STATE OF MICHIGAN

COURT OF APPEALS

MONTRESSIA SMITH and ROBERT SMITH,

Plaintiffs-Appellants,

v

KEN ARTHUR MUMY and FEA MANAGEMENT, INC.,

Defendants-Appellees.

UNPUBLISHED
December 20, 1996

No. 176453
Oakland County
LC No. 92-437707-NI

Before: Doctoroff, C.J., and Corrigan and R.J. Danhof,* JJ.

PER CURIAM.

Following a jury trial, plaintiff Montressia Smith was awarded $11,110.50 and plaintiff Robert Smith $5,000.00. Plaintiffs' post-trial motion for judgment notwithstanding the verdict (JNOV) and/or new trial was denied. Plaintiffs now appeal as of right. We affirm.

Plaintiffs brought this negligence action after a truck driven by defendant Ken Arthur Mumy, and owned by defendant FEA Management, Inc., struck a vehicle in which plaintiff Montressia Smith was riding as passenger. Montressia Smith sought both economic damages for excess work loss and noneconomic damages for serious impairment of a body function. Robert Smith sought damages for loss of the services, society, companionship and sexual relationship with plaintiff. The jury found that Montressia Smith sustained excess work loss damages in the amount of $11,110.50, but did not suffer a serious impairment of a body function. The jury also found that Robert Smith sustained damages of $2,500 for loss of services and $2,500 for loss of consortium. Plaintiffs' motion for JNOV and/or new trial on the ground that the jury verdicts were against the great weight of the evidence was denied.

Plaintiffs argue that the trial court erred in denying their motion for JNOV and/or a new trial. Plaintiffs claim that JNOV or a new trial should have been granted because the jury's determination that Montressia Smith did not suffer a serious impairment of a body function is inconsistent and against the

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* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

great weight of the evidence. Plaintiffs similarly contend that the amount of damages awarded to them by the jury are inconsistent and against the great weight of the evidence. We disagree.

When deciding a motion for JNOV, the trial court must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party and determine whether the facts presented preclude judgment for the nonmoving party as a matter of law. If the evidence is such that reasonable minds could differ, the question is for the jury and JNOV is improper. *McLemore v Detroit Receiving Hospital*, 196 Mich App 391, 395; 493 NW2d 441 (1992). JNOV is improper when the trial court is faced with an inconsistent verdict. *Beasley v Washington*, 169 Mich App 650, 658-659; 427 NW2d 177 (1988). Rather, where a verdict in a civil case is inconsistent and contradictory, the remedy is to set it aside and grant a new trial. *Payton v Detroit*, 211 Mich App 375, 397; 536 NW2d 233 (1995). It is fundamental that every attempt must be made to harmonize a jury's verdicts. *Beasley*, *supra* at 657. Only where verdicts are so logically and legally inconsistent that they cannot be reconciled will they be set aside. *Id*.

The question whether a verdict is against the great weight of the evidence generally involves issues of credibility or circumstantial evidence. *In Re Robinson*, 180 Mich App 454, 463-464; 447 NW2d 765 (1989). A jury's verdict should not be set aside if there is competent evidence to support it. *Domako v Rowe*, 184 Mich App 137, 144; 457 NW2d 107 (1990), aff'd 438 Mich 347 (1991). A trial court's determination that a verdict is not against the great weight of the evidence is entitled to substantial deference by the appellate court, and the trial court's decision will not be reversed absent an abuse of discretion. *Bordeaux v Celotex Corp*, 203 Mich App 158, 170; 511 NW2d 899 (1993); *Arrington v Detroit Osteopathic Hospital Corp (On Remand)*, 196 Mich App 544, 560; 493 NW2d 492 (1992).

The no-fault act, MCL 500.3101 *et seq*.; MSA 24.13101 *et seq*., abolishes tort liability arising from the ownership, maintenance, or use of a motor vehicle except, in relevant part, as to damages for (1) noneconomic loss where the injured person suffers death, serious impairment of a body function, or permanent serious disfigurement, and (2) economic damages for allowable expenses, work loss, and survivor's loss as defined in sections 3107 to 3110 in excess of the daily, monthly, and 3-year limitations contained in those sections. MCL 500.3135(2); MSA 24.13101(2). Damages for work loss in excess of the daily, monthly, and three-year limitations are recoverable in tort without regard to whether the injured person suffered death, serious impairment of a body function, or permanent serious disfigurement. *Ouellette v Kenealy*, 424 Mich 83, 85-86; 378 NW2d 470 (1985). Thus, under the no-fault act, an injured person may sue the negligent tortfeasor for excess economic loss and, if the threshold of injury is met, for non-economic loss. *Auto Club Ins Ass'n v Hill*, 431 Mich 449, 460; 430 NW2d 636 (1988).

In this case, Montressia Smith, who was in her fifties, held two full-time jobs before the accident, one at a VA Hospital and the other as a psychiatric nurse at Psychiatric Programs Associates (PPA). In January 1990, approximately three months before the automobile accident, Montressia injured her back in a fall at the VA Hospital and was unable to return to work. She received physical therapy for approximately six weeks, and then underwent surgery on her lower back in March 1990.

Montressia anticipated returning to work sometime in April or May, 1990. Before she returned to work, however, she was involved in the automobile accident with defendant Mumy on April 9, 1990.

After the accident, Montressia complained of pain and discomfort in her back and legs. She initially treated with her regular physician, Dr. Obianwu, but, when the pain did not subside, began seeing a pain specialist, Dr. Awan. Montressia returned to her job at the VA Hospital, part-time in September 1990, and then full-time in November 1990, but did not return to her job at PPA, allegedly because of restrictions from the accident. Following the accident, Montressia received work loss benefits from her no-fault insurer, pursuant to MCL 500.3107(1)(b); MSA 24.13107(1)(b), at a rate of $2,808 a month, for the period beginning in April 1990. At trial, she sought additional economic damages for work loss in excess of the statutory amount. After consideration of the amount of work loss benefits that Montressia Smith received from her no-fault insurer, plaintiffs contend that based on the salary Montressia received when she was working two jobs, compared with the salary she received from one job after she returned to work following the accident, her total compensable damages for lost wages were $115,308.00.[1] Plaintiffs contend that the actual amount awarded by the jury, $11,110.50, is inadequate, inconsistent and against the great weight of the evidence. We disagree.

First, as a legal matter, because economic damages for excess work loss are recoverable without regard to whether the threshold of injury for recovery of noneconomic damages is met, *Ouellette, supra*, the jury here could consistently find that Montressia Smith was entitled to damages for excess economic loss, and at the same time find that she was not entitled to damages for noneconomic loss. Second, as a factual matter, we find that the jury's verdict with regard to the amount of economic damages is not inconsistent or against the great weight of the evidence.

Defendants' expert, Dr. Donald Austin, chief of neurosurgery at Hutzel Hospital, testified that Montressia Smith had degenerative arthritis in her spine, particularly in the area where she had surgery. He noted that degenerative arthritis is part of the aging process and develops slowly and gradually over a number of years. He indicated, however, that she had no objective abnormalities that could be attributed to the April 9, 1990, automobile accident. Dr. Austin also stated that Montressia showed no evidence that she had developed another ruptured disk as a result of the automobile accident. At best, Dr. Austin could only attribute some temporary aggravation of Montressia's symptoms from the prior surgery, to the accident. Dr. Austin also testified that Montressia had no abnormal objective findings on her exam to indicate that she had any continuing need for medical treatment or any continuing disability with respect to her back or legs. Dr. Austin additionally testified that he could not place any restrictions on plaintiff from performing her job at the VA Hospital and saw "no reason why she couldn't go back and try her job as a psychiatric nurse."

Dr. Austin's testimony created genuine issues of material fact on matters involving the nature, extent, and duration of Montressia Smith's injuries attributable to the automobile accident, whether Montressia was physically able to work a second job as a psychiatric nurse, and, if she was not, whether her inability was the result of injuries she received in the automobile accident or some other, unrelated factor, such as her age, arthritis, or previous injury and surgery from the earlier fall. Thus, the evidence was such that reasonable minds could differ with regard to the amount of economic work loss

damages attributable to the accident and the jury award was not inconsistent or against the great weight of the evidence.

The jury's verdict that Montressia Smith did not suffer a serious impairment of body function likewise was not inconsistent or against the great weight of the evidence. As noted previously, Dr. Austin testified that Montressia had no objective abnormalities that could be attributed to the April 9, 1990, automobile accident, nor had any abnormal objective findings to indicate that she had any continuing need for medical treatment or any continuing disability with respect to her back or legs. The jury was entitled to weigh his credibility and determine that Montressia did not sustain a serious impairment of a body function. *DiFranco v Pickard*, 427 Mich 32; 398 NW2d 896 (1986).

Plaintiffs further contend that the jury award of $5,000 to Robert Smith for loss of service and consortium is inadequate and against the great weight of the evidence. Loss of consortium includes loss of conjugal fellowship, companionship, services, and all other incidents of the marriage relationship. *Berryman v K Mart Corp*, 193 Mich App 88, 94; 483 NW 2d 642 (1992).

At trial, Robert Smith testified that his relationship with Montressia started "going downhill" after Montressia fell in January 1990, but then improved once Montressia returned to work at the VA Hospital. Viewed in conjunction with the jury's determination that Montressia did not suffer a serious impairment of a body function, the $5,000 amount awarded to Robert Smith is not inadequate or against the great weight of the evidence. Therefore, the trial court's refusal to grant a new trial was not an abuse of discretion, nor was the denial of JNOV improper.

Plaintiffs also argue that the trial court erred in denying their request for additur. The proper consideration in granting or denying additur is whether the damage award is supported by the evidence. *Arnold v Darczy*, 208 Mich App 638, 640; 528 NW2d 199 (1995). An appellate court must accord due deference to the trial court's decision regarding the grant or denial of additur and should reverse the trial court's decision only if an abuse of discretion is shown. *Arnold, supra* at 639. Here, as discussed above, the jury's damage awards were supported by the evidence. Therefore, the trial court did not abuse its discretion in denying plaintiffs' request for additur.

Plaintiffs also argue that they were denied a fair trial by statements made by defense counsel during closing argument. However, plaintiffs did not preserve this issue by objecting to the statements at trial, nor did they raise this argument in their motion for a new trial. Moreover, plaintiffs did not raise this argument in their statement of the questions presented. Therefore, review of this issue is inappropriate. *Auto Club Ins Ass'n v Lozanis*, 215 App 415, 421; 546 NW2d 648 (1996); *Hammack v Lutheran Social Services*, 211 Mich App 1, 7; 535 NW2d 215 (1995).

Affirmed.

/s/ Martin M. Doctoroff
/s/ Maura D. Corrigan
/s/ Robert J. Danhof

[1] Plaintiffs do not explain how they arrived at this figure.