

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 10, 2002**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 00-3343  
STATE OF WISCONSIN**

**Cir. Ct. No. 99-CV-335**

**IN COURT OF APPEALS  
DISTRICT I**

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**JEFFREY E. SOBCZAK,**

**PLAINTIFF-RESPONDENT,**

**DAIRYLAND INSURANCE COMPANY AND PRINCIPAL LIFE  
INSURANCE COMPANY,**

**INVOLUNTARY-PLAINTIFFS,**

**v.**

**ELEANOR CIGANEK AND ALLSTATE INSURANCE COMPANY,**

**DEFENDANTS-APPELLANTS.**

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APPEAL from a judgment of the circuit court for Milwaukee County: MICHAEL P. SULLIVAN, Judge. *Affirmed.*

Before Vergeront, P.J., Roggensack and Deininger, JJ.

¶1 PER CURIAM. Eleanor Ciganek appeals from a judgment awarding Jeffrey Sobczak \$285,064.13 for damages (and costs) he sustained in a motor vehicle accident. The issues are: (1) whether Sobczak was required to present testimony from a vocational expert to substantiate his claim of loss of future earning capacity; and (2) whether the evidence was sufficient to support the jury's award. We affirm.

¶2 Eleanor Ciganek struck Jeffrey Sobczak with her automobile. Sobczak, who was driving a motorcycle, was severely injured. Sobczak brought an action against Ciganek, alleging that her negligence caused his injuries. After a trial, the jury awarded Sobczak \$275,750, including \$100,000 for his loss of future earning capacity. Ciganek moved the trial court to reduce the award for loss of future earning capacity to zero, but the trial court denied the motion and granted judgment on the verdict together with taxable costs.

¶3 Ciganek first argues that Sobczak's award for loss of future earning capacity should be reduced to zero because Sobczak did not substantiate his claim with the testimony of a vocational expert. To support her claim that a vocational expert must testify to loss of future earning capacity, Ciganek cites *Brain v. Mann*, 129 Wis. 2d 447, 385 N.W.2d 227 (Ct. App. 1986), *Koele v. Radue*, 81 Wis. 2d 583, 260 N.W.2d 766 (1978), and *Ostreng v. Lowrey*, 37 Wis. 2d 556, 155 N.W.2d 558 (1968). However, these cases do not support the proposition that no damages for loss of future earning capacity can be awarded unless a *vocational expert* testifies. There is no such limitation in Wisconsin law. All that is required is that an *expert* testify to substantiate loss of future earning capacity. Here, medical doctors testified about the injuries Sobczak sustained and the limitations his injuries imposed upon him. From that testimony and Sobczak's testimony

about the physical requirements of his prior and present jobs, the jury could extrapolate the effect on Sobczak's earning capacity.<sup>1</sup>

¶4 Ciganek next argues that the \$100,000 award for loss of earning capacity is not supported by sufficient evidence. WISCONSIN STAT. § 805.14(1) (1999-2000)<sup>2</sup> provides:

No motion challenging the sufficiency of the evidence as a matter of law to support a verdict, or an answer in a verdict, shall be granted unless the court is satisfied that, considering all credible evidence and reasonable inferences therefrom in the light most favorable to the party against whom the motion is made, there is no credible evidence to sustain a finding in favor of such party.

A review of the trial testimony shows there is credible evidence to sustain the jury's verdict. Dr. Michael Collopy, M.D., testified that Sobczak should not drive for more than two hours at a time as a result of his injuries and should take only short term trucking assignments. Sobczak testified that he can no longer drive the longer routes because he cannot sit for more than a couple of hours at a time and cannot lift more than twenty pounds or crawl under his truck to inspect it as he would be required to do with longer routes. He further testified that his earnings had dropped over \$10,000 per year since the accident because he was not able to return to driving the longer routes that paid more. Because the testimony of

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<sup>1</sup> Ciganek also argues that Sobczak is precluded from challenging the testimony of the vocational expert who testified, Timothy Riley, because Sobczak had stipulated that Riley would be the only vocational expert to testify at trial. The stipulation, however, did not preclude Sobczak from disagreeing with Riley.

<sup>2</sup> All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

Sobczak and his doctor is credible evidence substantiating the jury's verdict, we reject Ciganek's challenge to the sufficiency of the evidence.

*By the Court.*—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

