

IN THE COURT OF APPEALS OF IOWA

No. 6-389 / 05-1956
Filed August 9, 2006

DARBY LYNN BRINCKS,
Plaintiff-Appellant,

vs.

GLENS FALLS INSURANCE COMPANY,
Defendant-Appellee.

Appeal from the Iowa District Court for Carroll County, Gary McMinimee,
Judge.

Plaintiff-appellant, Darby Lynn Brincks, appeals following a jury trial and the dismissal of her suit seeking recovery of underinsured motorist benefits under an automobile policy written by defendant-appellee, Glen Falls Insurance Company. **AFFIRMED.**

Dee Ann Wunschel and Russell S. Wunschel, Carroll, for appellant.

Thomas H. Cellilli, III of Stern & Montana, New York, New York, and Matthew Hammes of Locher, Cellilli, Pavelka & Dostal, L.L.C., Council Bluffs, for appellee.

Considered by Sackett, C.J., and Huitink and Miller, JJ.

SACKETT, C.J.

Plaintiff-appellant, Darby Lynn Brincks, appeals following a jury trial and the dismissal of her suit seeking recovery of underinsured motorist benefits under an automobile policy written by defendant-appellee, Glen Falls Insurance Company. Plaintiff contends the district court should have ordered a new trial because (1) the jury verdict was inadequate, (2) the jury verdict was inconsistent, and (3) the district court erred in instructing on proximate cause. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

Plaintiff was involved in a motor vehicle accident in rural Carroll County in the early morning hours of January 20, 2001. The day following the accident the plaintiff visited the McFarland Clinic in Carroll and incurred \$303 in medical expenses. She subsequently sought additional treatment from other providers as well as the McFarland Clinic over the course of more than four years and incurred an additional nearly \$7000 in medical expenses.

The driver of the car that hit plaintiff's car, Matthew Sturm, had \$50,000 in liability insurance and plaintiff settled with him for \$45,000. Plaintiff then brought this suit against defendant seeking to recover additional monies pursuant to an underinsured motorist benefits provision of an automobile policy defendant issued to her.

The matter was tried to a jury. Plaintiff presented evidence she was injured in the accident and that she incurred over \$7000 in medical expenses as a result of those injuries.

The jury was instructed that plaintiff was claiming underinsured motorist benefits, Sturm was at fault, and the sole issue for the jury to determine was the

nature and extent of plaintiff's damage, if any, which were proximately caused by the fault of Sturm.

The jurors received and returned the unanimous "Special Verdict" below:

1. Past medical expense	<u>\$303</u>
2. Future medical expenses	<u>\$ 0</u>
3. Past pain and suffering	<u>\$ 0</u>
4. Present value of future pain and suffering	<u>\$ 0</u>
5. Past function of the body	<u>\$ 0</u>
6. Present value of future loss of function of the body	<u>\$ 0</u>
7. Past loss of wages	<u>\$ 0</u>
TOTAL	<u>\$303</u>

Following the return of the special verdict, the district court dismissed the case at plaintiff's cost. In doing so, the district court noted that it had contacted all counsel before discharging the jury and no party made a specific objection to the verdict nor did any party request that any matter be resubmitted to the jury and that all parties agreed the jury should be discharged. Plaintiff objected to this language and the district court subsequently amended the order to provide only that after contacting all counsel the court discharged the jury.

The plaintiff also filed a motion for new trial contending the verdict was inconsistent because the uncontroverted evidence was that plaintiff's past medical expenses totaled \$7300.94; the uncontroverted evidence was that plaintiff did sustain an injury to her neck and a past loss of function of her body and past pain and suffering; and the uncontroverted evidence was that plaintiff would continue to have pain, loss of body function and medical expenses. Plaintiff further contended the district court should have instructed the jury as a matter of law that Sturm's negligence was a proximate cause of plaintiff's damages.

The district court denied the motion for new trial finding that there was conflicting evidence (1) whether Sturm's negligence was the proximate cause of damages; (2) as to the nature, extent and severity of plaintiff's injuries; and (3) whether plaintiff's injuries were proximately caused by the accident. The court reasoned these issues were disputed, as were whether the medical expenses plaintiff incurred were necessary to treat injuries proximately caused by the accident. The court noted that while defendant did not call expert witnesses to contest plaintiff's claim, the defendant did use medical records of preexisting conditions to challenge plaintiff's claims and the verdict was not inadequate. The court further determined the verdict was not inconsistent because the jury could have found it appropriate for plaintiff to incur medical expenses on the day of the accident to have her condition checked out but conclude she suffered no injuries as a proximate result of the accident. The court went on to say:

There is substantial evidence to support that position. The plaintiff was seeing a chiropractor both before and after the collision and while the chiropractor opined that the conditions for which he was treating her were different after the collision, plaintiff's subjective complaints were the same, the chiropractor's diagnosis was the same, and the chiropractor treated the same parts of plaintiff's body.

II. SCOPE OF REVIEW.

We review the actions of the district court for corrections of errors at law. Iowa R. App. P. 6.4. Our standard of review of a trial court's action on a motion for new trial is for abuse of discretion. *Foggia v. Des Moines Bowl-O-Mat, Inc.*, 543 N.W.2d 889, 891 (Iowa 1996).

III. ANALYSIS.

Inadequate Damages. The trial court may grant an aggrieved party a new trial when the jury awards excessive or inadequate damages, or when the verdict is not sustained by sufficient evidence, or is contrary to law. *Fisher v. Davis*, 601 N.W.2d 54, 57 (Iowa 1999). We afford the trial court considerable discretion in ruling upon a motion for new trial based upon the ground that the verdict was inadequate. *Id.* Whether damages are so inadequate to warrant a new trial is a determination for the trial court to make, and we will not ordinarily disturb its discretion to grant or deny the motion unless an abuse of discretion is shown. *Id.* We are slower to interfere with the grant of a new trial than with its denial. Iowa R. App. P. 6.14(6)(d). Whether damages in a given case are adequate depends upon the particular facts of the case. *Fisher*, 601 N.W.2d at 57 (citing *Witte v. Vogt*, 443 N.W.2d 715, 716 (Iowa 1989)). The question is whether the verdict fairly and reasonably compensates the party for the injury sustained. *Id.*

If uncontroverted facts show the amount of the verdict bears no reasonable relationship to the loss suffered, the verdict is inadequate. *Pexa v. Auto Owners Ins. Co.*, 686 N.W.2d 150, 163 (Iowa 2004). If the damages are inadequate, the trial court must either grant a new trial or, if appropriate, grant an additur. *Id.*

There is substantial evidence to support the jury's finding that the only damage plaintiff suffered as a result of Sturm's negligence was the \$303 medical bill for checking her condition the day following the accident. Plaintiff did not seek immediate medical treatment. She testified when she went to the

McFarland Medical Clinic in Carroll the day following the accident she complained of pain in her left shoulder, arm, and neck, and a bruised left shoulder. Yet the medical records of the clinic from that day's visit made no reference to complaints of shoulder pain or a bruise to her left shoulder. The record indicates the only problem found was a cervical strain.

Evidence indicated that in July, six months before the accident, plaintiff consulted chiropractor Dr. Ken Keller complaining of left neck and left shoulder pain after doing computer work. She saw Dr. Keller two months before the accident complaining of back pain. Plaintiff again saw Dr. Keller on January 28, 2001, about eight days after the accident, and told him of the accident and complained of neck and upper and mid-back pain and left shoulder pain from the accident. The trial court did not abuse its discretion in refusing to grant a new trial on the ground the damages found by the jury were inadequate.

Inconsistent Verdict. Plaintiff contends the verdict is inconsistent because she was awarded medical expenses but nothing for pain and suffering.

Verdicts that cannot be reconciled "in any reasonable manner consistent with the evidence and its fair inferences, and in light of the instructions of the court" must be set aside. *Hoffman v. National Med. Enter., Inc.*, 442 N.W.2d 123, 126-27 (Iowa 1989). If a verdict is internally inconsistent and there is no way to determine the jury's intent, the proper remedy is a new trial. *Bangs v. Pioneer Janitorial of Ames, Inc.*, 570 N.W.2d 630, 632 (Iowa 1997). Every verdict awarding only damages for medical expenses in a personal injury action is not inadequate as a matter of law. See *Fisher v. Davis*, 601 N.W.2d 54, 58 (Iowa 1999); *Cowan v. Flannery*, 461 N.W.2d 155, 159 (Iowa 1990).

The district court's ruling on the motion for new trial found substantial evidence from which the jury could have found plaintiff was not injured as a proximate cause of Sturm's negligence. We agree with the district court that there is substantial evidence supporting this finding. The district court did not abuse its discretion in overruling the motion for new trial on this ground.

Failure to instruct that the tortfeasor's negligence was the proximate cause of plaintiff's injuries. We review a trial court's instruction for correction of errors at law. *Waits v. United Fire & Casualty*, 572 N.W.2d 565, 575 (Iowa 1997). Generally questions of proximate cause are for the jury and it is only in exceptional cases where it can be decided as a matter of law. Iowa R. App. P 6.14(6)(j). A review of the record reveals that the issue of whether plaintiff suffered injuries that were the proximate result of Sturm's negligence was disputed at trial. The district court did not err on this issue.

Failure to preserve issues for review. Defendant contends the issues plaintiff raises were not preserved for review because prior to discharging the jury the district court provided the parties an opportunity to make further record and plaintiff failed to utilize that opportunity. In *Clinton Physical Therapy Services, P.C. v. John Deere Health Care*, 714 N.W.2d 603, 608 (Iowa 2006), Clinton Physical Therapy Services (CPT) challenged a verdict as being inconsistent and John Deere contended CPT waived its right to a new trial by agreeing to a sealed verdict and failing to move for resubmission of the case before the jury was discharged.

In *CPT* the court said,

When parties agree to a sealed verdict, they lose their right to have a verdict returned in open court where inquiry can be made into its findings. See Iowa R. Civ. P. 1.931. Consequently, it is not possible to use additional deliberations as a remedy for an inconsistency in a verdict when a sealed verdict is used in a case. However, further deliberation to remedy an inconsistency in the verdict is only one available remedy. The other remedies are to grant a new trial or attempt to reconcile the inconsistencies. *Id.* r. 1.934. Thus, a sealed verdict may constitute a waiver of the additional-deliberations option, but it would not constitute a waiver of other remedies. CPT did not waive its right to request a new trial by agreeing to a sealed verdict.

Clinton Physical Therapy Services, 714 N.W.2d at 610.

Here the district court gave the parties the option to make additional record whereas in *CPT* it discharged the jury without notifying the attorneys for the parties. See *id.* at 608. The plaintiff has failed to show the verdict is inconsistent and/or cannot be reconciled. Consequently, we need not determine whether plaintiff's waiver of the option to seek further deliberations is controlled by *CPT* and/or whether error now argued was preserved.

AFFIRMED.