her complaints, the jury considered the evidence and

found that the collision did not cause her to suffer any damages. Because there was a material issue of fact as to whether Carolyn was damaged by the collision, we find that the trial court did not abuse its discretion denying the motion for a directed verdict and Carolyn's post-trial motions.

The judgment is affirmed.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR APPELLANT:	BRIEF AND ORAL ARGUMENT FOR APPELLEE:
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