

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-441

MAY TERM, 2003

	}	APPEALED FROM:
	}	
Dawn Marie Remes	}	Rutland Superior Court
	}	
v.	}	DOCKET No. 655-10-00 Rdcv
	}	
Catherine M. Hyde	}	Trial Judge: Hon. William D. Cohen
	}	
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Plaintiff appeals the Rutland Superior Court's denial of her request for additur and motion for a new trial in this personal injury action. We affirm.

While driving home from work on October 22, 1998, plaintiff was involved in a car accident with defendant after defendant drove her vehicle into an intersection against a red light. Plaintiff sued defendant and a jury trial was held in May 2002. At the close of the evidence, the court directed a verdict against defendant on liability. After deliberating on plaintiff's claim for damages, the jury awarded plaintiff the full amount of medical expenses she claimed (totaling \$4,355.57) and lost wages of \$544.47, a sum less than what plaintiff claimed. The jury did not award any damages for past or future pain and suffering. Consequently, plaintiff moved for additur and a new trial. On July 31, 2002, the court heard argument on the motion and denied it on the record.* This appeal followed.

On appeal, plaintiff argues that it was error to deny her any damages for past or future pain and suffering where the jury concluded that defendant's negligence caused her to incur medical expenses and lost wages. She claims that the evidence of her pain and suffering was uncontroverted, and therefore the jury was remiss in not compensating her for those injuries, and the court's failure to correct the jury's verdict was reversible error.

We review plaintiff's claim under the abuse-of-discretion standard. Dusckiewicz v. Carter, 115 Vt. 122, 126 (1947). Plaintiff is entitled to recover the damages resulting to her from the car accident with defendant, Nourse v. Austin, 140 Vt. 184, 185 (1981), but she must prove the extent and nature of those damages by a preponderance of the evidence. Callan v. Hackett, 170 Vt. 609, 609 (2000) (mem.). When determining whether plaintiff has satisfied her burden, the jury must weigh the evidence and decide which witnesses offered credible testimony. See Turgeon v. Schneider, 150 Vt. 268, 271 (1988) (jury's role is to weigh the evidence and determine the credibility of witnesses). We will not tamper with the court's decision to deny additur or order a new trial if the jury's verdict " can be justified in any reasonable view of the evidence, considered in the light most favorable to the defendant." Wilford v. Salvucci, 117 Vt. 495, 498-99 (1953); Dusckiewicz, 115 Vt. at 126. The key question is not how this Court might have assessed plaintiff's damages, but whether the evidence allowed the jury to reach the decision it did. Quesnel v. Raleigh, 128 Vt. 95, 100 (1969). We will reverse a jury's award of damages if the award is " so small that it plainly indicates the award was the product of prejudice or other misguidance which undermines its validity as a verdict." Id.

In this case, the evidence on the extent of plaintiff's injury was conflicting, and consisted of testimony from plaintiff, her husband, and the last physician who treated plaintiff. In addition, plaintiff's entire medical record related to the

accident was admitted. Although plaintiff portrays the evidence as uncontroverted, the medical records contained information contradictory to plaintiff' s other evidence. Plaintiff testified that upon impact she felt like she had been hit by a shotgun. She received medical attention at the scene, but no major cuts or bruises were found and she did not go to the hospital immediately. In fact, she did not seek medical treatment until the fourth day after the accident. Plaintiff testified that she suffered pain and stiffness in her right shoulder and neck almost constantly for some time after the accident and had trouble sleeping. Plaintiff also testified that she had pain when she tried to do chores around the house. Her husband testified that plaintiff had difficulty picking their son up without pain, had trouble sleeping, and could not perform all the household duties she had previously performed.

The physician who testified for plaintiff was a physiatrist specializing in soft tissue injuries like plaintiff' s. He testified that he first saw plaintiff roughly one year after the accident. He identified pain trigger points in her right shoulder and neck area and prescribed plaintiff with a sleeping aide. For pain, plaintiff took extra strength Tylenol only. The doctor last saw plaintiff in February 2000, and at that time he believed she would continue to suffer some pain in the future. Plaintiff testified that she did not seek medical treatment for her neck since her last visit with the physiatrist in February 2000, however.

The jury also had evidence before it that plaintiff had good range of motion in her shoulder without significant pain on October 26, the first day she sought treatment after the accident. Plaintiff missed very little work immediately following the accident. According to the evidence, most of plaintiff' s work absences were due to medical appointments rather than due to symptoms of pain or stiffness. Plaintiff' s primary care physician noted on October 31, 1998 that plaintiff had a full range of motion in her neck and right shoulder and that she had been working up until that date. Plaintiff underwent an MRI in December 1998, which was negative. Physician notes during 1999 and 2000 indicate that plaintiff' s arm symptoms had completely resolved, she was " pain free," had not lost time from work due to her symptoms, experienced painless active range of motion within functional limits, was able to perform activities of daily living without interference by symptoms, and did not suffer pain until she painted her house and used a rowing machine. In addition, plaintiff testified that she was able to drive the day after the accident, and enjoyed a promotion at work sometime after the accident. The physiatrist acknowledged that no other doctor who examined plaintiff, including her primary care physician, had found the same problems he did in her right shoulder and neck.

Given the conflicting evidence on the pain and stiffness plaintiff alleged she suffered after the accident, it was not unreasonable for the jury to find the injury plaintiff received in the accident did not in fact cause her compensable pain and suffering. Indeed, plaintiff' s own medical records contradicted her testimony that she experienced stiffness and constant pain in her neck and shoulder. There was no sign of bruising or other visible injury after the accident, and plaintiff' s MRI was negative. Although defendant did not offer an expert to counter plaintiff' s physiatrist, the jury was allowed to disregard the physiatrist' s testimony altogether or give it little weight. Moreover, the jury could reasonably infer that plaintiff' s injury was not significant enough to cause the pain and stiffness she alleged because she was able to work and to drive right after the accident. On this record, we are unable to conclude that the jury' s award was premised on prejudice or misguidance, and was so inadequate that additur or a new trial was required. Accordingly, we hold that the trial court did not abuse its discretion by denying plaintiff a new trial on damages or denying her request to increase her award to account for the pain and suffering she claims resulted from her injury.

Affirmed.

BY THE COURT:

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Frederic W. Allen, Chief Justice (Ret.)

Specially Assigned

Footnote

* We do not have a transcript of that hearing so we do not know the basis for the court's ruling assuming the court provided one.