

STATE OF MICHIGAN  
COURT OF APPEALS

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RODNEY SORTOR,

Plaintiff-Appellant,

v

STANLEY EDWARD POLKOWSKI,

Defendant-Appellee.

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UNPUBLISHED

January 9, 1998

No. 198427

Monroe Circuit Court

LC No. 94-002879 NI

Before: MacKenzie, P.J., and Hood and Hoekstra, JJ.

MEMORANDUM.

In this automobile negligence action, in which liability was conceded, the jury awarded plaintiff damages for past pain and suffering but none for future pain and suffering. Plaintiff timely moved for new trial or, in the alternative, additur, which was denied by the trial judge in a bench opinion, noting that the question of future damages depended very much on the credibility of the witnesses, as to which there was conflicting evidence. The court noted that plaintiff's credibility was very much in doubt on this score, and that it was not at all surprised by the jury's verdict, nor did it feel that it had good reason to set aside that verdict or disturb it in any way.

In this appeal as of right, plaintiff contends that the trial court abused its discretion in denying his motion for new trial or additur. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

Where, as here, the evidence is conflicting, or to the extent it is uncontradicted, addresses points as to which plaintiff bears the burden of proof, the controlling principle is well established. As the Court said in *Cebulak v Lewis*, 320 Mich 710, 718-719; 30 NW2d 21; 5 ALR 2d 186 (1948), quoting *Woodin v Durfee*, 46 Mich 424; 9 NW 457 (1881):

“The most of these facts the claimant insists are entirely undisputed on the evidence; and she claims that they establish beyond question the liability of Staley on the bond, and that the judge was at liberty to so instruct the jury. But the difficulty is that the facts were not conceded or beyond dispute: There was evidence of them which probably ought to have satisfied any one to whom it was addressed; but evidence is for

the jury, and the trial judge cannot draw conclusions for them. It is said that on some points there was no evidence of a conflicting nature; but that does not aid the claimant. A jury may disbelieve the most positive evidence, even when it stands uncontradicted; and the judge cannot take from them their right of judgment.”

The trial court did not abuse its discretion on this record in refusing to set aside the verdict as against the great weight of the evidence or in otherwise denying plaintiff’s motion for new trial or additur.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Harold Hood

/s/ Joel P. Hoekstra