

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-197

OCTOBER TERM, 2005

Joanne P. Flanders	}	APPEALED FROM:
	}	
	}	
v.	}	Rutland Superior Court
	}	
Robin M. Bombard	}	DOCKET NO. 33-1-04 Rdcv
	}	

Trial Judge: William D. Cohen

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

Plaintiff appeals from the jury=s verdict in this automobile negligence case. She asserts that the verdict is contrary to the uncontested evidence. We affirm.

Plaintiff filed a complaint against defendant in December 2003, alleging that she had suffered injuries due to his negligent driving. Defendant admitted fault for the accident. A jury trial was held on the issue of damages. Plaintiff complained of neck and shoulder pain, and she sought compensatory damages of \$12,000 for chiropractic treatment that she had received during the three months after the accident, as well as unspecified damages for pain and suffering and for permanent injury. Plaintiff acknowledged at trial that she had pre-existing injuries, including osteoporosis and arthritis, as well as breathing problems that rendered her totally disabled for Social Security purposes. On a special verdict form, the jury found that defendant=s negligence was a proximate cause of damages suffered by plaintiff, and it awarded plaintiff \$6000 in past medical expenses. It did not award her any past or future Apersonal injury damages/pain and suffering.@ Plaintiff appealed.

Plaintiff asserts that the jury=s verdict is clearly erroneous and cannot be justified upon any reasonable view of the evidence. According to plaintiff, the uncontradicted evidence presented at trial was that she had been injured in the accident. She maintains that the jury=s verdict must be read to indicate that the jury believed that she was injured and that \$6000 was a reasonable amount to pay for treatment of her injuries. Plaintiff argues that it was irrational for the jury to conclude that her injuries required \$6000 in treatment but not award her damages for her personal injuries.

We reject plaintiff=s argument. AIn determining a damages award, the jury award must stand if the verdict can be justified on any reasonable view of the evidence.@ Trombley v. Southwestern Vt. Med. Ctr., 169 Vt. 386, 398 (1999). Contrary to plaintiff=s assertion, the jury did compensate her for damages resulting from the car accident, by awarding her \$6000 in medical expenses. It does not follow, as plaintiff argues, that the jury was also obligated to award her damages for past or future Apersonal injury damages/pain and suffering.@

In its charge to the jury, the court explained that Apersonal injury damages@ included compensation for Aany bodily injury sustained by the Plaintiff and any resulting pain, suffering and discomfort, disability or physical impairment; disfigurement, mental anguish, inconvenience, loss of ability to engage in recreational activities, and loss of capacity for the enjoyment of life experienced in the past or to be experienced in the future.@ The court explained that the jury could award reasonable damages to plaintiff for each element of damages that she had proven, but it cautioned

the jury not to double-count damages by providing compensation for the same harm in more than one category. Plaintiff did not object to the jury instructions.

The jury could have reasonably concluded that plaintiff was not entitled to Apersonal injury damages@ in light of the evidence presented at trial. Although plaintiff complained about ongoing neck and shoulder pain, she acknowledged at trial that the car accident had not affected her ability to engage in any of her prior activities. Plaintiff=s chiropractor testified that plaintiff had suffered a thirteen percent permanent impairment as a result of the accident but he acknowledged that he had not examined any of plaintiff=s earlier medical records, nor had he been aware that plaintiff was one-hundred percent disabled for Social Security purposes and had been for more than twelve years. He did not examine plaintiff=s x-ray records, although he was aware that plaintiff suffered from osteoporosis. He testified that plaintiff=s pre-existing osteoporosis and arthritis could have reduced her range of motion even without the car accident. He also testified that plaintiff exhibited some Asymptom magnification@ regarding her neck pain disability. He stated that plaintiff=s physical injuries were minor in that she had not suffered any fractured bones as the result of the accident. The jury could have reasonably concluded that, while plaintiff proved by a preponderance of the evidence that she incurred medical expenses as a result of defendant=s negligence, she had not proved by a preponderance that she suffered any compensable bodily injury or incurred any compensable pain and suffering as a result of defendant=s negligence. We find no error.

Affirmed.

BY THE COURT:

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice