STATE OF MICHIGAN

COURT OF APPEALS

BENJAMIN MORRIS and DEBRA MORRIS,

Plaintiffs-Appellees,

v

JACKSON COUNTY ROAD COMMISSION,

Defendant-Appellant,

and

JACKIE SUE HORSCH,

Defendant.

UNPUBLISHED
February 3, 1998

No. 201297
Jackson Circuit Court
LC No. 93-066838-NI

Before: Neff, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's January 16, 1996, judgment pursuant to jury verdict. We remand.

Plaintiffs filed a complaint against Jackie Horsch and Horsch's employer, defendant Jackson County Road Commission, alleging that Horsch negligently struck Benjamin Morris while under the employ of and driving a vehicle owned by defendant. Horsch was granted absolute immunity pursuant to MCL 691.1407; MSA 3.996(107) and the suit against her in her individual capacity was dismissed. The jury found Benjamin Morris and defendant to be comparatively negligent, assigning sixty-five percent of such negligence to Benjamin Morris. The jury awarded Benjamin $68,788.10 in damages and awarded Debra $10,000 for loss of society, companionship and consortium.

I

Defendant contends first that the judgment awarding Benjamin future economic damages is against the great weight of the evidence.

The record reveals that the jury's award of economic damages was not against the great weight of the evidence and the trial court did not abuse its discretion in denying defendant's motion for a new trial. *Severn v Sperry Corp*, 212 Mich App 406, 412; 538 NW2d 50 (1995). The jury awarded plaintiff Benjamin Morris total economic damages of $32,841.40. Although testimony was presented that Benjamin's injuries were caused by alcoholism and may have been present before the October 3, 1991, accident, plaintiffs provided expert testimony that Benjamin incurred brain injuries in the accident which caused the symptoms Benjamin complained of and inhibited Benjamin's ability to work. Benjamin testified that he did not maintain steady work, but managed to earn approximately $7 per hour on a fairly regular basis, plus extra money from selling cars. Based on Benjamin's testimony regarding his earnings and plaintiffs' expert testimony regarding the effect of the October 3, 1991, accident on Benjamin and his ability to work, the award of future economic damages is not against the great weight of the evidence.

II

Next, defendant argues that the trial court erred by failing to reduce plaintiffs' future economic damage award by the amount of future social security payments. We agree.

The collateral source rule prevents a plaintiff from recovering the same expenses from both a defendant and a collateral source. *Haberkorn v Chrysler Corp*, 210 Mich App 354, 374; 533 NW2d 373 (1995). The specific provisions of the collateral source rule are found in MCL 600.6303; MSA 27A.6303. As we stated in *Haberkorn*:

> According to subsection 1, the statute applies to damages for past and future economic loss. According to subsection 2, before judgment is entered, the trial court must determine what expenses have been paid or will be paid by a collateral source. These collateral payments are then applied to reduce the verdict's economic damage component . . . . [*Id*. at 374-375.]

According to the specific language of the statute, social security benefits are a collateral source. MCL 600.6303(4); MSA 27A.6303(4). Subsection five provides that the collateral source benefits shall not be considered "payable or receivable" unless there is a previously existing contractual or statutory obligation to pay the benefits. MCL 600.6303(5); MSA 27A.6303(5). A previously existing statutory obligation exists where, at the time of the collateral source hearing, a plaintiff has been certified by the Social Security Administration as disabled and is therefore entitled to receive social security benefits. *Id*. at 376.

We remand to the trial court for a determination, in accordance with MCL 600.6303(5); MSA 27A.6303(5), whether there is a "previously existing contractual or statutory obligation" by the Social Security Administration to pay benefits to Benjamin. The court must then determine the amount of Benjamin's expenses which are payable by the Social Security Administration. If it is determined that such future benefits are owed to Benjamin, his future economic award must be reduced by such amount.

III

Finally, defendant contends that the trial court erred in refusing to reduce plaintiff Debra Morris' $10,000 award for loss of consortium by the percent of plaintiff Benjamin Morris' comparative negligence.

"Because Michigan has established an approach of pure comparative negligence, this Court feels it is consistent that the plaintiff wife's recovery take into consideration the source of her loss which also would include the negligence of her husband . . . ." *Danaher v Partridge Creek Country Club*, 116 Mich App 305, 321; 323 NW2d 376 (1982). It would be unfair for the defendant "to bear the entire burden of the wife's loss of consortium when there is a jury finding that the plaintiff husband was partially responsible for his own injuries, which then also resulted in a loss to his wife." *Id*. Plaintiff wife "should not be expected to be able to recover full costs from defendants when it is clear that her co-plaintiff is also partially responsible for the loss of consortium that she has suffered." *Id*. at 321-322. "[F]or some derivative claims, such as loss of consortium, the derivative claimant's recovery is reduced by the amount of the comparative negligence of the principal." *Rodriguez v Solar of Michigan, Inc*, 191 Mich App 483, 491 n 3; 478 NW2d 914 (1991).

The trial court erred in failing to reduce Debra's loss of consortium award by the percent of Benjamin's comparative negligence. Debra's award of $10,000 for loss of consortium should be reduced by sixty-five percent.

Remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ David H. Sawyer
/s/ William B. Murphy