2013 IL App (1st) 122396-U

FOURTH DIVISION
November 7, 2013

No. 1-12-2396

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GAY WATKINS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 09 L 3256
	)	
NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION d/b/a METRA/ METROPOLITAN RAIL,	)	The Honorable
	)	Susan Ruscitti Grussel,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Howse and Justice Lavin concurred in the judgment.

ORDER

HELD: Trial court did not err in denying plaintiff's motions for directed verdict and judgment *n.o.v.* where evidence supported jury's general verdict, as well as its finding on special interrogatory, regarding the issues of defendant's negligence and plaintiff's comparative fault; in addition, trial court did not err in denying plaintiff's motion *in limine* regarding the admission of certain records that were irrelevant to the issues at trial and constituted double hearsay.

¶ 1 Plaintiff-appellant Gay Watkins (plaintiff) filed a complaint at law against defendant-appellee Northeast Illinois Regional Commuter Railroad Corporation d/b/a Metra/Metropolitan Rail (defendant) alleging personal injuries received while disembarking from one of defendant's commuter trains. Following trial, the jury returned a general verdict in favor of defendant and answered a special interrogatory finding plaintiff to be more than 50% at fault for her injuries; the trial court entered judgment on the verdict. Plaintiff moved the trial court for directed verdict and for judgment *n.o.v.*, but the trial court denied these motions. Plaintiff appeals, contending that the trial court erred in denying her motions and in excluding certain evidence at trial. She asks that we vacate the verdict against her and in favor of defendant, enter judgment in her favor and against defendant on liability, and remand this matter to the trial court for a hearing on damages. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 The incident at issue occurred in the early morning hours of August 22, 2008, following an outing during which plaintiff and approximately 25 friends went for a trolley ride, sight-seeing and dancing at several restaurants and bars in downtown Chicago. At about midnight, plaintiff and her friends boarded defendant's last train for the evening heading outbound to the suburbs. Plaintiff's scheduled stop was Elmwood Park.

¶ 4 Plaintiff testified at trial that when she boarded the train, she was in one of the front cars as it left Chicago. When the train reached the stop before hers, she went to the vestibule of her train car, but the train doors did not open. Therefore, plaintiff went to the next pair of train cars. There, she saw some of her friends from the outing and she opened the vestibule doors to say

goodbye to them. Plaintiff further testified that she was in the vestibule when the train stopped at her station; the train doors opened and she began to disembark when, suddenly, the doors closed on her and the train started to move. She alleged that, out of fear, she freed herself from the train doors and jumped to the platform below, sustaining injury.

¶ 5 Donna Wheeler, one of the participants of the outing, testified that, while she did not see plaintiff during the train ride, she did see her as plaintiff was leaving. Wheeler described that when the announcement was made that the Elmwood Park stop was approaching, plaintiff was saying goodbye to people and "not getting to the door" of the train. Wheeler stated that she was concerned that plaintiff was going to miss her stop and even voiced this concern to the person sitting next to her on the train. She eventually saw plaintiff "slipping through the [vestibule] door as the train was stopping," and then did not see her again.

¶ 6 Lynn McAteer, another participant from the outing, testified that when the announcement for the Elmwood Park stop was made, plaintiff entered the train car in which she was sitting to say goodbye to several people. She was not rushing to exit the train. Plaintiff went back into the vestibule, but the train doors were closed. Through the windows of the vestibule doors, McAteer could see plaintiff in the vestibule with her hand raised above her head "trying to get the door open" by "pulling feverishly at whatever was above her." Plaintiff was standing on the first or second step from the top of the stairs leading from the train to the platform. The train began to move, but plaintiff was still in the vestibule. McAteer surmised that the doors must have then opened, because plaintiff "was gone" and she did not see her anymore. McAteer further testified that while plaintiff was "continually trying to pull down" on what was above her head, she had a

"panicked" look on her face, an "I[-]am[-]not[-]going[-]to[-]get[-]off[-]this[-]train look." While observing the incident, McAteer believed that plaintiff was going to miss her stop.

¶ 7 Kerry May, plaintiff's friend who invited her on the outing, testified that she was sitting in the same car as plaintiff when they originally boarded the outbound train. May saw plaintiff leave the car to exit the train a few stops before her scheduled stop at Elmwood Park; plaintiff was not rushing. May further testified that, on the day after the incident, plaintiff told her that when she tried to disembark at her stop, she had difficulty finding an open train door. Plaintiff described to May that "she was trying to get out of the train when the train stopped and there were – every time she would go to a door, there would be no doors open *** meanwhile there's a lot of time going by."

¶ 8 Dr. Thaddeus Manczko testified that he examined plaintiff in the emergency room on the day after the incident. Dr. Manczko stated that plaintiff told him she had "[l]ost her footing and fell," and that she had "tripped getting off the Metra train at its stop."

¶ 9 Anthony Costa, the conductor in charge of the train at issue, stated that he was not an eyewitness to plaintiff's alleged injury and had no recollection of the night in question. However, he did testify at length regarding the Elmwood Park station and the safety protocol he and his crew always follow on the route taken that night, which he has worked hundreds of times. Costa noted that the Elmwood Park station is well lit, with lights on the platform and on nearby streets and light being reflected from the train and inner vestibules. The train at issue had three consecutive operational cars. Costa mans the doors in the westernmost car, his assistant mans the doors in the easternmost car, and the middle doors between them remain unmanned. For

safety reasons, Costa alone controls the doors on all three cars. Costa described that, after a train pulls into and stops at a station, including Elmwood Park, he and his assistant exit their manned doors, step onto the platform facing each other, and watch passengers disembark. Once all passengers are clear of the doors, Costa's assistant signals him that all is clear and reboards the train. Costa closes his assistant's doors as well as the middle doors, checking that the red indicator lights above these sets of doors extinguish, signaling that the doors are fully closed. Then, with only his doors open, Costa waits and looks down the platform to ensure all doors are clear and no other passengers are struggling to disembark. Once his doors are clear, Costa steps back on the train, standing in front of one side of his doors so the other side closes, continually checking the platform. At this point, he finally steps fully into the train, closes the other side of his doors, and signals to the engineer by twice sounding a buzzer in his car to indicate that the train is ready to be moved out of the station. The train engineer is not authorized to move the train until he receives this signal from Costa. Costa further testified that passengers should be within the vicinity of the vestibule as the train approaches their stop and that it is never acceptable for passengers to get caught in train doors during the disembarkation process.

¶ 10 Following the close of evidence, plaintiff moved for a directed verdict on both defendant's negligence and its affirmative defense of comparative fault, arguing that the only testimony regarding her injuries came from plaintiff herself and, as there was no contradicting evidence, there was nothing for the jury to consider regarding either one of these issues. The trial court denied the motion. The jury returned a general verdict in favor of defendant and against plaintiff and answered affirmatively a special interrogatory finding plaintiff's contributory

negligence to be more than 50% of the total proximate cause of her injuries. The trial court entered judgment accordingly in favor of defendant and against plaintiff. Thereafter, plaintiff filed a motion for judgment notwithstanding the verdict and a motion for a new trial. The trial court denied both of these motions.

¶ 11 ANALYSIS

¶ 12 Plaintiff's main contention on appeal is that the trial court erred in failing to grant her motion for directed verdict filed at the close of evidence and her motion for judgment *n.o.v.* filed at the close of trial. First, she argues that, since she was the sole witness to her injuries, her testimony established defendant's negligence as a matter of law. Second, she argues that defendant presented no evidence to show she deviated from any standard of care imposed on her which would constitute comparative fault. We disagree with both arguments.

¶ 13 A directed verdict or a judgment notwithstanding the verdict is to be entered only when all the evidence, viewed in the light most favorable to the nonmovant, so overwhelmingly favors the movant that no contrary verdict could stand based on the evidence. See *McClure v. Owens Corning Fiberglas Corp.*, 188 Ill. 2d 102, 132 (1999); accord *York v. Rush-Presbyterian-St. Luke's Medical Center*, 222 Ill. 2d 147, 178 (2006); *Maple v. Gustafson*, 151 Ill. 2d 445, 452 (1992); see also *Pedrick v. Peoria & Eastern Railroad Co.*, 37 Ill. 2d 494, 502 (1967). In deciding whether to grant such a judgment, the trial court may not reweigh the evidence and set aside the verdict simply because a jury could have drawn different conclusions or inferences from the evidence or because it feels other possible results may have been more reasonable. See *McClure*, 188 Ill. 2d at 132; *Pedrick*, 37 Ill. App. 3d at 504 (the right of the parties to have a

substantial factual dispute resolved by the jury should be "carefully preserve[d]"); accord *Maple*, 151 Ill. 2d at 452. Likewise, a reviewing court may not usurp the role of the jury and substitute its own judgment on factual questions fairly submitted, tried, and determined from the evidence. See *McClure*, 188 Ill. 2d at 132 (reviewing court cannot substitute own judgment on questions of fact and witness credibility, which remain solely within the province of the jury); *Maple*, 151 Ill. 2d at 452-53. Rather, the standard is a high one, and we review decisions on motions for directed verdict and judgment *n.o.v. de novo*. See *McClure*, 188 Ill. 2d at 132; accord *Balough v. Northeast Illinois Regional Commuter Railroad Corporation d/b/a Metra*, 409 Ill. App. 3d 750, 768 (2011).

¶ 14 Turning first to plaintiff's argument regarding defendant's negligence, she insists that, as a common carrier, there is a rebuttable presumption of negligence on defendant that, if raised by plaintiff's showing of an accident that occurred while she was a passenger upon an apparatus wholly under its control, shifts the burden to defendant to show the accident occurred due to a cause for which it is not responsible. From this, she argues that she raised the presumption via her testimony and that defendant did not present any evidence to refute it, thereby warranting a directed verdict in her favor. Upon our review, however, we find that plaintiff's argument misses the mark in several respects.

¶ 15 Plaintiff is correct that, as a common carrier, defendant is to exercise the highest degree of care consistent with the practical operation of its trains to protect its passengers, and that there is a rebuttable presumption of negligence against common carriers when a plaintiff is able to show that she was a passenger, an accident happened while the train was wholly within the

control of defendant and injury resulted. See *New v. Pace Suburban Bus Service*, 398 Ill. App. 3d 371, 379 (2010). However, no common carrier, not even defendant, is required to ensure the absolute safety of its passengers. See *New*, 398 Ill. App. 3d at 379. And, in direct contradiction to plaintiff's insistence, a presumption of negligence does not shift the burden of proof; it is not evidence, it does not take the place of established fact, and, once rebutted, it ceases to operate and the parties are left to prove their respective positions. See *In re Marriage of Nagel*, 133 Ill. App. 3d 498, 503 (1985) (citing *Franciscan Sisters Health Care Corp. v. Dean*, 95 Ill. 2d 452, 463 (1983)).

¶ 16 While plaintiff may have raised a presumption of negligence in this cause, her statement that defendant presented no evidence to rebut it wholly mischaracterizes the record. Contrary to both her argument and her description of the evidence presented at trial as contained in her brief, while she may have been the sole eyewitness to the exact moment of her injury, there was a great amount of evidence presented from varying sources providing the basis for a different inference with respect to what occurred in this cause to support the jury's verdict. First and foremost is the testimony of conductor Costa, who testified that, not only has he worked this particular train route through Elmwood Park hundreds of times, but that he always, without any deviation, follows the same safety protocol to ensure that no passenger gets caught between the train doors during disembarkation, as plaintiff alleged happened to her. Although Costa admitted he did not recall the night at issue, his testimony with respect to his habit of following the same safety protocol was clearly relevant to prove that what he did on that night was in conformity with that habit. See *Grewe v. West Washington County Unit District No. 10*, 303 Ill. App. 3d 299, 307

(1999) (evidence of habit or routine practice of organization is admissible as tending to prove that it was followed on the occasion in question, as established by opinion testimony of person with personal knowledge); *Small v. Prudential Life Insurance Co.*, 246 Ill. App. 3d 893, 897 (1993) (in absence of evidence to contrary, evidence of company's routine constitutes evidence that it followed that practice at time at issue). Accordingly, as he described, on the night in question, Costa and his assistant exited the train at Elmwood Park from the easternmost and westernmost cars, waited for passengers to disembark from all three sets of doors and looked up and down the platform before Costa's assistant reboarded the train. Costa then closed his assistant's and the middle doors, waited for the red indicator lights to extinguish signaling that those doors were fully closed, and again, this time with only his doors open, waited and looked down the platform to make sure no other passengers were struggling to disembark. Finally, Costa stepped back onto the train, checked the platform for a third time while closing one side of his door and then the other, and, once clear, signaled the engineer by sounding his buzzer to authorize him to move the train out of the station. Costa's clear and unrebutted testimony supported the conclusion that, on the night in question, defendant was not negligent but, rather, followed its safety protocols and that its train doors did not close on plaintiff during the disembarkation process while the train was stopped at Elmwood Park.

¶ 17 In addition to Costa's testimony is that of several passengers on the train who observed plaintiff and her actions on that evening's last outbound train, right before the alleged incident. Wheeler testified that, when the announcement was made that the train was approaching the Elmwood Park stop, plaintiff was saying goodbye to people and "not getting to the door" of the

train. While observing this, Wheeler was concerned that plaintiff did not have enough time to get to the train doors to properly exit and that she was going to miss her stop; Wheeler even voiced this concern to a fellow passenger. Corroborating Wheeler, McAteer testified that plaintiff entered her train car after the announcement was made that her stop was nearing and began saying goodbye to people instead of moving toward the exit. McAteer was sure plaintiff was going to miss her stop. McAteer saw plaintiff finally go back into the vestibule but, by this time, the train doors were closed. McAteer then watched plaintiff, with a panicked look on her face, reach up above her head and feverishly pull at what was above her in an effort to try and get the train doors to open. Plaintiff was still in the vestibule as the train started to move out of the station. Then, suddenly, plaintiff "was gone." Similarly, May testified that she spoke to plaintiff the day after the incident and plaintiff told her that, every time she went to a door of the train, none of them were open. Additionally, Dr. Manczko, who examined plaintiff on the day after the incident, testified that plaintiff told him not that the train doors closed on her but, rather, that she had tripped and fallen while getting off the train.

¶ 18 From all this, the jury could have certainly inferred that plaintiff was not injured by train doors closing on her pursuant to defendant's negligence, as she alleged, but, rather, because she chose to improperly exit this last train of the evening when its doors were already closed and the train had begun to move out of the station, thereby tripping and falling to the platform below.

¶ 19 Plaintiff additionally asserts that a directed a verdict should have been granted in her favor with respect to defendant's negligence because the jury answered the special interrogatory in the affirmative, finding her to be more than 50% at fault for her injuries. She claims that, by

doing so, the jury necessarily first found defendant was at fault and only then considered her comparative fault, but as there was no evidence to support any comparative fault, its finding was improper. While we believe this argument is better suited to support her second contention on review that the trial court erred in not granting her a directed verdict on the issue of defendant's affirmative defense of comparative fault, we will follow plaintiff's lead and address it here.

¶ 20 Despite the fact that we have just found, based on the testimony presented at trial, that plaintiff's insistence that there was no evidence of comparative fault is misplaced, we would further note that special interrogatories are only relevant to a cause when they conflict with the general verdict. That is, special interrogatories are used to test a general verdict against the jury's determination of an issue of fact. See *Balough*, 409 Ill. App. 3d at 768 (citing *Northern Trust Co. v. University of Chicago Hospitals and Clinics*, 355 Ill. App. 3d 230, 251 (2004)) (special interrogatory is proper when it relates to ultimate issue of fact and when an answer responsive thereto would be in conflict with some general verdict that could be returned); see also *Garcia v. Seneca Nursing Home*, 2011 IL App (1st) 103085, ¶ 36; accord *Blue v. Environmental Engineering, Inc.*, 215 Ill. 2d 78, 112 (2005). Thus, only when a jury answers a special interrogatory in a manner inconsistent with the general verdict will the special interrogatory take the place of that verdict. See *Balough*, 409 Ill. App. 3d at 768-69 (when special interrogatory is inconsistent with the general verdict, the former will control the latter); *Garcia*, 2011 IL App (1st) 103085, ¶ 36; accord *Blue*, 215 Ill. 2d at 112. Otherwise, the general verdict controls. See *Balough*, 409 Ill. App. 3d at 769 (quoting *Simmons v. Garces*, 198 Ill. 2d 541, 556 (2002)) (all reasonable presumptions are exercised in favor of general verdict and it will clearly control

unless it and special interrogatory are " 'clearly and absolutely irreconcilable' "); *Garcia*, 2011 IL App (1st) 103085, ¶ 36; accord *Blue*, 215 Ill. 2d at 112.

¶ 21 In the instant cause, contrary to any assertion by plaintiff, the special interrogatory was irrelevant. It was in no way inconsistent with the general verdict–both of the jury's findings on the special verdict and the general verdict went against plaintiff's favor, thereby making them consistent. Accordingly, there is no way the special interrogatory would control this case in any way. In addition, again, we have already discussed that there was a great amount of evidence presented at trial regarding plaintiff's actions right before the incident to support both, or either, the special and general verdicts, which held for defendant and against plaintiff. Accordingly, we find no basis for plaintiff's contention that her cause merited a directed verdict in her favor and against defendant on the issue of defendant's negligence.

¶ 22 Plaintiff's other main contention on appeal is that the trial court should have directed a verdict in her favor with respect to the issue of defendant's affirmative defense of comparative fault. She argues that, apart from a baseless theory that she was "rushing" to get off the train, defendant presented no proof of any comparative fault on her part since the evidence showed she was either standing in the vestibule or was entering the vestibule when it was time to exit the train. Again, however, we find plaintiff's contention to be meritless.

¶ 23 In the instant cause, while defendant had a duty as a common carrier to ensure plaintiff's safety as a passenger, plaintiff herself had a duty as well, namely to exercise care for her own safety as any reasonably prudent person would under the circumstances presented. See *Blacconeri v. Aguayo*, 132 Ill. App. 3d 984, 988 (1985). The issue of whether a plaintiff

exercised due care for her own safety is a question of fact for a jury, and the burden of proving oneself free from such negligence rests solely with the plaintiff. See *Blacconeri*, 132 Ill. App. 3d at 988. Thus, if the evidence shows that the plaintiff voluntarily exposed herself to a danger of which she was aware, this would support a claim of comparative negligence, since an ordinary prudent person would not knowingly place herself in a position of danger. See *Blacconeri*, 132 Ill. App. 3d at 989 (person has no right to knowingly expose self to danger and then recover damages for resulting injury that could have been prevented if she had chosen different path/ method or had exercised precaution).

¶ 24 Contrary to plaintiff's insistence, the evidence presented at trial did not conclusively show that she was standing in or entering the vestibule as the train came to the Elmwood Park stop. Again, plaintiff admitted that she knew this was the last train of the evening. Wheeler testified that, as the train approached the stop, plaintiff entered the train car in which she was sitting to say goodbye to several people instead of "getting to the door." McAteer corroborated Wheeler when she likewise testified that plaintiff entered the train car from the vestibule to say her goodbyes as the train began to approach the station and, by the time she went back into the vestibule, the train doors were closed. McAteer further testified that she was able to see plaintiff through the vestibule windows; she had a panicked look on her face and she began to pull feverishly at something over her head in an effort to get the train doors to open. McAteer confirmed that plaintiff was still in the vestibule as the train began to leave the station. Soon thereafter, the doors must have opened and plaintiff exited, as McAteer then lost sight of her in the vestibule and did not see her again. In addition to Wheeler and McAteer's testimony, May

stated that plaintiff admitted to her that, at the time she tried to exit the train, none of the doors were open. All this, combined with Costa's testimony regarding the procedures he followed that evening to ensure that the doors were closed and that no passengers were trying to disembark at Elmwood Park, supports the inference that plaintiff did not allow herself sufficient time to properly exit the train and, instead, put herself in danger by exiting in an improper manner once the doors were closed and the train was leaving the station rather than remaining onboard this last train of the evening. Therefore, the jury reasonably could have found, as it did, clear support from this evidence to conclude that defendant proved its affirmative defense of comparative fault on the part of plaintiff here, thus rendering a directed verdict in her favor improper.

¶ 25 Finally, plaintiff makes one last brief contention on appeal, focusing on a motion *in limine*. Plaintiff sought to introduce at trial a series of records prepared and kept by defendant in the last five years. Plaintiff alleged that these were accident report forms of "a dozen similar accidents where passengers got caught" in defendant's train doors while they were boarding or disembarking its trains (emphasis in original). The trial court denied plaintiff's motion explaining that, while the reports could be considered foundationally as business records, they nonetheless constituted inadmissible double hearsay. Citing several cases wherein accident reports were found to be admissible at trial, plaintiff insists that this was reversible error because these records were "critical in refuting" defendant's affirmative defense of comparative fault, thereby warranting a new trial. As with plaintiff's other contentions on appeal, we disagree.

¶ 26 A motion *in limine* invokes the trial court's inherent power to admit or exclude evidence at trial. See *Chicago Exhibitors Corp. v. Jeepers! Of Illinois, Inc.*, 376 Ill. App. 3d 599, 606

(2007); see also *Leonardi v. Loyola University of Chicago*, 168 Ill. 2d 83, 92 (1995). Evidence of prior accidents may be admissible to show a defendant's knowledge or notice regarding a particular danger; however, the crucial factor in this consideration is their reasonable similarity to the incident at issue. See *Newton v. Meissner*, 76 Ill. App. 3d 479, 492 (1979) (it must be determined whether the prior accident occurred under substantially similar conditions as the incident at issue); accord *Bachman v. General Motors Corp.*, 332 Ill. App. 3d 760, 785 (2002). The proponent of this evidence must lay a foundation of substantial similarity and, ultimately, the trial court's decision to admit or exclude such evidence on a motion *in limine* will not be reversed absent an abuse of discretion. See *Bachman*, 332 Ill. App. 3d at 786; see also *Leonardi*, 168 Ill. 2d at 92; *Chicago Exhibitors*, 376 Ill. App. 3d at 606.

¶ 27 We note for the record that the "accident reports" plaintiff sought to introduce cannot be characterized, as she stresses in her brief, as similar accidents where passengers got caught in train doors like she alleged happened to her. First, it is not clear that they even involved true accidents or occurrences. That is, these reports were not prepared by defendant after an investigation but, rather, were records kept by defendant's police service of calls made by people to report alleged incidents involving defendant's trains. Thus, they comprised only general summaries of statements made by third parties; the reports did not indicate whether the statements were substantiated or whether defendant was responsible for what, if anything, actually occurred. Also, the reports did not describe only incidents of passengers getting caught in train doors but, rather, incidents involving different circumstances and occurrences that were not like those plaintiff described in her testimony. In addition, as the trial court found, these

reports undeniably constituted double hearsay. Under this doctrine, these out-of-court statements made by nonwitness third parties contained in the reports could have been admitted if both levels of their hearsay concerns fell within an exception to the hearsay rule. See *Brooks Inns, Inc. v. S and R Hi-Fi and TV*, 249 Ill. App. 3d 1064, 1086 (1993); *Horace Mann Insurance Co. v. Brown*, 236 Ill. App. 3d 456, 461 (1992) (out-of-court statement contained in report constitutes double hearsay and, to be used as substantive evidence, both levels must fall within exception to hearsay rule). However, plaintiff, as the proponent of the evidence, never argued these and, thus, was unable to remedy these concerns. Therefore, based on the circumstances, including the uncertainties and dissimilarities accompanying the reports plaintiff sought to admit, we find no abuse of discretion in the trial court's decision to exclude these records.

¶ 28 We further note that the cases plaintiff relies on in her brief on appeal to support her statement that "every Illinois decision regarding the admissibility of [r]ailroad accident reports against the railroad has come down squarely [in favor of] their admissibility," are wholly distinguishable. This is because these cases involve reports concerning only the very incident at issue during trial and not, as here, of prior (and allegedly similar) accidents, and because these cases include admissions by the railroads themselves. For example, as plaintiff discusses, *Poltrock v. Chicago and North Western Transportation Co*., 151 Ill. App. 3d 250, 254-55 (1986), *Amos v. Norfolk and Western Railway Co*., 191 Ill. App. 637, 645 (1989), *Ficken v. Alton and Southern Railway Co.*, 255 Ill. App. 3d 1047, 1062-63 (1993), and *Lewis v. Baker*, 526 F.2d 470, 472 (2d Cir. 1975), all allowed the admission of reports prepared by the defendant railroads; however, each of these reports concerned the very incident at issue (not prior accidents) and all

were made by the defendant railroads themselves or their employees upon their own investigation.[1] In clear contrast, here, again, plaintiff sought the admission of unsubstantiated claims made by unknown third parties about events wholly unrelated to her own claim which may or may not have occurred to prove that defendant had notice or knowledge of doors closing on disembarking passengers. Because of this, we again find no error in the trial court's denial of her motion *in limine*.

¶ 29 Ultimately, due to the conflicting evidence presented at trial, which consisted of plaintiff's testimony on the one hand, and Wheeler, McAteer, May and Costa's testimony on the other, the instant cause revolved essentially around the issue of credibility, which was for the jury to determine. See, *e.g.*, *McClure*, 188 Ill. 2d at 132 (questions of fact and witness credibility remain solely within the province of the jury); *Maple*, 151 Ill. 2d at 452-53. When viewed in the light most favorable to defendant, as was required here under the applicable standard, it cannot be said that the evidence so overwhelmingly favored plaintiff that no contrary verdict could stand. Therefore, having been unable to meet this burden for the reasons discussed above, plaintiff's contentions that a directed verdict and/or judgment notwithstanding the verdict should have been entered in her favor cannot stand.

¶ 30 CONCLUSION

¶ 31 Accordingly, for all the foregoing reasons, we affirm the judgment of the trial court.

¶ 32 Affirmed.

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[1]Plaintiff cites one more case in this regard, *Kalalinick v. Knoll*, 97 Ill. App. 3d 660, 666 (1981). That case, however, does not involve the admissibility of an accident report but, rather, of an insurer's settlement memo and, thus, has no relevance to plaintiff's argument.