

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 CA 1020

KENDRA COLLINS

VERSUS

SARA CALLAIS, GENERAL INSURANCE COMPANY OF AMERICA AND
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

MAY 01 2013

Judgment Rendered: _____

JMM
J. E. W. (by JMM)
J. E. W. (by JMM)

APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
DOCKET NUMBER 566833, SECTION "22"

THE HONORABLE TIMOTHY E. KELLEY, JUDGE

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*Kuhn, J Agrees in Part + Dissents
in Part + Assigns Reasons*

BEFORE: WHIPPLE, C.J., KUHN, PETTIGREW, McDONALD, AND
WELCH, JJ.

McDONALD, J.

This appeal concerns an automobile accident that occurred on May 12, 2007. On that date, Kendra Collins (Ms. Collins) was a back-seat passenger in a 1996 Acura driven by her sister, Dawn R. Collins. The owner of the vehicle, their mother, Esther M. Collins, was riding in the front passenger seat. The Acura was traveling eastbound in the left-hand lane of Interstate 12 near the O'Neal Lane exit in East Baton Rouge Parish at the time of the accident. Sara Callais (Ms. Callais) was driving directly behind the Acura, in a 2006 BMW owned by Ronnie Callais. The Acura slowed down as it approached traffic on the interstate, and Ms. Callais' BMW struck the rear of the Acura. The Acura began to spin and struck the retaining wall separating the eastbound and westbound lanes of Interstate 12. Ms. Collins was injured in the accident.

On May 9, 2008, Ms. Collins filed suit against Ms. Callais, General Insurance Company of America (GIC) (the liability insurer of the Callais vehicle), and State Farm Mutual Automobile Insurance Company (State Farm) (the uninsured/underinsured motorist insurer for the Collins vehicle), asserting that Ms. Callais was at fault for the accident. Ms. Collins asserted that the Acura was damaged in the accident and that she suffered personal injuries, including bulging discs, lower back injury, injury to her right arm and leg, and injury to her face. Ms. Collins asserted that her damages included past physical pain and suffering and mental anguish, future physical pain and suffering and mental anguish, loss of enjoyment of life, permanent disabilities and impairment, past and future loss of income, impairment of earning capacity, and past and future medical expenses.

State Farm answered the petition, generally denying liability to Ms. Collins, setting forth affirmative defenses, and filing a cross-claim against Ms. Callais and GIC. Ms. Callais and GIC filed an answer to the petition and a request for jury

trial, generally denying the allegations and asking that the suit be dismissed with prejudice.

On July 6, 2009, State Farm was dismissed from the suit without prejudice, with Ms. Collins reserving the right to proceed against the remaining defendants. The parties entered into a joint stipulation agreeing: that \$1,878.00 was paid by State Farm to and on behalf of Ms. Collins; that GIC had paid State Farm \$1,878.00 in satisfaction of the cross claim filed by State Farm for reimbursement of the medical payments coverage; that Ms. Callais and GIC were entitled to a credit in the amount of \$1,878.00 against any judgment or settlement; that Ms. Collins agreed to waive any further claims against State Farm; and that State Farm agreed to dismiss its cross-claim. The joint stipulation was signed by the district court on December 15, 2010.

At trial, the parties stipulated that Ms. Callais was solely at fault for the accident. After the trial, the jury determined that Ms. Collins was injured in the accident and that the fault of Ms. Callais was a legal cause of the injuries. The jury awarded Ms. Collins \$10,000.00 for past and future physical pain and suffering, \$0 for past and future mental pain and suffering, \$13,000.00 for past and future medical expenses, \$1,558.00 for lost wages, and \$5,442.00 for loss of enjoyment of life, for a total of \$30,000.00 in damages. The district court signed a judgment in accordance with the jury verdict on October 27, 2011, awarding judgment in favor of Ms. Collins, and against Ms. Callais and GIC, jointly and in solido, for \$30,000.00, less a credit due to Ms. Callais and GIC in the amount of \$1,878.00. Ms. Callais and GIC were taxed with judicial interest and costs of court.

Ms. Collins filed a motion for judgment notwithstanding the verdict, and in the alternative a motion for new trial on the issue of damages, and in the alternative a motion for additur, asserting that the damages award was inadequate. The district court denied the motion.

Thereafter, Ms. Collins filed an appeal. Ms. Collins asserts the following assignments of error on appeal.

1. The jury abused its discretion in awarding excessively low quantum for plaintiff-appellant's past and future physical pain and suffering when the testimony of plaintiff-appellant and the uncontroverted medical testimony presented at trial clearly established that plaintiff-appellant sustained bulging discs at the C5-6 and C6-7 levels and that she continued to suffer pain through the date of trial, over four years post accident.
2. The jury abused its discretion in failing to award plaintiff-appellant any sums for past and future mental pain and suffering when the medical evidence clearly established that she suffered from depression as a result of the accident which forms the subject matter of this litigation.
3. The jury abused its discretion in failing to award plaintiff-appellant the full sum of past medical expenses incurred when the evidence introduced at trial clearly established that said expenses were incurred in the treatment of her injuries sustained in the accident which forms the subject matter of this litigation.
4. The jury abused its discretion in failing to award plaintiff-appellant damages for future medical treatment.

ASSIGNMENTS OF ERROR NOS. 3 AND 4

In these assignments of error, Ms. Collins asserts that the jury erred in failing to award the full sum of her past medical expenses and in failing to award damages for future medical treatment.

In reviewing a jury's factual conclusions with regard to special damages, an appellate court must satisfy a two-step process based on the record as a whole: there must be no reasonable factual basis for the trial court's conclusions, and the finding must be clearly wrong. **Kaiser v. Hardin**, 2006-2092 (La. 4/11/07), 953 So.2d 802, 810 (per curiam).

The district court noted the following at the hearing on the motion for judgment notwithstanding the verdict:

It was not a big bulge at all, and that's part of the difficulty with this case and the fact that, I will tell you quite candidly as I said before, the credibility of your client was less than spectacular. She was not a credible witness at all, and yet, you know, the jury could

have found she just made everything up. They didn't. They analyzed everything.

A thorough review of the record shows that the jury apparently did not believe that all of Ms. Collins' medical issues were related to the accident. Ms. Collins was treated for carpal tunnel syndrome and back complaints that were not related to the accident. We cannot say that there was no reasonable basis for the jury's conclusions, nor can we say that the jury's finding was clearly wrong.

ASSIGNMENT OF ERROR NO. 1

In this assignment of error, Ms. Collins asserts that the jury abused its discretion in awarding \$10,000.00 for her past and future physical pain and suffering, an amount she asserts is excessively low. Ms. Collins asserts that the medical evidence presented at trial established that she sustained bulging discs at the C5-6 and C6-7 levels and that she continued to suffer pain through the date of trial, over four years after the accident.

The role of an appellate court in reviewing general damages is not to decide what is an appropriate award, but rather to review the exercise of discretion by the trier of fact. The initial inquiry is whether the award for the particular injuries and their effects under the particular circumstances of the particular injured person is a clear abuse of the "much discretion" of the trier of fact. **Youn v. Maritime Overseas Corp.**, 623 So.2d 1257, 1260 (La. 1993), cert. denied, 510 U.S. 1114, 114 S.Ct. 1059, 127 L.Ed.2d 379 (1994).

The district court noted that Ms. Collins was not a credible witness on her own behalf, and we find that the jury determined that all of Ms. Collins' medical care was not related to the accident. The record shows that Ms. Collins had numerous health issues unrelated to the accident at issue. After a thorough review of the record, we cannot say that the jury abused its discretion in awarding Ms. Collins \$10,000.00 for past and future physical pain and suffering.

ASSIGNMENT OF ERROR NO. 2

In this assignment of error, Ms. Collins asserts that the jury abused its discretion in failing to award her any sum for past and future mental pain and suffering.

Under the facts of this case, we find that it was an abuse of discretion for the jury to fail to award any amount to Ms. Collins for her past and future mental pain and suffering. Ms. Collins was injured in a collision that caused her vehicle to hit a concrete barricade on the interstate. She was removed from the vehicle by medical personnel and taken to the hospital by ambulance, and the jury awarded her \$10,000.00 for her physical pain and suffering.

We find that the lowest amount that the jury could have awarded for past and future mental pain and suffering under the circumstances is \$5,000.00. See Youn, 623 So.2d at 1260. Thus, we amend the judgment to award Ms. Collins \$5,000.00 for her past and future mental pain and suffering.

DECREE

Therefore, for the foregoing reasons, we amend the judgment of the district court to award Ms. Collins \$5,000.00 for her past and future mental pain and suffering. In all other aspects, the district court judgment, dated October 27, 2011, is affirmed. Ms. Callais and GIC are assessed with the costs of this appeal.

AMENDED, AND AS AMENDED, AFFIRMED.

KENDRA COLLINS

FIRST CIRCUIT

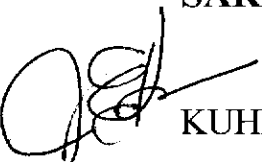
VERSUS

COURT OF APPEAL

SARA CALLAIS, ET AL.

STATE OF LOUISIANA

NO. 2012 CA 1020

 KUHN, J., dissenting in part.

I respectfully disagree with that portion of the majority opinion concluding that the jury abused its much discretion in denying Ms. Collins any damages for mental pain and suffering. At trial, defense counsel argued during closing arguments that Ms. Collins was entitled to such damages because the medical evidence established that she suffered from depression as a result of the accident at issue. However, the record reveals that serious questions arose at trial regarding the credibility of Ms. Collins' claim. For instance, she suffered from a myriad of pre-existing health problems unrelated to the accident that the jury could have concluded were the cause of any depression she may have suffered. Moreover, her own family physician noted that Ms. Collins was prone to exaggeration and over-dramatization of her symptoms. It is noteworthy that in denying her motion for judgment notwithstanding the verdict, the trial court observed that Ms. Collins' credibility was "less than spectacular" and that "she was not a credible witness at all."

Given the circumstances, I agree with the trial court's conclusion that the jury's verdict represented "a fair and reasonable interpretation of the evidence ... based on [Ms. Collins'] lack of credibility...." As noted, Ms. Collins based her claim of mental pain and suffering on the allegation that the accident caused her to suffer depression. Thus, the jury's refusal to award damages for mental pain and suffering constituted a rejection of this claim.

Considering defense counsel's closing arguments, the jury reasonably could have concluded that the item of "Physical pain and suffering" on the verdict form

encompassed damages for both physical and mental pain and suffering associated with Ms. Collins' injuries, while the item of "Mental pain and suffering" encompassed damages for her alleged depression. Moreover, the \$10,000.00 the jury awarded to Ms. Collins for physical pain and suffering was adequate to compensate for both her physical and mental pain and suffering. Although arising in a different context, several cases have recognized that "bodily injury" can also include mental anguish and distress. See *Crabtree v. State Farm Insurance Company*, 93-0509 (La. 2/28/94), 632 So.2d 736, 744; *Motorola, Inc. v. Associated Indemnity Corporation*, 02-0716 (La. App. 1st Cir. 6/25/04), 878 So.2d 824, 833, writs denied, 04-2314, 04-2323, 04-2326, 04-2327 (La. 11/19/04), 888 So.2d 207 & 211-12.

In view of this jurisprudence, and especially given the evidence regarding Ms. Collins' tendency to exaggerate and overdramatize, the jury reasonably could have concluded that any mental anguish or emotional distress she suffered was subsumed into the award the jury made to her for physical pain and suffering. In reviewing the jury's determinations, this Court must bear in mind that the factfinder is afforded much discretion because it is in the best position to observe evidence firsthand and evaluate witness credibility. See *Bouquet v. Wal-Mart Stores, Inc.*, 08-0309 (La. 4/4/08), 979 So.2d 456, 459. Based on its obvious factual findings and credibility determinations, a reasonable basis existed for the jury's verdict. Therefore, the record does not establish that the jury abused its great discretion in rejecting Ms. Collins' claim that she was entitled to damages for mental pain and suffering due to her depression. By amending the trial court judgment to award Ms. Collins damages for mental pain and suffering, the majority is substituting its own evaluation of the evidence and credibility

determinations for those of the jury. Accordingly, I dissent from that portion of the majority opinion.