

IN THE COURT OF APPEALS OF IOWA

No. 9-498 / 09-0041
Filed July 22, 2009

AZZA HABIB MUSTAFA,
Plaintiff-Appellant,

vs.

ABOK YOR,
Defendant-Appellee.

Appeal from the Iowa District Court for Story County, William A. Pattinson,
Judge.

The plaintiff appeals from the district court's denial of her motion for new
trial. **AFFIRMED.**

Angelina M. Thomas of Newbrough Law Firm, L.L.P., Ames, for appellant.
Janice M. Thomas of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des
Moines, for appellee.

Considered by Mahan, P.J., and Eisenhauer and Mansfield, JJ.

EISENHAUER, J.

Azza Habib Mustafa was injured in a motor vehicle accident. She was a passenger in a car driven by Abok Yor. She brought a negligence action against Yor seeking compensation for past medical expenses, past pain and suffering, past loss of function, future loss of function, and future pain and suffering. Yor conceded liability but contested the amount of Mustafa's damages. The jury awarded Mustafa \$9568 in past medical expenses, \$5000 in past pain and suffering, and \$5000 in past loss of function. Mustafa filed a motion for new trial/additur, arguing the jury's failure to award future pain and suffering and future loss of function was not supported by the evidence and/or was inadequate. The district court denied the motion.

The district 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). The district court has 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 for the district court to decide. *Id.* We will not ordinarily disturb its discretion to grant or deny the motion unless an abuse of discretion is shown. *Id.*

Whether damages in a given case are adequate depends on the particular facts of the case. *Id.* The test is whether the verdict fairly and reasonably compensates the party for the injury sustained. *Id.* Here, there is no dispute Mustafa had pre-existing injuries as a result of a prior accident. In denying

Mustafa's motion, the district court held the range of evidence in the case could allow a reasonable jury to conclude the injuries Mustafa suffered in the collision did not exacerbate her previous condition. It further held the jury could conclude the accident did not permanently diminish her body's functional capacity and the limitations she did have were no greater than those existing prior to the accident. It noted Mustafa's trial testimony regarding the limitations on her activities was contradicted by her own medical records.

Given the conflicting evidence in the record, we conclude the district court did not abuse its discretion in denying Mustafa's motion for new trial on the basis the jury's verdict was not supported by the evidence or was inadequate.

AFFIRMED.