

**DONSHEKIA MERCADEL**

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**NO. 2000-CA-0801**

**VERSUS**

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**COURT OF APPEAL**

**PATRICK CONAGHAN, CITY  
OF NEW ORLEANS AND  
INTERSTATE PROPERTIES,  
INC.**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 97-16791, DIVISION "E-9"  
HONORABLE GERALD P. FEDOROFF, JUDGE

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**JAMES F. MCKAY, III  
JUDGE**

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(Court composed of Judge Joan Bernard Armstrong, Judge Charles R. Jones,  
Judge James F. McKay, III)

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Attorneys for Defendant/Appellant

**AFFIRMED**

On September 24, 1996, Patrick Conaghan, a New Orleans Police Officer, was working a paid detail at an apartment complex owned by Interstate Properties, Inc. (Interstate) when he arrested Donshekia Mercadel on an outstanding warrant from Jefferson Parish. At the time of the arrest, the officers who coordinate the detail, Sergeants Mark Mornay and Michael Glasser, were also present. During the arrest, Ms. Mercadel was handcuffed behind her back and placed in the backseat of a police car. Ms. Mercadel maintains that she complained to Officer Conaghan as well as to Sergeants Mornay and Glasser that the handcuffs were too tight. They, however, took no action. Shortly thereafter, Orleans Levee Board Police Captain Eric Barton arrived on the scene. Ms. Mercadel also complained to him on two occasions about the handcuffs being too tight. After the second complaint, Captain Barton adjusted the handcuffs. Ms. Mercadel was then transported to Central Lockup where she again complained that the handcuffs were too tight and had caused her wrists to swell.

After her release later that same day, Ms. Mercadel reported to the emergency room at Charity Hospital. X-rays were taken of both wrists. The x-rays of the right wrist revealed no fracture, but the x-rays of the left wrist revealed a slight fracture of the scaphoid bone. Plaster casts, however, were placed over both forearms. Ms. Mercadel wore these casts for approximately four weeks and during this period of time was unable to take care of even her most basic needs.

On February 7, 1997, Dr. Wilmot Ploger, an expert in orthopedic medicine, began treating Ms. Mercadel for pain and numbness in both hands. Based upon his exam of Ms. Mercadel and her history, Dr. Ploger believed Ms. Mercadel to have carpal tunnel syndrome. A nerve conduction study confirmed this diagnosis as to the right wrist. In April of 1997, Dr. Ploger performed carpal tunnel surgery on the right wrist. By July of 1997, Ms. Mercadel reached maximum medical cure relative to the carpal tunnel surgery but she was left with a five percent (5%) permanent anatomic disability of the right wrist.

Ms. Mercadel filed suit against Officer Conaghan, the City of New Orleans, and Interstate Properties, seeking damages for her injuries. Prior to

trial, Ms. Mercadel settled her claim against Interstate. She proceeded to trial against Officer Conaghan and the City. The trial court rendered judgment in favor of the plaintiff and awarded her \$20,000 in damages. The trial court found that the plaintiff's injuries from the incident were plainly traumatic and were caused by the method by which the handcuffs were applied. However, the trial court found that plaintiff's carpal tunnel syndrome did not result from her being handcuffed but more likely than not was occupationally related. It is from this judgment that Ms. Mercadel now appeals.

There are two issues before this Court. The first is whether the trial court erred in disallowing the plaintiff to recover for her carpal tunnel injury and surgery. The second is whether the trial court erred in its award of general damages to the plaintiff.

In its reasons for judgment, the trial court found that the plaintiff's carpal tunnel syndrome was more likely than not occupationally induced. An appellate court may not set aside a trial court's or jury's findings of fact in the absence of manifest error or unless it is clearly wrong. Stobart v. State, Through DOTD, 617 So.2d 880 (La. 1993); Rosell v. ESCO, 549

So.2d 840 (La. 1989). In Mart v. Hill, 505 So.2d 1120 (La. 1987), the Supreme Court established the two-tier test for reversal on appellate review: (1) the appellate court must find from the record that a reasonable factual basis does not exist for the finding of the trial court, and (2) the appellate court must further determine that the record establishes that the finding is clearly wrong or manifestly erroneous. In the instant case, the trial court found that no matter how tightly the handcuffs were applied they would not have impinged on the median nerve. When we consider this finding coupled with the fact that Ms. Mercadel had worked as a cosmetologist, we find no error in the trial court's determining that the plaintiff's carpal tunnel syndrome was more likely than not occupationally related and not caused by the incident.

The plaintiff also appeals the trial court's award of general damages. Ms. Mercadel contends that the award was not high enough. The discretion vested in the trier of fact is "great" and even vast, so that an appellate court should rarely disturb an award on 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. Youn v. Maritime Overseas Corp., 623 So.2d 1257 (La. 1993). In the instant case, the trial court awarded Ms. Mercadel \$20,000 in general damages. Ms. Mercadel suffered a fractured wrist and had both of her forearms in casts for approximately four weeks during which time she could not even take care of her most basic needs. From the facts of this case, it looks as if the trial court based its award of general damages on the particular circumstances of this case. Accordingly, we find no error or abuse of discretion in the trial court's award of general damages to Ms. Mercadel.

For the foregoing reasons, the judgment of the trial court is affirmed.

**AFFIRMED**