

**IN THE COURT OF APPEALS OF IOWA**

No. 8-574 / 07-1945  
Filed October 1, 2008

**CRAIG V. FULLARTON,**  
Plaintiff-Appellant,

**vs.**

**ROBERT S. WRAY,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Linn County, Mitchell E. Turner,  
Judge.

Fullarton appeals following a jury verdict and award in his personal injury  
action arising from an automobile accident. **AFFIRMED.**

David A. Lemanski, Dubuque, for appellant.

Les V. Reddick of Kane, Norby & Reddick, P.C., Dubuque, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

**PER CURIAM**

Craig Fullarton was involved in a two-car collision with Robert Wray and sued Wray for personal injury and property damage. Fullarton appeals from the jury verdict contending the damages awarded were inadequate and that the district court improperly instructed the jury. We affirm.

On January 5, 2004, Fullarton had the right of way at an intersection, but Wray turned into Fullarton's path resulting in a collision. Wray entered a plea of guilty to a traffic charge of failure to yield on a left turn. Fullarton told personnel in the emergency room that he was traveling thirty-five miles per hour when the collision occurred.

Fullarton filed a petition alleging Wray's negligence caused him both property damages and personal injury. The jury found Wray eighty percent at fault and Fullarton twenty percent at fault. The jury returned a verdict finding Fullarton had sustained total damage of \$31,126.05, which was comprised of \$2,000 in property damage, \$14,126.05 in past medical and mental health expenses, and \$15,000 in past pain and suffering. The district court reduced the award to \$24,900.84 based on the finding of comparative fault. The court rejected Fullarton's claims that the damages awarded were inadequate and that the jury was improperly instructed on the statutory speed requirement and the common law duty to drive at a reasonable speed. Fullarton's motion for new trial was denied. Fullarton now appeals.

The district court has considerable discretion in ruling upon a motion for new trial based upon the ground that the verdict was inadequate. Whether damages are so inadequate to warrant a new trial is for the district court to decide. And we will not ordinarily disturb its discretion to grant or deny the motion unless an abuse of

discretion is shown. We are slower to interfere with the grant of a new trial than with its denial. Whether damages in a given case are adequate depends on the particular facts of the case. The test is whether the verdict fairly and reasonably compensates the party for the injury sustained.

*Fisher v. Davis*, 601 N.W.2d 54, 57 (Iowa 1999) (citations omitted).

Fullarton contends the jury award for past pain and suffering and medical expenses is inconsistent with the jury's refusal to award anything for past loss of full use of body and mind. He argues there was evidence that he had to undergo two surgeries, he suffered permanent injury, and he was not able to work due to pain and depression all proximately caused by the accident.

Although the evidence may have justified a higher award, such is not controlling. The determinative question posed is whether under the record, giving the jury its right to accept or reject whatever portions of the conflicting evidence it chose, the verdict effects substantial justice between the parties.

*Kautman v. Mar-Mac Comm. Sch. Dist.*, 255 N.W.2d 146, 148 (Iowa 1977).

Conflicting evidence was presented. The jury reasonably could have found that the injuries proximately caused by the accident did not extend past Fullarton's first knee surgery and the doctor's full release without restrictions. Fullarton himself notes the jury award matches exactly his claim for medical care through his first surgery.

The jury was not required to accept his contentions that another surgery he underwent two years later was proximately caused by the accident or that his depression was linked to the accident and not other factors such as the death of his mother and his loss of job. We conclude the jury verdict was not flagrantly inadequate.

Fullarton also contends the trial court improperly instructed the jury in giving an instruction related to the posted speed limit and the duty to drive a reasonable speed.

We review the trial court's jury instructions for correction of errors at law. Iowa R. App. P. 6.4. Parties are entitled to have their legal theories submitted to a jury if they are supported by the pleadings and substantial evidence in the record. *Sonnek v. Warren*, 522 N.W.2d 45, 47 (Iowa 1994). "Evidence is substantial enough to support a requested instruction when a reasonable mind would accept it as adequate to reach a conclusion." *Bride v. Heckart*, 556 N.W.2d 449, 452 (Iowa 1996).

Here, Fullarton testified he was going thirty-seven miles per hour at some point before he reached the intersection. The posted speed limit was thirty-five miles per hour. Fullarton also testified he saw Wray in the turning lane. When taken to the hospital after the accident, he told hospital personnel he was going thirty-five miles per hour at the time of the collision. Wray was entitled to have his theory of contributory negligence submitted to the jury. The district court instructed the jury both as to statutory speed requirement and the common law duty to drive at a reasonable speed. Both were appropriate under the evidence presented. Contrary to Fullarton's complaint, we find no undue emphasis on the speed issue in favor of Wray. Finding no error, we affirm.

**AFFIRMED.**