

IN THE COURT OF APPEALS OF IOWA

No. 9-499 / 09-0043
Filed July 22, 2009

CARLEASA J. MYLES,
Plaintiff-Appellant,

vs.

MARLYS M. HILTON,
Defendant-Appellee.

Appeal from the Iowa District Court for Black Hawk County, James C. Bauch, Judge.

Carleasa Myles appeals the district court's denial of her motion for new trial. **AFFIRMED.**

John J. Wood of Beecher, Field, Walker, Morris, Hoffman & Johnson, P.C., Waterloo, for appellant.

Randall E. Nielsen of Pappajohn, Shriver, Eide & Nielsen, P.C., Mason City, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings**

On October 10, 2006, Carleasa Myles filed a petition at law requesting damages for injuries she sustained in a car accident that occurred on October 15, 2004. Myles's petition at law asserted that Marlys Hilton was negligent in the operation of her vehicle and was the cause of injuries to Myles. After a two-day jury trial, the jury found Hilton was a proximate cause of damage to Myles and awarded damages as follows: \$1158.76 for past medical expenses, \$4950 for future medical expenses, \$5000 for past physical and mental pain and suffering, and \$5000 for future physical and mental pain and suffering. The jury declined to award damages for past loss of body, future loss of body, or loss of future earning capacity. Myles filed a motion for new trial or, in the alternative, additur, arguing that the jury's verdict was legally inconsistent and contrary to the uncontested evidence. The district court denied Myles's motion for new trial.

Myles appeals from the portion of the jury verdict relating to damages, arguing the jury's failure to award damages for past and future loss of body is not supported by sufficient evidence and is logically and legally inconsistent with its award of damages for past and future pain and suffering.

II. Standard of Review

Our review of a district court's ruling on a motion for new trial depends on the grounds raised in the motion. We review the district court's conclusion as to whether answers in a jury verdict are inconsistent for correction of errors at law. *Clinton Physical Therapy Servs., P.C. v. John Deere Health Care, Inc.*, 714 N.W.2d 603, 609 (Iowa 2006). We likewise review the district court's ruling as to

whether the jury's verdict was sustained by sufficient evidence for correction of errors at law. *Estate of Hagedorn ex rel. Hagedorn v. Peterson*, 690 N.W.2d 84, 87 (Iowa 2004).

III. Damages

"The jury's award of itemized damages should be logically and legally consistent." *Blume v. Auer*, 576 N.W.2d 122, 125 (Iowa Ct. App. 1997). "[A] verdict is not inconsistent if it can be harmonized in a reasonable manner consistent with the jury instructions and the evidence in the case, including fair inferences drawn from the evidence." *Clinton Physical Therapy Servc.*, 714 N.W.2d at 613.

The test is whether the verdicts can be reconciled in any reasonable manner consistent with the evidence and its fair inferences, and in light of the instructions of the court. Only where the verdicts are so logically and legally inconsistent that they cannot be reconciled will they be set aside.

Hoffman v. Nat'l Med. Enters., Inc., 442 N.W.2d 123, 126-27 (Iowa 1989) (internal citations omitted).

Myles asserts the jury's decision to award damages for pain and suffering is inconsistent with its decision not to award damages for loss of body. When supported by the record, "[a]n award of medical expenses or pain and suffering damages is not legally inconsistent with the jury's failure to award damages for loss of function of the body." *Blume*, 576 N.W.2d at 126; see also *Brant v. Bockholt*, 532 N.W.2d 801 (Iowa 1995) (finding an award of damages for pain and suffering and medical expenses but not for loss of body was not inconsistent because plaintiff's facial scarring did not result in a lack of body functioning).

The record allows the jury's verdicts to be reconciled in a reasonable manner. Loss of body "is the inability of a particular body part to function in a normal manner." *Brant*, 532 N.W.2d at 804-05. Myles testified that she still is able to perform all duties at work and is not restricted in any way. She stated that she still exercises and is able to go to the park, walk, ride her bike, and bowl as long as she does not overexert herself. Daily progress notes from physical therapy reveal that Myles indicated her activity level was unchanged.

Myles submitted a report from Dr. Barbara Malicka-Rozek in which Rozek concluded, "[Myles] does not have any residual from this accident. Her physical exam is perfectly normal. She does not have any permanent impairment due to car accident dated October, 2004." After conducting an independent medical examination, Dr. Farid Manshadi wrote in a letter that "[Myles] denies any problems with her activities of daily living." Though Manshadi testified that Myles sustained an eight percent permanent impairment as a result of the accident, "[t]he jury, as the finder of fact, is free to accept or reject evidence on . . . any . . . issue." *Blume*, 576 N.W.2d at 125. The record would allow a reasonable jury to conclude that although Myles was in pain, her body was able to function in a normal manner. See *id.* at 126 (finding no inconsistency in jury verdict awarding medical expenses and pain and suffering but not loss of body when the record was "devoid of any evidence indicating Blume suffered functional impairment of her body, *in addition to pain and suffering*"). Accordingly, we find the jury's verdict was not inconsistent.

Myles also argues the jury's verdict was not supported by sufficient evidence. A new trial may be granted if the jury's verdict is not sustained by

sufficient evidence. Iowa R. Civ. P. 1.1004(6). The jury has the right to accept or reject whatever portions of conflicting evidence it chooses. *Kautman v. Mar-Mac Cmty. Sch. Dist.*, 255 N.W.2d 146, 148 (Iowa 1977). The evidence summarized above is sufficient to support the jury's verdict.

AFFIRMED.

Vaitheswaran, P.J., concurs. Doyle, J., writes separately.

DOYLE, J. (writing separately)

I concur, but write separately to emphasize that a finding of pain and suffering does not automatically support an award for loss of function of the body. On its face, a jury verdict that makes an award for pain and suffering, but no award for loss of function of the body, would appear to be impermissibly inconsistent, thus warranting the grant of a new trial. But, a finding of pain and suffering does not necessarily presume loss of function of the body. Loss of function of the body relates to functional impairment of a body part and does not include conditions of incapacity embraced within the definition of pain and suffering. *Brant v. Bockholt*, 532 N.W.2d 801, 805 (Iowa 1995). Therefore, an award for loss of function of the body must be founded upon evidence of functional impairment to the body, in addition to pain and suffering. *Blume v. Auer*, 576 N.W.2d 122, 126 (Iowa Ct. App. 1997). Bound by these pronouncements, and in view of the dearth of any evidence indicating Myles suffered any functional impairment to her body in addition to her pain and suffering, I would not interfere with the jury's verdict.