

**DENZIL COLE AND SHERRY
COLE**

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NO. 2001-CA-2337

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COURT OF APPEAL

VERSUS

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FOURTH CIRCUIT

**NORTH AMERICAN FIRE
AND CASUALTY INSURANCE
COMPANY, METRY CAB
SERVICE, INC. AND JAMES
LAURENT**

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STATE OF LOUISIANA

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PLOTKIN, J. DISSENTS WITH WRITTEN REASONS:

Because I believe that the trial judge abused his vast discretion in setting damages by awarding Mr. Cole a total of \$35,000 in damages, I respectfully dissent from the majority decision affirming that award.

The record evidence in this case demonstrates clearly that the August 15, 1997, accident between Mr. Cole's vehicle and the taxicab driven by James Laurent was extremely minor. In fact, the only property damage related to that accident was \$22.63 in damages related to a scratch on the trailer hitch attached to Mr. Cole's vehicle; the taxicab suffered no damage whatsoever. Further, Mr. Cole's testimony concerning his personal injuries, which the trial court labeled "unimpressive" and "extremely colored by the dramatic change in his physical condition that resulted from the very severe accident of January 17, 1998," was in fact inconsistent and therefore suspect. Although Mr. Cole did seek medical treatment as a result of the accident, alleging injuries in his neck, shoulder, and wrists, nothing in the record supports an award in excess of the \$25,000 pre-trial settlement with Mr. Laurent and his insurer, especially when the record evidence of the two subsequent accidents is factored into the equation. Accordingly, I would reverse the trial court judgment awarding Mr. Cole \$10,000 against Canal Insurance Co., his uninsured motorist insurance carrier.