

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 CA 1427

VANDI McMURRY, INDIVIDUALLY, AND ON BEHALF OF
HER MINOR CHILD, JAYDEN McMURRY

VERSUS

JAMES COMMANDER AND LOUISIANA FARM BUREAU
CASUALTY INSURANCE COMPANY

Judgment Rendered: APR 24 2015

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APPEALED FROM THE TWENTY-FIRST JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF LIVINGSTON
STATE OF LOUISIANA
DOCKET NUMBER 140,492, DIVISION "D"

HONORABLE M. DOUGLAS HUGHES, JUDGE

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BEFORE: McDONALD, CRAIN, AND HOLDRIDGE, JJ.

McDONALD, J.

In this appeal arising from a motor vehicle accident, Vandi McMurry appeals a judgment awarding her a \$25,000 lump sum in special and general damages against James Commander and Louisiana Farm Bureau Casualty Insurance Company.¹ Ms. McMurry assigns error to the trial court's award of a lump sum and contends the award should be higher.

The factfinder is afforded much discretion in assessing the facts and rendering a damage award, because it is in the best position to evaluate witness credibility and see the evidence firsthand. See LSA-C.C. art. 2324.1. A damage award should rarely be disturbed on appeal. **O'Connor v. Litchfield**, 03-0397 (La. App. 1 Cir. 12/31/03), 864 So.2d 234, 247, writ not considered, 04-0655 (La. 5/7/04), 872 So.2d 1069. A lump sum judgment is presumed to award all items of damages claimed. **Bryan v. City of New Orleans**, 98-1263 (La. 1/20/99), 737 So.2d 696, 697-98; **O'Connor**, 864 So.2d at 247. Further, a trial court is not required to itemize the damages in its award and does not err in making a lump sum award. See **Gray v. Holiday Inns, Inc.**, 99-1292 (La. App. 1 Cir. 6/23/00) 762 So.2d 1172, 1176. After a thorough review of the record, we find the trial court did not abuse its discretion in this case. Ms. McMurry's testimony and her medical records presented inconsistent evidence as to the causal relation between the motor vehicle accident and her alleged injuries. At the end of the bench trial, the trial court specifically noted the inconsistent testimony, apparently concluded that Ms. McMurry lacked credibility, and then rendered its finding that a \$25,000 lump sum would adequately compensate her. Based on the record, we cannot say the trial court erred in refusing to award the full amount of medical expenses claimed nor in refusing to include a higher amount for general damages.

Because the trial court did not abuse its discretion, and because the issues involve no more than the application of well-settled rules to a recurring fact situation,

¹ The judgment also provided that plaintiff was in violation of LSA-R.S. 32:866, barring her recovery of the first \$15,000 of the amount awarded.

we affirm the trial court's judgment in accordance with Uniform Rules – Courts of Appeal, Rule 2-16.2(A)(2), (4), and (7). Costs of this appeal are assessed to Vandi McMurry.

AFFIRMED.