2015 IL App (1st) 142735-U

FOURTH DIVISION
August 27, 2015

No. 1-14-2735

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SANDRA M. MITSIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 11 L 66083
	)	
SAMUEL T. MULLINS,	)	Honorable
	)	Robert Clifford,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Judgment affirmed. Jury award of $2,000 was not against manifest weight of evidence.

¶ 2 Plaintiff Sandra Mitsis filed a personal injury complaint against defendant Samuel Mullins stemming from a car accident. Following a jury trial, plaintiff was awarded $2,000 in damages. Plaintiff appeals, contending that the jury disregarded proven elements of damages and that the verdict was against the manifest weight of the evidence. We disagree and affirm the trial court's denial of plaintiff's motion for a new trial on damages.

¶ 3 Plaintiff filed a personal injury complaint against defendant for injuries she sustained on January 11, 2010, following a car accident on the Southwest Highway exit ramp near the intersection of 123rd Street in Palos Park, Illinois. There was no dispute at trial concerning the underlying facts of the car accident. Plaintiff's car was stopped at an intersection. She moved her car forward to see around a barrier into traffic and then stopped a second time. Defendant, whose car was behind plaintiff, moved his car forward and, not noticing that she had stopped a second time, rear-ended plaintiff's car.

¶ 4 In his opening statement, defendant made it clear that he was not denying his fault in the collision. Instead, defendant's opening statement focused on the fact that plaintiff's request for damages was excessive and not based on credible evidence.

¶ 5 Plaintiff first called defendant to testify. Defendant testified that, on January 11, 2010, he exited off the Southwest Highway at 123rd Street, and plaintiff's car was stopped at the stop sign at the end of the ramp. Defendant stopped behind that vehicle. There was a lot of traffic, and as he looked toward the left for a gap in traffic, defendant proceeded to move forward and struck plaintiff's vehicle.

¶ 6 Next, Dr. Anis Mekhail's evidence deposition testimony was read to the jury. Dr. Mekhail, who specializes in orthopedic surgery, first saw plaintiff on January 29, 2010. Plaintiff was referred to him by her primary-care doctor, Dr. James Tess. Plaintiff told Dr. Mekhail that she had neck pain radiating down the left shoulder with tingling in the thumb, and that the condition started on January 11, 2010, after she was involved in a car accident. Plaintiff advised Dr. Mekhail that she had a pre-existing problem with her left shoulder for which she had recently received physical therapy.

¶ 7 Dr. Mekhail testified that he examined plaintiff, who indicated that she had some pain with range of motion of her neck as well as pain with the rotation of her shoulder. Plaintiff told him that her pain was 8 out of 10, and that 50% of her pain was in the neck and 50% in the arm. She also indicated that she was not sleeping well because of the pain. The doctor ordered an X-ray, which showed that plaintiff had degenerative changes, but that was a pre-existing condition, along with the shoulder problem. But he testified that plaintiff had identified a new condition which could have been caused by the car accident—the neck pain radiating down the shoulder. He recommended an MRI and gave plaintiff a low dose of cortisone to decrease the inflammation.

¶ 8 Dr. Mekhail next saw plaintiff on February 15, 2010. At that time, plaintiff indicated that she was still having neck pain going down the left arm. The MRI showed some pinching on the nerve on the left side. Though plaintiff had a pre-existing condition, the trauma of the accident could have made it symptomatic. He ordered physical therapy for plaintiff, which she received.

¶ 9 Dr. Mekhail testified that the next and last time he saw plaintiff was on April 1, 2010. Plaintiff told him that her neck pain was a 6 out of 10 and improved 20% with physical therapy. Plaintiff had a reduced range of motion in turning her head to the left. The doctor did not know if plaintiff's decreased range in motion was a result of the accident because it could have been due to her pre-existing injury, and it was not possible for him to know whether plaintiff's report of pain was valid because "I can't tell if someone is in pain."

¶ 10 Dr. Mekhail told plaintiff that the next step for pain management was a possible injection. He did not know if she received an injection, because she did not follow up with him. He recalled that plaintiff was somewhat reluctant to have an epidural steroid injection.

¶ 11 Dr. Mekhail testified that the charges for the emergency room treatment, his services, physical therapy and diagnostic testing, which totaled $9,118.12, were reasonable and necessary to treat plaintiff's injuries. The doctor testified that the pain in the neck and the limited range of motion "could happen as a result of this kind of injury" sustained in a rear-end car accident.

¶ 12 On cross-examination, Dr. Mekhail testified that all of the problems found on the MRI were pre-existing, degenerative changes. He agreed that plaintiff told him that her shoulder pain was new and was not aggravation of a pre-existing injury.

¶ 13 Plaintiff then took the stand. At 12:30 p.m. on January 11, 2010, she was on the exit ramp of Southwest Highway at 123rd Street and stopped at the stop sign. She pulled a little forward to see around a barrier there, and when she stopped, she was struck from behind. It was rather forceful, and she went forward with the impact and jerked backwards. She felt pain on the left side of her neck that she had not felt before. She refused medical treatment at the scene of the accident and drove herself to the Palos Community Hospital, where she worked as a secretary. A few hours later, she went to the emergency room. An X-ray was taken, and she was released. She felt sharp pains in her neck and down her arm. She had difficulty sleeping due to the neck pain and could not lift things.

¶ 14 Plaintiff testified that Dr. Tess, her primary-care physician, referred her to Dr. Mekhail, who ordered an MRI and prescribed physical therapy. The physical therapy relieved some of the pain, but her neck pain continued. Dr. Mekhail later suggested that she have a spinal injection for the pain, but she did not want to have that done because she did not feel comfortable with having a needle in her spine. She testified that she still had an irritation in the neck, a light burning sensation, which was discomforting and still interrupted her sleep. Despite these problems, she

continued to work at her job as a secretary for a hospital. She did not see any medical providers about her neck after her last visit with Dr. Mekhail. She never went to a pain clinic for spinal injections. She continued to engage in a home-exercise therapy program.

¶ 15 Plaintiff testified that, two weeks before the car accident, she received a cortisone injection for her left shoulder problem and underwent physical therapy. Plaintiff did not recall telling anyone, at the time of the accident, that the pain was not so severe as to require her to visit a pain clinic. However, according to her deposition, she stated that she did not go to a pain clinic because the pain was not so severe.

¶ 16 In closing argument, plaintiff asked the jury to award $9,118.12 for medical expenses; $18,000 for her pain and suffering; and $9,000 for disability experienced. Defendant focused on the credibility of plaintiff's claimed damages, noting that she refused treatment at the scene, that she suffered no cuts, bruises or abrasions, and that she went to work for a few hours before visiting the emergency room. He argued that Dr. Mekhail's testimony was inconsistent in terms of whether the injury sustained was the result of an aggravation of a pre-existing injury or a new, independent injury. Defendant argued that plaintiff visited the doctor only three times and went to physical therapy. Defendant noted that plaintiff stopped treatment in 2010 for her alleged injury but claimed to still be in pain nearly four years later.

¶ 17 The jury returned a verdict in favor of plaintiff and awarded her $2,000 for reasonable medical expenses and nothing for pain and suffering or disability. Plaintiff then moved for a new trial on damages, arguing that that the jury only awarded a portion of the medical damages, and that the verdict on the issues of medical expenses and pain and suffering were against the manifest weight of the evidence. The trial court denied plaintiff's motion.

¶ 18 Plaintiff now appeals. Plaintiff contends that the jury's verdict of $2,000 in damages disregarded plaintiff's proven medical damages of $9,118.12, and its non-award for pain and suffering was against the manifest weight of evidence.

¶ 19 "The question of damages is peculiarly one of fact." *Control Solutions, LLC v. Elecsys*, 2014 IL App (2d) 120251, ¶ 55. Thus, in a jury trial, it is the function of the jury to weigh contradictory evidence, to judge the credibility of the witnesses and to draw the ultimate conclusion as to damages. *Id*. Courts of review are reluctant to interfere with a jury's discretion in assessing damages and will overturn an award only if it is against the manifest weight of the evidence. *Profit Management Development Inc. v. Jacobsin, Brandvik & Anderson Ltd.*, 309 Ill. App. 3d 289, 306 (1999). A reviewing court will not upset a jury's award of damages unless a proven element of damages was ignored, the verdict resulted from prejudice, or the award bears no reasonable relationship to the loss suffered. *Control Solutions*, 2014 IL App (2d) 120251, ¶ 55**.**

¶ 20 The jury awarded no damages for pain and suffering. We do not find that non-award to be against the manifest weight of the evidence. Defendant's entire argument was that plaintiff was not injured as badly as she claimed and that her injuries, if they existed at all, stemmed from her pre-existing degenerative condition. There was evidence at trial to support defendant's position. Dr. Mekhail testified, for example, that it was difficult to tell whether plaintiff's decreased range of motion resulted from the accident or from her pre-existing injury—she had, after all, received physical therapy previously and had received a cortisone injection for the shoulder pain only two weeks before the accident. The doctor also testified that he had no way of knowing if plaintiff truly suffered from pain as she claimed.

¶ 21 Plaintiff's own conduct supported defendant's theory as well. Plaintiff refused medical treatment on the scene and went straight to work after the accident, visiting the emergency room a few hours later. She also never followed up with spinal injections at the pain clinic.

¶ 22 To be sure, plaintiff had responses to all of this evidence, including that the pain was markedly worse post-accident, and that she did not follow up with the pain clinic because she feared having a needle injected into her spine. But the question is not whether plaintiff's case was stronger than defendant's on this issue. It is not our function to re-weigh the evidence. The jury could have reasonably awarded damages for pain and suffering given the evidence presented, but it just as reasonably could have determined either that plaintiff did not suffer pain, or that any pain she did suffer was not the result of the car accident.

¶ 23 Contrary to plaintiff's contention, defendant was not required to present medical testimony to discredit the testimony of plaintiff's witnesses. *Moran v. Erickson*, 297 Ill. App. 3d 342, 353 (1998). Rather, a verdict can be sustained in defendant's favor, where, as here, defendant successfully discredits the testimony of plaintiff's witnesses. *Id*. at 353. Defendant did so in his cross-examination, which revealed that plaintiff had a cortisone shot in her left shoulder two weeks before the accident, underwent physical therapy for her left shoulder recently, did not undergo treatment after April 1, 2010, refused medical treatment on the scene, and did not suffer such pain in her neck as to require her to go to the pain clinic for spinal injections. The jury was not required to accept plaintiff's subjective claims of pain, even if the treating physician believed her. *Id*. at 354; see also *Melecosky v. McCarthy Brothers Co.*, 115 Ill.2d 209, 216-17 (1986) (jury must decide weight to be given opinion of medical expert that is based on patient's subjective statements to expert).

¶ 24 In addition, when the pain and suffering element of plaintiff's evidence is weak or contested, as here, the jury may merely reject plaintiff's pain and suffering evidence as unpersuasive or decide that a separate pain and suffering award is unjustified. *Snover v. McGraw*, 172 Ill. 2d 438, 445-46 (1996); *Moran*, 297 Ill. App. 3d at 354-56. We find no reason to disturb the jury's non-award of damages for pain and suffering. *Profit Management Development Inc.*, 309 Ill. App. 3d at 306.

¶ 25 Regarding medical expenses, plaintiff says the award of $2,000 was patently insufficient because her medical expenses were proven, by uncontroverted testimony, to be $9,118.12, and thus the award did not rationally relate to her proof. Plaintiff notes that her emergency-room visit alone cost $1,864.35.

¶ 26 For the reasons stated above, however, we do not agree that these medical expenses were uncontroverted. If the jury believed that plaintiff suffered no pain traceable to the car accident, then likewise it could have concluded that much of plaintiff's subsequent medical treatment was not compensable. One could reasonably speculate that the $2,000 award was intended to cover what was arguably the most reasonable (and closest in time) expense, that of the emergency-room visit only hours after the collision. Or maybe the jury considered the pre-existing condition to be the predominant cause of her medical expenses and thus heavily discounted the overall cost of medical expenses down to $2,000. We cannot know this with certainty, of course, but neither will we isolate the jury's finding on pain and suffering from its finding on medical expenses. If the jury found that plaintiff suffered no pain as a result of the car accident, as it clearly did, then its decision to award less than the full complement of medical expenses was not so arbitrary and

unreasonable that we are compelled to overturn it. The jury's award of $2,000 for medical expenses was not against the manifest weight of the evidence.

¶ 27 It might seem odd that the jury awarded any medical expenses at all, given its rejection of the pain-and-suffering claim. But we find no inconsistency in the damages award here. Our supreme court has held that a jury may reject a pain-and-suffering award while awarding damages for medical expenses in the appropriate case, quoting with approval a decision from the appellate court:

> " 'Where the pain and suffering element of plaintiff's evidence is weak or contested, as is often the case in a rear-end automobile accident case, the jury may merely reject plaintiff's pain and suffering evidence as unpersuasive or decide that a separate pain and suffering award is unjustified. Simultaneously, the jury may decide to compensate the plaintiff for her out-of-pocket medical expenses, including pain-related medical expenses. In the proper case, there is no inherent inconsistency in such an award.' " *Snover*, 172 Ill. 2d at 445-46 (quoting *Buttita v. Stenberg*, 246 Ill.App.3d 1012, 1024 (1993)).

¶ 28 Because the jury could have reasonably determined that plaintiff's injuries and pain were insubstantial or not related to the car accident, we believe that the jury award of $2,000 for medical expenses and nothing for pain and suffering was supported by the evidence.

¶ 29 Plaintiff cites *Faleti v. Tracy*, 233 Ill. App. 3d 1025 (1992), in support of her contention that the jury should have awarded her the total medical expenses that she incurred. In *Faleti*, 233 Ill. App. 3d at 1030, the plaintiffs were hospitalized, received physical therapy, and lost wages from missing work. *Id*. at 1030. The defendants contested the need for hospitalization, but there was no dispute as to other medical expenses or the lost wages. The jury returned verdicts for medical expenses and lost wages that were below these uncontested amounts. We reversed and remanded for a new trial on damages. *Id*. Here, in contrast, as we have explained above,

plaintiff's damages were sharply disputed, largely due to the pre-existing injury. *Faleti* does not assist plaintiff.

¶ 30 Plaintiff also cites *Duncan v. Peoria Yellow Checker Cab Corp.*, 45 Ill. App. 3d 653 (1977), *Giardino v. Fierke*, 160 Ill. App. 3d 648 (1987), and *Blevins v. Inland Steel Co*, 180 Ill. App. 3d 286 (1989), in support of her contention that she should have been awarded the total medical expenses that she incurred. In *Duncan*, plaintiff was injured from a car collision and hospitalized for 14 days due to a soft-tissue injury and muscle spasms. One week later, she was again hospitalized but the doctor could not find anything objectively wrong other than plaintiff's subjective complaints. *Id*. at 654. The reviewing court stated that it could not find any justification in the jury not awarding the full damages incurred for the first hospitalization, where the legitimacy of the hospitalization and its cost were never challenged. *Duncan*, 45 Ill. App. 3d at 655.

¶ 31 In *Giardino*, 160 Ill. App. 3d at 652, plaintiff was injured in a car accident and was hospitalized for nine days. The amount and cost of the hospital stay were undisputed, nor did defendant challenge the fact that plaintiff endured pain and suffering during that hospitalization. The jury awarded less than the total of medical damages and did not award anything for pain or suffering, which we held was manifestly inadequate and ignored proven elements of damages. *Id*.

¶ 32 In *Blevins*, 180 Ill. App. 3d at 288, plaintiff, an ironworker, was injured when he stepped off a bus into a pothole and twisted his knee; he underwent surgery which required him to be in a cast. Plaintiff had permanent damage which prevented him from working for eight months, and when he returned to work, he could only perform light duties. *Id*. at 289. The medical expenses

and lost wages alone were nearly $26,000, but the plaintiff was only awarded $15,550. *Id*. This court noted that the medical expenses were not challenged at trial, and the defendant did not deny that plaintiff endured pain and suffering or permanent injury but, instead, focused on the lost wages claim. We found that the lost wages were proven and that the award did not comport with the largely uncontradicted evidence. *Id*. at 291.

¶ 33 None of these cases affect our decision. Unlike those cases, here defendant directly challenged the veracity of the injuries and pointed to evidence that plaintiff had a pre-existing injury. We find no error in the jury's damages award. We affirm the trial court's denial of the motion for a new trial on damages.

¶ 34 Affirmed.