NOT DESIGNATED FOR PUBLICATION

WILFRED MONTEGUE	*	**NO. 2000-CA-0251**
VERSUS	*	**COURT OF APPEAL**
EDDIE CROCHET, ALLSTATE INSURANCE COMPANY AND STATE FARM MUTUAL AUTOMOBILE INSURANCE	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 96-7775, DIVISION "F-10"
Honorable Yada Magee, Judge
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JUDGE MAX N. TOBIAS JR.
* * * * * *

(Court composed of Judge Patricia Rivet Murray, Judge Dennis R. Bagneris, Sr., and Judge Max N. Tobias, Jr.)

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AFFIRMED

This matter arises from an automobile collision in which the plaintiff-appellant, Wilfred Montegue ("Montegue"), was broad-sided. The facts of the underlying accident are not at issue. The defendants-appellees, Eddie Crochet, his insurer, Allstate Insurance Company, and Montegue's underinsured/uninsured insurer, State Farm Mutual Automobile Insurance Company, stipulated to liability at trial. The only issues tried to the jury

were causation and damages. The jury reached a determination that Montegue was injured in the accident and placed the value of damages at $8,000.00. A judgment based upon the verdict was entered in favor of Montegue. Montegue moved for a new trial, judgment notwithstanding the verdict, and additur on grounds that the judgment amount was inadequate. Montegue appeals from the judgment and the trial court's denial of his motions. We affirm.

Before the factfinder's verdict may be reversed, a reviewing court must determine from the record whether a reasonable factual basis exists for the verdict and whether the verdict is manifestly erroneous or clearly wrong. *Touchard v. SLEMCO Elec. Foundation,* 99-3577 (La. 10/17/00), 769 So.2d 1200, 1204 (on rehearing); *Stobart v. State Through Dept. of Transp. and Development,*617 So.2d 880 (La. 1993). This Court's duty is not to determine whether other reasonable views of the evidence exist, even though we might have preferred to adopt another view were this Court sitting as the trier of fact. See, *Ambrose v. New Orleans Police Department Ambulance Service,* 93-3099 (La. 7/5/94), 639 So.2d 216, *Ferrell v. Fireman's Fund Ins. Co.,* 94-1252 (La. 2/20/95), 650 So.2d 742. Where more than one reasonable view of the evidence exists, the factfinder's choice must be upheld on appeal. This court previously has held:

> Where there are two permissible views of the evidence, the

> factfinder's choice between them cannot be manifestly erroneous or clearly wrong. Our initial review function is not to decide factual issues de novo. When findings are based on determinations regarding the credibility of witnesses, the manifest error—clearly wrong standard demands great deference to the trier of fact's findings. Where a factfinder's finding is based on its decision to credit the testimony of one of two or more witnesses, that finding can virtually never be manifestly erroneous or clearly wrong.

Jackson v. Palmer, 98-1856 (La.App. 4 Cir. 1/13/99), 727 So.2d 636, 639, citing *Rosell v. ESCO*, 549 So.2d 840, 844-45 (La. 1989).

Moreover, our Supreme Court has reiterated its position originally stated in *Virgil v. American Guarantee & Liability Ins. Co.,* 507 So.2d 825 (La. 1987), that deference is due to the trial court not only by virtue of the factfinder's ability to view the demeanor of witnesses, but also because of the great deference accorded to the trial court as factfinder in Louisiana's three-tiered court system. *Shephard v. Scheeler,* 96-1690, 96-1720 (La. 10/21/97), 701 So.2d 1308.

The standard for review of general damages is expressed in *Youn v. Maritime Overseas Corp.*, 623 So.2d 1257 (La. 1993), *cert. denied*, *Maritime Overseas Corp. v. Youn,* 510 U.S. 1114, 114 S.Ct. 1059, 127 L.Ed.2d 379 (1994):

> The standard for appellate review of general damage awards is difficult to express and is necessarily non-specific, and the requirement of an articulated basis for disturbing such awards gives little guidance as to what articulation suffices to justify modification of a generous or stingy award. Nevertheless, the theme that emerges [citations omitted] . . . is that the discretion vested in the trier of fact

> is "great", and even vast, so that an appellate court should rarely disturb an award of general damages. Reasonable persons frequently disagree about the measure of general damages in a particular case. It is only when the award is, in either direction, beyond that which a reasonable trier of fact could assess for the effects of the particular injury to the particular plaintiff under the particular circumstances that the appellate court should increase or reduce the award.

Id. at 1261.

Thus, the role of the appellate court in reviewing general damages 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. Only after reaching a determination of 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. *Coco v. Winston Industries, Inc.,* 341 So.2d 332 (La. 1976).

A personal injury plaintiff must prove by a preponderance of the evidence that there exists a causal relationship between his injury and the accident that caused the injury. The plaintiff must prove through medical testimony that it is more probable than not that his injuries were caused by the accident. *Maranto v. Goodyear Tire & Rubber Co.,* 94-2603 (La. 2/20/95), 650 So.2d 757. Montegue met that standard as reflected by the jury's answering "yes" to its first interrogatory:

> 1. Was Eddie Crochet the cause of any injuries sustained by Wilfred A. Monteque, Jr.?

Since Montegue allegedly sustained two injuries in the collision, we are left to reach our own deductions as to whether the jury found that both injuries or only one was caused by the accident. We find some direction in the jury's response of $8,000.00 to its second (and final) interrogatory and it is with regard to that response that Montegue takes exception:

> 2. What amount, if any, do you award Wilfred A. Montegue, Jr.
> in damages: $_____.

In reaching its determination of quantum, the jury weighed two days of testimony from Montegue, his treating physicians, and the IME doctor. It serves no purpose to detail all of the testimony of all of the witnesses. The medical testimony is consistent as to the likelihood that the accident caused Montegue's neck injury and that the neck injury fully resolved within 6 weeks. The testimony is also consistent in revealing that Montegue has a mildly herniated disk (as evidenced on MRI), which did not make itself evident until after the accident.

The jury heard evidence of the physically stressful nature of Montegue's job as a slot machine attendant at a casino. Thus, the issue was whether the plaintiff's lower back condition was the result of heavy lifting at work, the accident, or some combination of those factors. Sufficient competent medical evidence was presented to the jury to support any of

those views. Moreover, regardless of the cause of the back injury, Montegue's own physicians indicated that his symptoms, both objective and subjective, had ceased within 10 months of the date of the accident. Surgery was not recommended. Future pain was predicted to be intermittent and likely to be precipitated only by heavy lifting. The plaintiff claimed no loss of earning capacity and, in fact, has been promoted at his place of employment such that he is no longer required to do heavy lifting.

For this injury, the jury awarded a total of $8,000.00, which we calculate from the record in a light most favorable to the plaintiff as representing $3,374.00 in actual medical expenses plus approximately $150.00 for car rental expenses and $4,476.00 in general damages. We find no abuse of the jury's great and vast discretion given the apparent mildness of the plaintiff's injury. We have undertaken a review of recent general damage awards in the Fourth Circuit and have found a range of $5,000.00 to $42,500.00 for similar injuries. The jury's award is not significantly below the range cited above and is not manifestly erroneous or an abuse of discretion. By implication, the jury determined that Montegue's condition was primarily work related.

On the basis of the foregoing, we find no abuse of discretion either by the jury in reaching its verdict, or by the trial judge in making that verdict

the final judgment of the court and by denying the motions for new trial, judgment notwithstanding the verdict, and additur.

AFFIRMED.