STATE OF MICHIGAN

COURT OF APPEALS

RONALD H. SEELY and DORIS E. SEELY,

Plaintiffs-Appellees,

v

SHAFER-RACHELLE POST NO. 6782, VETERANS OF FOREIGN WARS OF THE U.S.,

Defendant-Appellant.

UNPUBLISHED
May 8, 1998

No. 194718
Macomb Circuit Court
LC No. 90-005335 NZ

Before: Whitbeck, P.J., and MacKenzie and Murphy, JJ.

PER CURIAM.

In this negligence action, defendant appeals as of right from an order denying its motion for new trial or remittitur and from a judgment in the amount of $134,371.06 entered upon a jury's verdict in favor of plaintiffs. We affirm.

On March 24, 1989, plaintiffs went to defendant's hall for lunch. As plaintiff Ronald Seely (plaintiff) sat down at the couple's table, the power door of a ceiling-mounted air cleaner fell and struck him on the head. Falling ceiling tiles hit Doris Seely, causing facial bruises and swelling. Plaintiffs theorized that defendant's maintenance man failed to properly secure the power door after cleaning the unit's air filter two or three days earlier.

After the accident, plaintiff suffered continuous neck and back pain, loss of mobility, and sleep discomfort. Because he was unable to lift heavy items or perform various movements, he had to have assistance performing certain tasks at his job as a mechanic. Although he planned to retire in 1994 with twenty-five years of service, plaintiff's neck and back condition led him to retire three years earlier, in 1991. At least two doctors testified that plaintiff's injuries are permanent.

The jury awarded plaintiff $80,000 for wage loss. On appeal, defendant first argues that the trial court should have granted its motion for new trial or remittitur because that award was excessive and unsupported by the evidence. We find no abuse of discretion. *Palenkas v Beaumont Hospital*, 432 Mich 527, 533; 443 NW2d 354 (1989). Defendant is correct that plaintiff did not take time off work and thereby lose any pay as a result of his injury. However, there was ample evidence that

plaintiff intended to work until 1994 and that he suffered three years' lost wages because his neck and back condition – caused by the accident – forced him to retire in 1991. Because the jury's award was well supported by the evidence, the trial court properly denied defendant's motion for new trial or remittitur. *Id.*

Defendant next contends that the trial court erred in allowing plaintiff's expert witness, John Salatka, to offer an opinion as to why the air cleaner power door fell. According to defendant, because Salatka did not inspect the air cleaner until June 1992, his observations were too remote and his opinion was mere speculation. We reject this claim. Certainly, in some circumstances an inspection three years after an accident may be too remote to provide accurate testimony. In this case, however, there was no evidence that the air cleaner unit was changed since the date of the accident. More importantly, the substance of Salatka's testimony was such that it would not be affected by the delayed inspection. Salatka testified that the knob holding the door in place was adequate if it was properly fastened, but if the door was not properly fastened, it could eventually fall due to vibration from the air cleaning unit. Under these circumstances, we find no abuse of discretion in allowing the testimony. *Phillips v Mazda Motor Mfg (USA) Corp*, 204 Mich App 401, 412; 516 NW2d 502 (1994).

Defendant also contends that the trial court erred by refusing to reduce the jury's award of lost wages by the amount of funds plaintiff received from a collateral source, his pension. See MCL 600.6303(a); MSA 27A.6303(1). We find no error. Under the statute, a defendant must bring forth evidence that the plaintiff is entitled to funds from a collateral source "after a verdict for the plaintiff and before a judgment is entered on the verdict." Here, contrary to the requirements of the statute, defendant did not request a reduction of the jury's award until several weeks after the court had issued a judgment on the verdict. In the absence of a timely request, the trial court properly declined to consider the matter.

Defendant's final claim is that it is entitled to a new trial because plaintiffs' attorney's remark during closing argument, that there had been no other falling air cleaner doors in the sixteen years since the unit was installed, was an improper reference to a subsequent remedial measure. MRE 407. We disagree. The remark does not imply that remedial measures were taken. Rather, read in context, the remark was merely an argument that the inference to be drawn from the isolated fall is that defendant's employee failed to properly fasten the door. The trial court did not err in refusing to order a new trial.

Affirmed.

/s/ William C. Whitbeck
/s/ Barbara B. MacKenzie
/s/ William B. Murphy