


NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2007 CA 2412



DEBORAH LOUISE MORELL, WIFE OF/AND
WILBERT J. MORELL, III, INDIVIDUALLY AND AS
ADMINISTRATORS OF THEIR MINOR DAUGHTER,
CARINA ELYSIA MORELL

VERSUS

HOLGER E. SCHUSTER, INDIVIDUALLY AND ON BEHALF OF HIS
MINOR SON, ANDREW J. SCHUSTER; GREAT AMERICAN
INSURANCE/WORLDWIDE INSURANCE GROUP, as liability insurer of
HOLGER E. SCHUSTER; AND LIBERTY MUTUAL FIRE INSURANCE
COMPANY, as uninsured/underinsured motorist insurer
and medical payments carrier of petitioners

Judgment Rendered: May 2, 2008.

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On Appeal from the
22nd Judicial District Court,
In and for the Parish of St. Tammany,
State of Louisiana
Trial Court No. 2004-10845

Honorable Reginald T. Badeaux, III, Judge Presiding

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G. Brice Jones
Slidell, LA

Attorney for Plaintiffs/Appellees,
Deborah Louise Morell, wife of/and
Wilbert J. Morell, III, as
Administrators of their minor
daughter, Carina Elysia Morell

Kevin T. Phayer
Metairie, LA

Attorney for Defendant/Appellant,
Liberty Mutual Fire Insurance
Company as uninsured/underinsured
motorist insurer and medical
payments carrier of petitioners

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BEFORE: CARTER, C.J., PETTIGREW AND WELCH, JJ.

*J.J. Pettigrew, J. concurs with the Results
Welch J. concurs with out reasons*

CARTER, C. J.

This suit arises from a rear-end collision during which the guest passenger, Carina Morell (a minor), suffered injuries that exacerbated injuries resulting from a previous motor vehicle accident. Medical testimony at trial attributed 70% of Carina's injuries to the first accident and 30% to the second accident. Prior to trial, all parties other than Carina Morell and Liberty Mutual Fire Insurance Group (Liberty Mutual), her parents' uninsured/underinsured motorist (UM) insurance carrier settled. As a result of the settlement, Carina received the tortfeasor's underlying insurance policy limits of \$50,000. The matter proceeded to a bench trial on the issue of damages, with a stipulation that Carina's damages did not exceed \$50,000. The trial court took the matter under advisement then issued written reasons for judgment and a judgment in favor of Carina Morell and against the UM carrier for \$44,047.65 plus interest from the date of judicial demand.

Liberty Mutual filed a motion for new trial contending the trial court failed to offset the amount of damages by the \$50,000 settlement plaintiff received from the underlying tortfeasor. The trial court granted the motion, reconsidered its determination of Carina's general damages, applied the \$50,000 credit and again rendered judgment in favor of Carina Morell and against Liberty Mutual for \$44,047.65 plus interest from the date of judicial demand. Liberty Mutual now appeals contending the trial court erred in going beyond the scope of its request for reduction of the judgment amount to reflect a credit for the settlement with the underlying tortfeasor and in increasing the amount of general damages.

Liberty Mutual asked for and was granted a new trial on the issue of damages. We find no abuse of discretion in the trial court's decision to grant the motion for new trial. Liberty Mutual's complaint, however, is that the trial court recalculated damages before applying the credit for amounts paid by the underlying tortfeasor's insurer. We find this was well within the bounds of a new trial on the issue of damages. After granting the motion for new trial, the trial court found that Carina Morell's damages attributable to this accident amount to \$94,047.65. Considering the particular injuries resulting from this accident and their effects upon this particular plaintiff, we cannot say that the trial court abused its discretion in awarding damages.

Considering the foregoing, the judgment appealed from is affirmed in accordance with URCA Rule 2-16.1.B. Costs of this appeal are assessed to Liberty Mutual Fire Insurance Company.

AFFIRMED.