

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CA 0690

EUGENE BOGLE

VERSUS

JAMES T. CHRISTIAN AND ALLSTATE INSURANCE COMPANY

CEH
TMH
MT
DATE OF JUDGMENT: DEC 27 2013

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
NUMBER 2011-15703, DIVISION G., PARISH OF ST. TAMMANY
STATE OF LOUISIANA

HONORABLE WILLIAM J. CRAIN, JUDGE

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and James T. Christian

BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

**Disposition: AFFIRMED IN PART; AMENDED IN PART; REVERSED IN PART; AND
RENDERED.**

KUHN, J.,

Plaintiff-appellant, Eugene Bogle, appeals from a trial court judgment dismissing his claim for personal injury damages allegedly resulting from a vehicular accident. For the following reasons, we reverse that portion of the trial court judgment and render judgment awarding plaintiff personal injury damages.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff was stopped at a red light in St. Tammany Parish on December 23, 2010, when the automobile he was driving suddenly was struck from the rear by a pickup truck driven by James Christian. The force of the impact punctured the bumper of plaintiff's vehicle. As a result of the accident, plaintiff was dazed and felt unwell. He returned home and went to bed. Five days later he began treatment with a chiropractor, Dr. James Derbes, complaining of severe neck pain, upper back pain and spasms, difficulty sleeping, nervousness, and headaches that began on the night of the accident. He also reported a history of rheumatoid arthritis and a prior vehicular accident involving his neck and back over twenty years earlier, which resulted in his permanent disability. Dr. Derbes diagnosed a "significant whiplash" combined with plaintiff's pre-existing cervical degenerative disc disease. He treated plaintiff for approximately four months, at which point he felt plaintiff had returned to his "pre-crash status."

Plaintiff filed the instant suit seeking personal injury and property damages against Mr. Christian and his insurer, Allstate Insurance Company. The parties stipulated to defendants' liability and the medical records of Dr. Derbes, including his final report, were admitted at trial without objection. No opposing medical evidence was offered.

On September 20, 2012, the trial court rendered judgment in favor of plaintiff and against defendants awarding property damages in the amount of \$1,277.43 for the damage to plaintiff's automobile. The trial court dismissed

plaintiff's personal injury claim, concluding he failed to prove that he sustained personal injury in the accident. In its reasons for judgment, the trial court stated that no evidence was presented to distinguish between those symptoms that may have been caused by the accident and the pre-existing symptoms plaintiff experienced as a result of his long-time disability. Plaintiff has now appealed, arguing in three assignments of error that the trial court erred in failing to award general and special damages for his personal injuries.

DISCUSSION

Plaintiff argues the trial court erred in concluding that he failed to prove he suffered bodily injury because the court failed to take into account the uncontroverted medical evidence from Dr. Derbes establishing the aggravation of plaintiff's pre-existing condition. We agree.

It is well-settled that a tortfeasor takes his victim as he finds him and is responsible for all natural and probable consequences of his tortious conduct. *Touchard v. Slemco Electric Foundation*, 99-3577 (La. 10/17/00), 769 So.2d 1200, 1204. Nevertheless, the tortfeasor cannot be held liable for injuries which are not attributable to the wrongful act. In such situations, the plaintiff is required to prove a causal connection between the damages claimed and the accident by a reasonable preponderance of the evidence. *Sanders v. Collins*, 551 So.2d 644, 651 (La. App. 1st Cir. 1989), writ denied, 556 So.2d 1261 (La. 1990). Where it is established that the defendant's negligent action aggravated a pre-existing injury or condition, he must compensate the victim for the full extent of that aggravation. *Touchard*, 769 So.2d at 1204. Whether an accident caused the plaintiff's injuries is a factual question that should not be reversed on appeal absent manifest error. *Thongsavanh v. Schexnayder*, 09-1462 (La. App. 1st Cir. 5/7/10), 40 So.3d 989, 1001, writ denied, 10-1295 (La. 9/24/10), 45 So.3d 1074.

Under the manifest error standard of review, an appellate court can reverse a trial court's factual finding only if no reasonable basis for the conclusion exists in the record and the record establishes that the finding is clearly wrong. *Stobart v. State, Department of Transportation and Development*, 617 So.2d 880, 882 (La. 1993); *Kugler v. Tangipahoa Parish School Board*, 99-0016 (La. App. 1st Cir. 2/18/00), 752 So.2d 375, 379. The issue to be resolved by this court is not whether the trier-of-fact was right or wrong, but whether the factfinder's conclusion was a reasonable one in light of the entire record. *Stobart*, 617 So.2d at 882; *Kugler*, 752 So.2d at 379.

In this case, the uncontradicted medical evidence, as well as plaintiff's testimony, related the symptoms plaintiff experienced during his treatment with Dr. Derbes to the December 2010 vehicular collision. During plaintiff's first visit, Dr. Derbes observed that plaintiff had "significant restrictions in all ranges with increased pain levels in flexion, extension, and bilaterally in rotation_[s]" as well as "hypertonic neck and upper back musculature" upon palpation. Dr. Derbes diagnosed plaintiff as having a "significant whiplash" combined with pre-existing cervical degenerative disc disease. At the conclusion of treatment, Dr. Derbes opined that plaintiff had "made a complete recovery from the injuries sustained in the motor vehicle crash_[s]" having progressed from severe pain/spasm in his neck and upper back to his "pre-crash status of very mild discomfort" and from daily headaches to the headaches being resolved.

In its reasons for judgment rejecting plaintiff's claim for personal injury, the trial court totally discounted Dr. Derbes' final report because it did not contain "facts regarding the accident, particularly [a] description of the force of impact or the biomechanical effects of any impact upon [plaintiff]" In requiring such information to be included in Dr. Derbes' report, the trial court impermissibly imposed an additional burden of proof upon plaintiff. Moreover, the court ignored

the fact that it was undisputed the impact was of sufficient force to cause physical damages to plaintiff's vehicle. The trial court also incorrectly stated in its reasons that "no evidence" was presented distinguishing between symptoms that may have been caused by the accident and the normal symptoms plaintiff experienced as a result of his pre-existing condition and disability. In fact, Dr. Derbes' final report made a clear distinction between plaintiff's pre-accident and post-accident symptoms by stating that plaintiff's treatment had progressed from severe pain during treatment to his "pre-crash status of very mild discomfort."

Given the evidence presented, particularly the uncontradicted medical evidence from Dr. Derbes, the record clearly established that plaintiff sustained personal injury as a result of the December 2010 vehicular accident. Because the record does not reasonably support the trial court's conclusion that plaintiff suffered no personal injury, that conclusion was clearly wrong and manifestly erroneous. The trial court erred in dismissing plaintiff's claim for personal injury damages.

Due to the trial court's error in finding no causation, it awarded no personal injury damages to plaintiff. However, since the record contains sufficient proof of damages, this Court can render awards for the general and special damages to which plaintiff is entitled. See La. C.C.P. art. 2164; *Dolmo v. Williams*, 99-0169 (La. App. 4th Cir. 9/22/99), 753 So.2d 844, 847; *Gordon v. Willis Knighton Medical Center*, 27,044 (La. App. 2d Cir. 6/21/95), 661 So.2d 991, 999, writs denied, 95-2776, 95-2783 (La. 1/26/96), 666 So.2d 679.

Because the trial court did not make an award of general damages, this Court is not limited to an award of either the lowest or highest amount reasonably within the court's discretion. Instead, this Court may set the award in an amount which is just compensation for the damages shown by record. *Ernst v. Taylor*, 08-1289 (La. App. 3d Cir. 5/6/09), 17 So.3d 981, 990, writ denied, 09-1262 (La. 9/18/09),

17 So.3d 977; *Gordon*, 661 So.2d at 999. General damages, including pain and suffering, are inherently speculative in nature and cannot be fixed with mathematical certainty. *Wainwright v. Fontenot*, 00-0492 (La. 10/17/00), 774 So.2d 70, 74. In this case, based on our review of the evidence concerning plaintiff's symptoms and his treatment for a period of approximately four months, we find that \$7,500.00 is an appropriate award for his general damages.

As to special damages, plaintiff introduced a billing statement from Dr. Derbes at trial reflecting total charges of \$3,472.00 that he related to plaintiff's injuries from the vehicular accident. Accordingly, plaintiff is entitled to an award of special damages for past medical expenses in that amount. No evidence was presented as to any future medical care plaintiff might require. Additionally, Dr. Derbes indicated that plaintiff had returned to his pre-accident status by the end of his treatment. Therefore, no award is made for future medical care.

CONCLUSION

For the reasons assigned, that portion of the trial court judgment dismissing plaintiff's claim for personal injury damages is reversed, and judgment is hereby rendered amending the trial court judgment in favor of plaintiff, Eugene Bogle, and against defendant,¹ Allstate Insurance Company, to award plaintiff general damages in the amount of \$7,500.00 and special damages in the amount of \$3,472.00, together with legal interest thereon. The judgment of the trial court is further amended to provide that Allstate Insurance Company is to pay all trial costs. The judgment of the trial court is affirmed in all other respects. All costs of this appeal are assessed to Allstate Insurance Company.

AFFIRMED IN PART; AMENDED IN PART; REVERSED IN PART; AND RENDERED.

¹ We render judgment against Allstate Insurance Company only because the parties stipulated at trial that defendant, James T. Christian, was to be released in exchange for the defendants' admission of liability.