NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2013 CA 1405

LORENZA A. SAVAGE AND JEREMY ANDRAS

VERSUS

NEDA W. GUIDRY, SEACOR MARINE, L.L.C. , AND AMERICAN HOME ASSURANCE COMPANY

Judgment Rendered: MAR 2 1 2014

Appealed from the
Seventeenth Judicial District Court
In and for the Parish of Lafourche, Louisiana
Docket Number 104416

Honorable F. Hugh Larose, Judge Presiding

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BEFORE: WHIPPLE, C.J., WELCH, AND CRAIN, JJ.

WHIPPLE, C.J.

This lawsuit arises out of a motor-vehicle accident. The parties stipulated that the defendant driver was solely at fault in causing the accident. Thus, the only issues at the trial on the merits were the extent of plaintiff's injuries caused by the accident and damages. After a jury trial, the jury awarded plaintiff $868,000.00 for general and special damages. Plaintiff and defendants both appealed. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

On September 1, 2005, plaintiff Lorenzo Savage was employed by the Lafourche Parish Sheriff's Office and was responding to a call after Hurricane Katrina, when he was involved in an automobile accident at the intersection of Louisiana Highway 308 and Louisiana Highway 654 in Lafourche Parish, Louisiana. While attempting to make a left-hand turn, and preempting the intersection, plaintiff's vehicle was struck by a vehicle being operated by defendant Neda Guidry and owned by defendant SeaCor Marine, L.L.C. On August 28, 2006, Ms. Savage filed suit for damages resulting from the accident, naming as defendants: Neda Guidry, SeaCor Marine, L.L.C., and American Home Assurance Company as the insurer of SeaCor Marine, L.L.C.[1]

Prior to the trial on the merits, plaintiff and defendants agreed and stipulated that the defendant driver, Ms. Guidry, was liable for causing the accident. A jury trial on the issues of causation of plaintiff's injuries and the extent of her damages was conducted on April 15 and 16, 2013.

DISCUSSION

At trial, the issues of causation of plaintiff's injuries, and the nature and extent thereof, were strongly contested. Determining the cause of plaintiff's

[1]At the time of the accident, Ms. Guidry was acting within the course and scope of her employment with SeaCor Marine, L.L.C..

injuries was complicated by the fact that she has suffered with Neurofibromatosis ("NF") since she was thirteen years old.[2] However, the only witnesses called to testify at the trial were plaintiff and plaintiff's treating neurologist, Dr. Donald Gervais, who opined that her injuries and the exacerbation of her NF were caused by the accident.

After hearing and considering the testimony of plaintiff and her attending physician, Dr. Donald Gervais, the jury awarded plaintiff damages as follows:

Past Medical Expenses	$44,000.00
Future Medical Expenses	$176,000.00
Past Pain and Suffering	$92,000.00
Future Pain and Suffering	$50,000.00
Past Mental Anguish	$10,000.00
Future Mental Anguish	$5,000.00
Loss of Enjoyment of Life	$0.0
Loss of Past Wages	$216,000.00
Loss of Future Wages	$275,000.00

A written judgment in accordance with the jury's verdict was signed on April 29, 2013.

From this judgment, both defendants and plaintiff appeal. On appeal, defendants challenge only the awards for future medical expenses and loss of future wages, contending that said awards are too high and not supported by the evidence. However, plaintiff contends on appeal that the awards for future medical expenses and future loss of wages are too low, and that the general damage award for past and future pain and suffering, past and future mental anguish, and loss of enjoyment of life are inadequate.

Plaintiff testified that as a result of this accident, she sustained injuries to her neck, back, and left arm and has been unable to return to her job. At trial, plaintiff candidly acknowledged that she sought treatment for neck and back pain prior to this accident, but she described her pre-accident pain as "soreness and stiffness . . .

[2]Neurofibromatosis ("NF"), also known as elephant man disease, is an inherited disorder that causes bumps or growths on the nerves, which may grow large enough to impair the nerves and require surgical removal.

from everyday activities" from stress and physical activity, whereas after the accident, the pain was more severe and constant. Plaintiff testified that she underwent nerve conduction tests before this accident that showed no damage, whereas the tests after the accident showed damage. Plaintiff related that Dr. Gervais had informed her that her pain is permanent, and that two other physicians, with whom she had surgical consultations, also said that while her pain will get worse through the years, surgery is not an option at this point.

At trial, Dr. Gervais readily acknowledged that prior to this accident, plaintiff had presented with complaints of low back and neck pain. However, based on his examination and findings, as well as plaintiff's medical history, he concluded that her overall condition was worse after the accident and that her complaints were for injuries related to the motor-vehicle accident. In particular, a nerve test or EMG obtained after the accident revealed significant "cervical issues at C-7 and C-6." Dr. Gervais testified that at the time of the trial, almost eight years after the automobile accident, he was still treating plaintiff for her NF condition and her accident-related injuries. Dr. Gervais opined that it was more probable than not that plaintiff's complaints of neck, back, and arm pain were related to the motor-vehicle accident. He noted that over the course of this time, plaintiff's treatment has included sacroiliac injections, epidural injections, physical therapy, and various pain medications, including Lipoderm patches. Dr. Gervais testified that he was able to distinguish what his treatments were for, i.e., whether they were accident related or were attributable to plaintiff's NF condition, explaining that the neurofibromas (the growths caused by the NF condition) are anatomically palpable visible structures, so "its easy to figure out how much of her complaints were really coming from post-traumatic issues or from the neurofibromatosis." Accordingly, Dr. Gervais testified, approximately sixty (60%) to seventy-five (75%) percent of plaintiff's visits with him were related to her

accident related injuries and the rest of her visits were related to her NF condition and other medical issues.

Standard of Review

It is well-settled that a judge or jury is given great discretion in its assessment of quantum for both general and special damages. Guillory v. Lee, 2009–0075 (La. 6/26/09), 16 So.3d 1104, 1116. Louisiana Civil Code article 2324.1 provides: "In the assessment of damages in cases of offenses, quasi offenses, and quasi contracts, much discretion must be left to the judge or jury." Furthermore, the jury's assessment of quantum or determination of the appropriate amount of damages is a determination of fact, which is entitled to great deference on appeal. Wainwright v. Fontenot, 2000–0492 (La. 10/17/00), 774 So.2d 70, 74.

Review of the amounts awarded by the jury for general and special damages is subject to the "abuse of discretion" standard of review. See Leighow v. Crump, 2006–0642 (La. App. 1st Cir. 3/23/07), 960 So.2d 122, 128–129, writs denied, 2007–1195, 2007–1218 (La. 9/21/07), 964 So.2d 337, 341; Harris v. Delta Development Partnership, 2007–2418 (La. App. 1st Cir. 8/21/08), 994 So.2d 69, 82–83 (quoting Coco v. Winston Industries, Inc., 341 So.2d 332, 335 (La. 1976)). An appellate court, on review, must be cautious not to re-weigh the evidence or to substitute its own factual finding just because it would have decided the case differently. Guillory v. Lee, 16 So.3d at 1117.

In a personal injury suit, the plaintiff bears the burden of proving the causal connection between an accident and the resulting injuries. Oden v. Gales, 2006–0946 (La. App. 1st Cir. 3/23/07), 960 So.2d 114, 118. Whether the accident caused the plaintiff's injuries is a factual question that should not be reversed on appeal absent manifest error. Pena v. Delchamps, Inc., 2006–0364 (La. App. 1st Cir. 3/28/07), 960 So.2d 988, 994, writ denied, 2007–0875 (La. 6/22/07), 959 So.2d 498.

With these principles in mind, we review the evidence of record to determine whether the jury's damage awards are contrary to the evidence or constitute an abuse of the broad discretion afforded to the jury.

Future Medical Expenses

Defendants first contend that, based on the evidence presented, the jury lacked sufficient evidence to support an award to plaintiff of $176,000.00 for future medical expenses. Plaintiff counters that an award of future medical expenses of at least $300,000.00 is warranted.

A tort victim may ordinarily recover medical expenses, past and future, that he incurs as a result of an injury. Menard v. Lafayette Insurance Company, 2009–1869 (La. 3/16/10), 31 So.3d 996, 1006. However, the plaintiff must prove, by a preponderance of the evidence, the existence of the injuries and a causal connection between the injuries and the accident. Yohn v. Brandon, 2001–1896 (La. App. 1st Cir. 9/27/02), 835 So.2d 580, 584, writ denied, 2002–2592 (La. 12/13/02), 831 So.2d 989. The test to determine if that burden has been met is whether the plaintiff has established through medical testimony that it is more probable than not that the injuries were caused by the accident. Yohn v. Brandon, 835 So.2d at 584. After carefully considering the record herein, we find that plaintiff satisfied her burden of proof. As noted above, Dr. Gervais specifically testified that it is more probable than not that plaintiff's neck, back, and arm pain were related to or caused by the accident. Moreover, defendants did not offer any conflicting expert testimony regarding the cause of plaintiff's injuries or the need and costs for her future medical care, relying only on their cross-examination of plaintiff and Dr. Gervais.

Further, as this court has previously noted, a reviewing court should not reject an award of future medical expenses on the basis that the record does not provide the exact value of the necessary expenses unless the court cannot

determine from evidence of past medical expenses and other evidence a minimum amount that reasonable minds could not disagree will be required. Hollenbeck v. Oceaneering Intern., Inc., 96-0377 (La. App. 1st Cir. 11/8/96), 685 So.2d 163, 178, writ denied, 97-0493 (La. 4/4/97), 692 So.2d 421. After reviewing the record herein, we find that there was sufficient evidence and testimony to support the jury's determination as to the reasonable amount due plaintiff for future medical expenses. Dr. Gervais testified that in the future, plaintiff will continue to undergo the same types of treatment that she has had to undergo in the past and that activity will cause her condition to worsen. Dr. Gervais also testified that plaintiff's future medical care would cost $5,000.00 to $10,000.00 a year for office visits, plus medications that cost approximately $1,500.00 a year. He further noted that "as far as the motor vehicle accident related issues," there is probably a fifty (50%) percent chance of surgery in the next ten years and plaintiff may need additional injections or a spinal cord stimulator, at a cost of $10,000.00 to $30,000.00, for pain.

Considering this testimony and the evidence in the record, we find that the jury's award of $176,000.00 for future medical expenses is amply supported by the record and does not constitute an abuse of discretion.[3] Likewise, on review, we are unable to find that the future medical expenses should be increased to at least $300,000.00, as plaintiff contends.

These assignments of error lack merit.

Loss of Future Wages

Defendants next contend that the award of $275,000.00 for future lost wages should be reversed for lack of evidence as there was no evidence from a vocational rehabilitation specialist or an economist. Plaintiff counters that the amount awarded for future lost wages should be increased to $1,125,000.00.

[3]We note that plaintiff was thirty-nine (39) years old at the time of the trial.

At the time of this accident, plaintiff was working as a juvenile detective, earning approximately $27,000.00 per year according to her tax returns. Approximately one month after the accident, Dr. Gervais took plaintiff off of all work duties. Later, he also ordered plaintiff to undergo a functional capacity examination. The functional capacity exam showed that plaintiff had considerable weakness in her left-hand and a limited ability to return to work, with restrictions that include no prolonged sitting and no lifting. At the time of the trial, plaintiff was receiving disability payments and food stamps.[4]

In order to obtain an award for impaired earning capacity (or future loss of wages) and for future medical expenses, a claimant must present medical evidence which at least indicates there could be a residual disability casually related to the accident. Bize v Boyer, 408 So.2d 1309, 1311-12 (La. 1982). We find that plaintiff satisfied this burden of proof as Dr. Gervais testified that plaintiff's neck, back, and arm will slowly decline in the future. He further stated that it is difficult for plaintiff to sit for any prolonged period of time, and that as a result, it is hard for her to maintain a job. Notably, defendant did not offer any contradictory evidence.

Moreover, it is well-established that awards for loss of income are speculative by nature and cannot be calculated with mathematical certainty. Therefore, the trial court necessarily must have much discretion in fixing lost wage awards. Nielsen v. Northbank Towing, Inc., 1999-1118 (La. App. 1st Cir. 7/13/00), 768 So.2d 145, 163, writ denied, 2000-2423 (La. 11/3/00), 773 So.2d 149. Given plaintiff's age, her past earnings, and the uncontradicted testimony regarding her physical limitations, we are unable to find that the jury abused its discretion in awarding plaintiff $275,000.00 for loss of future wages. Thus, we

[4]The evidence introduced into the record included plaintiff's functional capacity exam and her application for disability benefits that was completed by Dr. Gervais.

reject the defendants contentions on appeal that the award should be set aside as excessive and unwarranted. However, we also find that plaintiff's request to increase the award to $1,125,000.00 is not warranted.

These assignments of error also lack merit.

General Damage Award

On appeal, plaintiff asserts three additional assignments of error concerning the amount awarded for general damages. Plaintiff contends that: 1) the awards of $92,000.00 for past pain and suffering and $50,000.00 for future pain and suffering should be increased to $366,000.00 and $200,000.00, respectively; 2) the awards of $10,000.00 for past mental anguish and $5,000.00 in future mental anguish should be increased to a total amount of $300,000.00; and 3) an appropriate amount should be awarded for loss of enjoyment of life.

The trier of fact is accorded much discretion in fixing general damage awards. LSA-C.C. art. 2324.1; Cheramie v. Horst, 93–1168 (La. App. 1st Cir. 5/20/94), 637 So.2d 720, 723. The discretion vested in the trier of fact is great, even vast, so that an appellate court should rarely disturb an award of general damages. Youn v. Maritime Overseas Corp., 623 So.2d 1257, 1261 (La. 1993), cert. denied, 510 U.S. 1114, 114 S.Ct. 1059, 127 L.Ed.2d 379 (1994). General damages are those which are inherently speculative in nature and cannot be fixed with mathematical certainty, including damages for pain and suffering. Wainwright v. Fontenot, 2000–0492 (La. 10/17/00), 774 So.2d 70, 74. The role of an appellate court in reviewing a general damage award is not to decide what it considers to be an appropriate award, but rather, to review the exercise of discretion by the trier of fact. Bouquet v.Wal–Mart Stores, Inc., 2008–0309 (La. 4/4/08), 979 So.2d 456, 459.

In the instant case, the jury herein heard two days of testimony and was also able to review extensive evidence that was introduced into the record, including

plaintiff's lengthy medical records. Based on our review of this testimony and evidence, we are unable to say that the jury abused its discretion in its general damage award. As such, we need not look to prior awards, as suggested by plaintiff. Only after finding that the award constitutes an abuse of discretion is a resort to prior awards appropriate and then only for the purpose of determining the highest or lowest point which is reasonably within that discretion. Youn, 623 So.2d at 1260 (citing Coco v. Winston Industries, Inc., 341 So.2d 332 (La. 1976)).

Accordingly, we reject as meritless these assignments of error by the plainitff.

CONCLUSION

For the above and foregoing reasons, the April 29, 2013 judgment of the trial court is hereby affirmed. Costs of this appeal are assessed equally against plaintiff and defendants.

AFFIRMED.