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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-441

MAY TERM, 2007

Gary Hodges	}	APPEALED FROM:
	}	
	}	
v.	}	Bennington Superior Court
	}	
John G. Wolfe	}	
	}	DOCKET NO. 205-6-06 Bncv
		Trial Judge: John P. Wesley

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

Plaintiff appeals the superior court's damages award in the amount of $151,165.00, entered following a default judgment in plaintiff's favor. We affirm.

Plaintiff was injured in a car accident in 2003. Defendant John G. Wolfe was the driver of the car while plaintiff was the passenger. As a result of the accident, plaintiff sustained injuries to his right ankle and his left shoulder. Plaintiff filed a complaint in superior court seeking compensation for his injuries. Defendant never answered the complaint and default judgment was entered in favor of plaintiff. Plaintiff moved for an assessment of damages, claiming total damages of $816,839.62. This amount represented the sum of certain readily-discernable categories of damages (namely, plaintiff's medical bills and his lost wages), as well as damages for permanent disability and disfigurement, pain and suffering, and loss of enjoyment of life. At the damages hearing, plaintiff testified regarding the car accident, the extent of his injuries, and their effect on his life. Plaintiff also presented statements of his lost wages and medical bills. Because this was a default judgment proceeding where defendant never made an appearance, there was no evidence presented that sought to establish a lesser amount of damages or challenge certain categories of damages.

The court awarded plaintiff all of his claimed medical bills and lost wages for a total of $76,165.00. In determining the amount to award for the other categories of damages, the court emphasized that, like a jury, it would seek to provide plaintiff with "fair compensation" for his injuries. To reach this figure, the court reasoned as follows:

> A jury is not required to apply any particular formula in arriving as a fair level of compensation for those un—unspecific damages, and I will not attempt to actually break down my award to you in—in categor[ies] such as permanent disfigurement plus pain and suffering plus loss of enjoyment of life. Rather, I'm going to give you an overall award that I think, in my judgment here, fairly reflects a

community sense of this particular loss.

> And there is no—there is no formula, and so to tell you the truth, these are the—these are the times when if I had a jury here, 12 people reflecting the community's sense, I would feel better about it than if I've got one person reflecting my sense, but I do have—I do have from the time I've spent on the bench a sense of what jury—how juries have reacted to—you know, no—no claim is ever exactly the same. You certainly know that. Your pain is your pain, it's nobody else's, but I have a sense from the presentation that you've made today and from my review of the affidavits of what similar—what awards I've seen for similar claims both in terms of jury awards and in terms of settlements about which I've been informed.
>
> So taking all of those things into consideration, it is my judgment that the appropriate measure of damages here is $76,165 for the lost wages as well as the medical expenses and another $75,000 to reflect permanent injury and pain and suffering and loss of enjoyment of life, and the Court will enter judgment in that amount.

On appeal, plaintiff argues that the superior court erred in considering evidence of awards in other cases in deciding the appropriate amount of damages in this case, citing Harned v. Dura Corp., 665 P.2d 5, 8 (Alaska 1983) (holding that damages awards in prior cases are not relevant evidence in subsequent cases), among other authorities. Plaintiff also argues that, even if the court was permitted to consider such evidence, plaintiff should have been provided notice of this and an opportunity to respond. Plaintiff did not object to the trial court's approach at the hearing, however, nor did he file any form of post-judgment motion. Thus, the trial court was never presented with an opportunity to consider and rule on plaintiff's objection to its approach to the damages award. The issue has not been preserved for appellate review. See McCarthy v. Emmons, 135 Vt. 450, 450 (1977) (concluding that adequacy of damages was not preserved for appellate review where plaintiffs failed to file a motion for new trial or to alter and amend the judgment); see also Bell v. Bell, 162 Vt. 192, 201 (1994) (concluding that issue was not preserved for appeal where it was neither raised at trial nor in motion to amend).

Affirmed.

BY THE COURT:

_____

Denise R. Johnson, Associate Justice

_____

Marilyn S. Skoglund, Associate Justice

_____

Brian L. Burgess, Associate Justice