

**HASSAN ABDUL** \* **NO. 2003-CA-1986**  
**VERSUS** \* **COURT OF APPEAL**  
**JAMES ALBERT, RICHARD'S** \* **FOURTH CIRCUIT**  
**DISPOSAL, INC. AND** \* **STATE OF LOUISIANA**  
**UNDERWRITERS** \*  
**INSURANCE COMPANY** \*  
\* \* \* \* \*

APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 2001-19299, DIVISION "G-11"  
Honorable Robin M. Giarrusso, Judge  
\* \* \* \* \*  
**Charles R. Jones**  
**Judge**  
\* \* \* \* \*

(Court composed of Judge Charles R. Jones, Judge James F. McKay III, and Judge Dennis R. Bagneris Sr.)

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**AFFIRMED**

The Defendants/Appellants, Mr. James Albert (hereinafter referred to as Mr. Albert), Richard's Disposal, Incorporated and, its insurers, Underwriters Insurance Company, appeal the judgment of the district court granting the Plaintiff/Appellee, Mr. Hassan Abdul (hereinafter referred as to Mr. Abdul), monetary damages in the amount of \$239,000 (\$14,000 in past medical expenses, \$25,000 in future medical expenses, and \$200,000 in general damages). We affirm.

**Facts**

Mr. Abdul incurred a lumbar strain injury as a result of an automobile accident that occurred in January of 2001. The parties involved in the accident were Mr. Abdul and Mr. Albert, an agent of Richard's Disposal, Inc.

On or about January 15, 2001, at approximately 5:00 a.m., Mr. Abdul was proceeding westbound on Chef Menteur highway near Chantilly in his

2000 Toyota Camry. Mr. Albert was proceeding eastbound on Chef Menteur Highway in a dump truck, owned by Richard's Disposal Incorporated. Suddenly, Mr. Albert lost control of his vehicle, traversed the median, and turned into Mr. Abdul's lane of travel, which resulted in a collision.

### **Procedural History**

A Petition for Damages was filed in the Civil District Court for the Parish of Orleans by Mr. Abdul against Mr. Albert, Richard's Disposal Incorporated, Mr. Albert's employer, and Underwriters Insurance Company. A jury trial was held on March 18-19, 2003, to consider the question of damages only. Judgment was rendered in favor of Mr. Abdul for monetary damages in the amount of \$239,000. Mr. Albert, Richard's Disposal, Inc., and Underwriters Insurance Company, filed Motions for Judgment Notwithstanding the Verdict, Remittitur, and New Trial. After denial of the Motions in the district court, the appellants filed this suspensive appeal.

### **Argument**

Mr. Albert asserts four assignments of error. He first asserts that the district court erred by finding that all pain and suffering that arose

subsequent to Mr. Abdul's accident were necessary consequences of the accident. Secondly, he asserts that the district court manifestly erred by failing to instruct the jury that the presumption of causation may be broken by the absence of a seamless sequence of events. He further asserts, in his third assignment of error, that the district court abused its discretion by awarding future medical damages based solely on speculation. In his fourth and final assignment of error, Mr. Albert asserts that the district court abused its discretion by awarding excessive general damages.

The standard of review for findings of fact is manifest error. To determine whether the district court manifestly erred, there is a two-part test to be used for reversal of the factfinder's determinations: 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 (manifestly erroneous). Parish National Bank v. Ott, 841 So.2d 749, 753 (La.2003). In effect, the appellate court must determine that, from the record as a whole, the factfinder's conclusion was a reasonable one. Id. Since the trier of fact is better able to observe the mannerisms and demeanors of witnesses, their determinations and inferences should not be disturbed on review, even if they feel their inferences are just as reasonable. Id. at 754.

The reviewing court must always keep in mind that “if the trial court or jury’s findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse, even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Id. (citing Stobart v. State Through DOTD, 617 So.2d 880 (La.1993)). When there are two permissible views of the evidence, the trier of facts determinations cannot be manifestly erroneous. Housley v. Cerise, 579 So.2d 973, 976 (La.1991). “However, if documents or objective evidence so contradict the witness’ story, or the story itself is so internally inconsistent or implausible on its face, that a reasonable fact finder would not credit the witness’ story, the court of appeal may well find manifest error even in a finding purportedly based upon a credible determination.” Id.

In his first assignment of error, Mr. Albert argues that the district court erred by finding that Mr. Abdul clearly demonstrated that all of his pain and suffering was a direct result of the accident and the resulting injury of the accident. Mr. Albert asserts that the accident was not the cause-in-fact of Mr. Abdul’s injury, since Mr. Abdul was not “disabled” as required by the plain language of the presumption of causation. Mr. Albert further argues that Mr. Abdul could have mitigated his damages by following the directions of his treating physicians and by properly taking his

medication. In support of his assertions, Mr. Albert cites Warner v. City of New Orleans, 694 So.2d 1231 (La.App. 4 Cir. 1997), wherein we stated, “a plaintiff is not entitled to a presumption that all pain and suffering that arise subsequent to an injury are the necessary consequences of that injury. A seamless sequence of events is required before the presumption of causation applies.”

Alternatively, Mr. Abdul argues that the jury came to a reasonable conclusion that all of his pain and suffering, which arose subsequent to the automobile accident in question, were necessary consequences of the injury. Mr. Abdul argues that the trier of fact was best equipped at the time the case was heard to evaluate the credibility of the appellee/plaintiff. Mr. Abdul further argues that the jury was able to hear all questioning and subsequent testimony, view all witnesses (including Mr. Abdul), and from there, make a reasonable determination on the merits of the case. Mr. Abdul states that, “the Appellants have failed to show manifest error.”

In the case at bar, we find that the district court was justified in its determination that Mr. Abdul was injured in the accident. From the evidence presented, a reasonable fact finder could credit Mr. Abdul’s testimony regarding the development of his injury as true, or discredit his

testimony as false. Further, there was no evidence presented in the district court to contradict Mr. Abdul's testimony, or discredit his assertions.

Accordingly, the factual determinations of the district court should not be disturbed, and we find that this assignment of error is without merit.

In his second assignment of error, Mr. Albert asserts that the district court manifestly erred by failing to instruct the jury that the presumption of causation is broken in the absence of a seamless sequence of events. Mr. Albert argues that the district court misstated applicable law when charging the jury. Mr. Albert further asserts that by instructing the jury that Mr. Abdul was entitled to a presumption of causation as long as there was a "reasonable possibility of causal connection," the jury charge not only misstated applicable law, but did so egregiously. In accordance with Warner, supra, Mr. Albert argues that "the presumption of causation of a personal injury applies only where there is a seamless sequence of events. When the chain of events is broken, there is no presumption."

Conversely, Mr. Abdul argues that Mr. Albert misapplied Warner to the instant case. Mr. Abdul asserts that Warner is distinguished from the instant case in that Warner was a manifest error case, in which there was a bench trial and the finder of fact made a credibility determination in which the appellate court found no manifest error.

However, Mr. Abdul argues in this case, the finder of fact found a causal link between the accident and Mr. Abdul's lumbar injury. Mr. Abdul further argues that the district court did not egregiously misstate the law, because the Louisiana Supreme Court in Dabog v. Deris, 625 So.2d 492, 494 (La.1993), formulated the jury charge given to the jury by the district court.

In Dabog, the Court stated, "a claimant's disability is presumed to have resulted from an accident, if before the accident the injured person was in good health, but commencing with the accident, the symptoms of the disabling condition appear and continuously manifest themselves afterwards, providing that the medical evidence shows there to be a reasonable possibility of causal connection between the accident and the disabling condition." Id. at 494. Although Dabog requires a seamless sequence of events before the presumption of causation applies, whether the chain of events is unbroken is a question of material fact to be determined by the fact finder, subject to the standard of review of manifest error. Warner v. City of New Orleans, 694 So.2d 1231, 1234 (La.App. 4 Cir.1997). Thus, causation may be proved, but not by the presumption alone. It is a fact intensive process. Id.

In the case at bar, the jury was able to obtain and evaluate all evidence presented during trial. Since causation is a fact intensive inquiry, it is up to



the fact finder to determine whether the chain of events is unbroken. According to the record, and absent medical evidence to the contrary, Mr. Abdul was in good health prior to the automobile accident. Symptoms of the lumbar strain that Mr. Abdul complains of continually manifested themselves after the accident. Also, the evidence presented during trial revealed a 'reasonable' possibility of causal connection between the accident and the lumbar strain. Therefore, the district court did not err in failing to instruct the jury that the presumption of causation may be broken by the absence of a seamless sequence of events.

In his third assignment of error, Mr. Albert asserts that the district court abused its discretion in awarding future medical damages based solely on speculation. Mr. Albert argues that future medical expenses should not be predicated on past expenses because Mr. Abdul may not have incurred \$13,391.50 in past medical expenses had he taken his doctor's advice. Mr. Abdul argues the award of \$25,000 for future medical damages is excessive because neither physician who testified in the district court on behalf of Mr. Abdul, could give specifics as to what future medical services would entail or how much it would cost for these services.

Mr. Albert further asserts that the expense sheet entered into evidence by Mr. Abdul, describing the costs of varying medical procedures, was

irrelevant because of contradicting testimony by Dr. Bradley Bartholomew, a certified neurosurgeon who testified on behalf of Mr. Abdul. Mr. Albert also asserts that it would be unreasonable to predict the cost of future chiropractic care by Dr. Mark Walker, who testified in the district court on behalf of Mr. Abdul, based on past-incurred medical expenses of \$11,729. Neither expert made mention of how long, how often, or if Mr. Abdul would need anything more than palliative chiropractic treatment.

Mr. Abdul argues that the proper standard to determine whether a plaintiff is entitled to future medical expenses is proof by a preponderance of the evidence that the future medical expenses will be medically necessary, as set forth in Hoskins v. Plaquemines Parish Government, 703 So.2d 207, 211. Mr. Abdul also cites Stiles v. K-Mart Corporation, 597 So.2d 1012 (La. 1992), in which the Louisiana Supreme Court stated, “when the record establishes that future medical expenses will be necessary and inevitable, the 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, if the court can determine from evidence of past medical expenses and other evidence a minimum amount that reasonable minds could not disagree will be required.” Since the evidence presented set out the probable cost both of surgery and continued treatment by Dr. Walker, Mr. Abdul contends that

there was sufficient evidence submitted to the district court for the jury to properly conclude that he would be in need of future medical expenses.

More recently, in Duncan et al v. Kansas City Southern Railway Co. et al, 773 So.2d 670, 685 (La. 2001), the criteria to be used by the district court to determine whether to award future medical damages was set forth by the Louisiana Supreme Court. The court stated that, “future medical damages must be established with some degree of certainty. Awards will not be made in the absence of medical testimony that they are indicated and setting out their probable cost.” Id. at 685.

In the present case, when asked by Mr. Abdul’s counsel whether it was “more likely than not that Mr. Abdul will have to have future medical treatment”, Dr. Walker responded by saying “yes”. When asked whether or not he believed, to a reasonable degree of medical certainty, Mr. Abdul will need future medical care because of the accident of January 15 of 2001, Dr. Bartholomew responded by stating, “I do believe he’s going to continue to require symptomatic relief, whether it’s with Dr. Walker or some other therapist, or possibly even a future procedure.” We find that the record supports the necessity of future medical expenses although there is no exact monetary amount. The testimony alone sufficiently establishes that Mr. Abdul’s condition will continue without abatement, that the treatment

merely provides a symptomatic relief, and that Mr. Abdul needs ongoing medical attention. We conclude that the \$25,000 awarded to Mr. Abdul for future medical expenses is within reason.

In his final assignment of error, Mr. Albert also asserts that the district court abused its discretion in awarding excessive general damages. He argues that the award of \$200,000 in general damages, in favor of Mr. Abdul, 'shocks the conscience', as Mr. Abdul's life and life-style were not affected by the accident. Mr. Albert further asserts that, although the accident "shook him (Mr. Abdul) up" for a few days, Mr. Abdul's testimony made no mention of any lingering emotional affects from the accident, nor was there any evidence that he ever experienced acute or severe pain. In addition, the medical testimony supported the fact that the injury was resolving itself normally before Mr. Abdul injured himself in further incidents. Mr. Albert further argues that the spinal degeneration found during the examination of Mr. Abdul was due to the normal aging process, and not the automobile accident in question.

On the contrary, Mr. Abdul argues that, due to the accident, he suffered and continues to suffer from back pain that has affected every aspect of his life. Mr. Abdul argues that the jury heard and believed the testimony of his treating doctors rather than the consultation made at the

behest of Mr. Albert. Mr. Abdul further argues that the jury agreed with Dr. Bartholomew that the accident caused Mr. Abdul's pain. Dr. Bartholomew stated, "In layman's terms, it's bad enough that I didn't want to operate on him, because I didn't think any operation I do would get rid of his pain. There were just too many levels involved."

It is well settled that general damages may not be granted, or fixed, with 'pecuniary exactitude'. General damages are calculated by examining "mental or physical pain or suffering, inconvenience, the loss of intellectual gratification or physical enjoyment, or other losses of life or life-style which cannot be definitely measured in monetary terms." Duncan at 682 (citing Keeth v. Dept. of Pub. Safety & Transp., 618 So.2d 1154, 1160 (La.App. 2 Cir.1993)). The Louisiana Civil Code Article 2324.1 allows that vast discretion is given to the trier of fact when awarding general damages. 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 decrease the award. Duncan at 682. In other words, the appellate court may amend general damages when they are so excessive such that it would "shock the conscience" of a reasonable person.

In the present case, Mr. Abdul incurred a lumbar strain after colliding

with Mr. Albert. Mr. Abdul continued to work for the dry cleaning service, which included expulsion of large amounts of energy and manual labor; thus, enduring large amounts of pain. Mr. Abdul complained of pain for more than one year and was also treated by a general physician, chiropractor, and neurosurgeon for that period of time. Mr. Abdul has, in regard to his injury, incurred many expenses, expended a substantial amount of time, and has incurred tremendous pain. Thus, we find that the district court's award of \$200,000 in general damages does not "shock the conscience" of a reasonable person, and affirmed.

### **Decree**

For the reasons stated herein and after review of the record before us, we find that the district court did not commit manifest error nor was clearly wrong in its determination that Mr. Abdul sustained injury in this accident, or in the charge to the jury. We further find that the record supports the award for future medical expenses and that the award for general damages was not excessive.

**AFFIRMED**