

GREGORY J. JACKSON

NO. 19-CA-345

VERSUS

FIFTH CIRCUIT

MATTHEW M. DRACHENBURG AND STATE  
FARM FIRE AND CASUALTY COMPANY

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT  
PARISH OF JEFFERSON, STATE OF LOUISIANA  
NO. 779-967, DIVISION "L"  
HONORABLE DONALD A. ROWAN, JR., JUDGE PRESIDING

January 08, 2020

**STEPHEN J. WINDHORST**  
**JUDGE**

Panel composed of Judges Marc E. Johnson,  
Stephen J. Windhorst, and John J. Molaison, Jr.

**AMENDED, AFFIRMED AS AMENDED**

**SJW**

**MEJ**

**JJM**

COUNSEL FOR PLAINTIFF/APPELLANT,  
GREGORY J. JACKSON

Ford T. Hardy, Jr.

COUNSEL FOR DEFENDANT/APPELLEE,  
MATTHEW M. DRACHENBURG AND STATE FARM FIRE AND CASUALTY  
COMPANY

Brian T. Carr

William F. Kelly

Scott A. Ledbetter

## **WINDHORST, J.**

In this personal injury lawsuit where defendant stipulated to liability, the trial court awarded plaintiff medical expenses and general damages. Plaintiff/appellant, Gregory Jackson, appeals the trial court's award of \$2,590.20 in medical expenses and \$2,500.00 in general damages as abusively low for injuries caused by an automobile accident. For the following reasons, we amend the trial court's award of special damages and award plaintiff \$5,359.20 for his past medical expenses, and affirm the trial court's award of \$2,500.00 in general damages.

### **Facts and Procedural History**

On March 13, 2017, Jackson was a passenger in a Jefferson Parish Water Department work truck that was parked near the intersection of Lapalco Boulevard and Manhattan Boulevard. Defendant, Matthew Drachenburg, was driving his vehicle and side-swiped the parked truck in which Jackson was sitting. There was minimal, if any, damage to the vehicles involved in the accident. State Farm Fire and Casualty Company insured Drachenburg.

After the accident, on March 17, 2017, Jackson went to Westbank Physicians Rehabilitation and reported constant back pain. Dr. David Dunn examined Jackson, diagnosed him with a lumbar strain and spasm, and prescribed him ibuprofen, flexeril and tramadol. Medical records indicate that Jackson continued to complain of back pain at visits to Westbank Physicians Rehabilitation in April 2017, May 2017, July 2017, August 2017, October 2017, March 2018, June 2018, and November 2018.

On January 25, 2018, Jackson filed a petition for damages, alleging that the March 13, 2017 accident was proximately caused by Drachenburg's negligence and seeking damages for his injuries, specifically the lower back injury diagnosed as a lumbar strain with muscle spasms. Jackson alleged that MRI testing showed

herniations and/or bulging of discs at L5/S1, which were caused or aggravated by the alleged accident.

Before trial, the parties stipulated that the accident at issue was 100% the fault of Drachenburg. Thus, the only issue before the court at trial was whether Jackson sustained any injuries as a result of the March 2017 accident; and, if so, the extent of those injuries. Jackson and Dr. Dunn were the only two witnesses to testify at trial. The parties submitted much of the evidence on deposition testimony and medical records.

At trial, with regard to physical damage to the vehicles, Jackson testified that the mirrors on both vehicles were damaged. According to Jefferson Parish Deputy, Gerald Favaloro, and photographs of the vehicles taken after the accident, the physical damage from the accident included scuff marks on the mirrors of the vehicles.

With regard to his injuries, Jackson testified he had back problems at the time of the accident and that the night of the accident, he began to suffer with severe back pain. He testified that the accident aggravated his lower back problems and caused his pain to progress from moderate to severe. He also testified that his back injury from this accident prevented him from playing basketball and riding his motorcycle. In his deposition, however, on September 26, 2018, he stated that he was not riding the motorcycle because of the heat, work, and rain; and, that he was not playing basketball because he did not have time. Plaintiff did not miss any work or lose any income as a result of his injury.

Dr. Dunn, who treated Jackson at Westbank Physicians Rehabilitation, testified that at his first visit after the March 2017 accident, Jackson exhibited limited lumbar range of motion in his back and tenderness on palpation in his lumbar mid-line. Dr. Dunn treated Jackson for consistent back pain from March 2017 to November 2018 and testified that he believed the March 2017 accident exacerbated

or aggravated Jackson's previous back injury. In July 2017, Dr. Dunn ordered an MRI for Jackson, which showed that the posterior surface of the L5-S1 was unchanged from its previous examination on December 10, 2014.

Before this accident, Jackson was involved in three prior automobile accidents on September 10, 2014, June 16, 2015, and April 5, 2016. In the 2014 accident, Jackson injured his back, shoulder and left leg, with the back injury persisting over several months. In the 2015 accident, Jackson injured his hand and thumb when a tire blew out and the vehicle hit the wall of a bridge. In the 2016 accident, a car side-swiped the vehicle Jackson was riding in and broke the side mirror. It does not appear that Jackson received any treatment following this accident.

Based on the testimony and evidence presented at trial and post-trial briefs from the parties, the trial court found that Jackson met his burden of showing that he is entitled to damages from defendant and awarded Jackson \$2,590.20 for medical expenses and \$2,500 in general damages. This appeal follows.

### **Discussion**

Appellant asserts that the trial court's award of \$2,590.20 for medical expenses and \$2,500 in general damages is abusively low because, at the time of trial, he had been treated for twenty (20) months due to the aggravation of a lumbar disc herniation. Appellant seeks special damages for medical expenses in the amount of \$5,359.20 and general damages of \$50,000.00.

State Farm asserts the accident did not aggravate plaintiff's back injury because there was no change in his MRI that was taken following a previous accident. State Farm argues that plaintiff's damage award should be affirmed because under the standard of review, where there are two permissible views of the evidence, neither can be manifestly erroneous or clearly wrong. State Farm further argues that the trial court, in awarding damages, made a credibility determination which should not be disturbed.

In a personal injury suit, the plaintiff bears the burden of proving a causal connection between the accident and the alleged injuries. Hunter v. Terrebonne, 18-134 (La. App. 5 Cir. 12/27/18), 263 So.3d 993, 997, writ denied, 19-144 (La. 3/18/19), 267 So.3d 90. When a plaintiff alleges he has incurred medical expenses as a result of injuries suffered in an accident and that treatment is supported by a bill, that evidence is sufficient evidence to support an award for past medical expenses unless there is sufficient contradictory evidence or reasonable suspicion that the bill is unrelated to the accident. Boxie v. Smith-Ruffin, 07-264 (La. App. 5 Cir. 2/6/08), 979 So.2d 539, 548.

We find there is sufficient evidence to support an award for the total amount Jackson seeks for past medical expenses. Jackson submitted medical bills from Westbank Physicians Rehabilitation for \$2,381.20, Metropolitan Health Group for \$209.00, and East Jefferson Hospital Imaging Center for \$2,769.00, totaling \$5,359.20. Plaintiff asserts that these expenses were incurred as a result of the accident in question. Dr. Dunn's testimony supports that this medical treatment received was for injuries sustained as a result of the accident. In addition, defendants have not supplied evidence to indicate the bills are unrelated to the accident. Therefore, we find Jackson is entitled to recover his total past medical expenses. We therefore amend the trial court's award for medical expenses and award Jackson \$5,359.20 in past medical expenses.

General damages are those which are inherently speculative in nature and cannot be fixed with mathematical certainty. Miller v. LAMMICO, 07-1352 (La. 1/16/08), 973 So.2d 693, 711. Louisiana jurisprudence has consistently held that much discretion is left to the judge or jury in the assessment of damages, and upon appellate review such awards will be disturbed only when there has been a clear abuse of that discretion. Theriot v. Allstate Ins. Co., 625 So.2d 1337, 1340 (La. 1993); Tauzier v. Kraus, 02-1015 (La. App. 5 Cir. 4/29/03), 845 So.2d 1208, 1211-

1212, writ denied, 03-1475 (La. 9/26/03), 854 So.2d 367. Only if an articulated analysis of the facts discloses an abuse of discretion, may the award be considered either excessive or insufficient on appellate review. Id. If the appellate court determines that an abuse of discretion has been committed, it is then appropriate to resort to a review of prior awards, to determine the appropriate modification of the award. Id. Only when an award is, in either direction, beyond that which a reasonable trier of fact could assess for the effects of the particular injury to the particular plaintiff under the particular circumstances should the appellate court increase or reduce the award. Id. Reasonable persons often disagree about the measure of general damages in a particular case. Youn v. Maritime Overseas Corp., 623 So.2d 1257, 1261 (La. 1993).

Approximately four days after the accident, Jackson went to Westbank Physicians Rehabilitation, was diagnosed with a lumbar strain and spasm, and was prescribed ibuprofen, flexeril and tramadol. Jackson returned to Westbank Physicians Rehabilitation to Dr. Dunn eight (8) times between April 2017 and November 2018, complaining of back pain. After these visits, Dr. Dunn generally recommended that plaintiff continue with the medication as prescribed and conservative treatment in the office. On July 31, 2017, Dr. Dunn gave plaintiff a referral for orthopedic evaluation and treatment, and on October 30, 2017, Dr. Dunn discharged plaintiff to orthopedics for further evaluation and treatment. The record, however, does not contain evidence of orthopedic evaluation and treatment.

Further, Jackson's MRI results after the subject accident did not show any change in his condition from prior to the accident. There was minimal evidence that plaintiff's personal life was affected by the injury. In addition, Jackson's injury was not severe enough to cause him to miss any work as a result of this injury.

Based on the record before us, we cannot conclude that the trial court abused its discretion in awarding \$2,500.00 in general damages. It is only after the

reviewing court finds an abuse of the trial court's vast discretion in setting an award of damages that the court can then "resort to a review of prior awards to determine the appropriate modification of the award." Theriot, 625 So.2d at 1340. Because we do not find an abuse of the vast discretion afforded the trier-of-fact in setting the award for damages in this case, we cannot resort to a review of prior awards to determine whether or not the award in this case is insufficient. We therefore affirm the trial court's award of \$2,500.00 in general damages.

### **Conclusion**

For the reasons stated, we amend the trial court's award of special damages and award plaintiff \$5,359.20 for his past medical expenses, and affirm the trial court's award of \$2,500.00 in general damages.

**AMENDED, AFFIRMED AS AMENDED**



SUSAN M. CHEHARDY  
CHIEF JUDGE

FREDERICKA H. WICKER  
JUDE G. GRAVOIS  
MARC E. JOHNSON  
ROBERT A. CHAISSON  
STEPHEN J. WINDHORST  
HANS J. LILJEBERG  
JOHN J. MOLAISSON, JR.

JUDGES



FIFTH CIRCUIT

101 DERBIGNY STREET (70053)

POST OFFICE BOX 489

GRETNA, LOUISIANA 70054

[www.fifthcircuit.org](http://www.fifthcircuit.org)

CURTIS B. PURSELL  
CLERK OF COURT

MARY E. LEGNON  
CHIEF DEPUTY CLERK

SUSAN BUCHHOLZ  
FIRST DEPUTY CLERK

MELISSA C. LEDET  
DIRECTOR OF CENTRAL STAFF

(504) 376-1400

(504) 376-1498 FAX

**NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY**

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **JANUARY 8, 2020** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

**CURTIS B. PURSELL**  
CLERK OF COURT

**19-CA-345**

**E-NOTIFIED**

24TH JUDICIAL DISTRICT COURT (CLERK)  
HONORABLE DONALD A. ROWAN, JR. (DISTRICT JUDGE)  
NO ATTORNEYS WERE ENOTIFIED

**MAILED**

FORD T. HARDY, JR. (APPELLANT)  
ATTORNEY AT LAW  
320 NORTH CARROLLTON AVENUE  
SUITE 101B  
NEW ORLEANS, LA 70119

WILLIAM F. KELLY (APPELLEE)  
BRIAN T. CARR (APPELLEE)  
SCOTT A. LEDBETTER (APPELLEE)  
TIFFANY D. SNEAD (APPELLEE)  
ATTORNEYS AT LAW  
4636 SANFORD STREET  
SUITE 100  
METAIRIE, LA 70006