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DISTRICT II

October 7, 2015

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You are hereby notified that the Court has entered the following opinion and order:

2015AP1111-FT James Billups v. City of Racine (L.C. # 2011CV2976)

Before Reilly, P.J., Gundrum and Stark, JJ.

The City of Racine (City) appeals from a judgment entered upon a jury's verdict awarding damages to James Billups following a motor-vehicle accident caused by a City employee's negligence. Pursuant to a presubmission conference and this court's order of June 23, 2015, the parties submitted memorandum briefs. *See* WIS. STAT. RULE 809.17(1) (2013-14).[1] Upon review of those memoranda and the record, we affirm.

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Billups was injured when a salt truck owned and operated by the City ran a red light and struck his vehicle. A jury found the City's driver one-hundred percent causally negligent and awarded Billups $151,000 for medical expenses, $44,000 in lost wages, $7500 for past pain and suffering, and $15,000 for future pain and suffering. Post-verdict, the City moved for a new trial on the ground that the jury's verdict was inconsistent and the trial court denied the motion.

The City maintains that the jury's verdict is inconsistent. An inconsistent verdict is one in which the jury answers are logically repugnant to each other. ***Becker v. State Farm Mut. Auto. Ins. Co.,*** 141 Wis. 2d 804, 821, 416 N.W.2d 906 (Ct. App. 1987). The City's contention is that the jury's award for medical expenses, which encompassed all of Billups's medical treatment and care after the accident, cannot be reconciled with its much smaller award for past pain and suffering. We disagree.

A verdict is not inconsistent because it allows damages for medical expenses and denies recovery for pain and suffering. ***Jahnke v. Smith***, 56 Wis. 2d 642, 653, 203 N.W.2d 67 (1973); ***Staehler v. Beuthin***, 206 Wis. 2d 610, 623, 557 N.W.2d 487 (Ct. App. 1996).[2] The amount awarded for pain and suffering need not bear any mathematic relation to the amount of a person's medical expenses. ***Rupp v. Travelers Indem. Co***., 17 Wis. 2d 16, 25, 115 N.W.2d 612 (1962). Unlike medical bills, a person's "physical pain, humiliation, embarrassment, worry and distress" and the extent to which it impaired his or her "ability to enjoy the normal activities, pleasure, and benefits of life" are not easily quantified and require a subjective determination.

[2] Similarly, a verdict is not inconsistent where it allows for pain and suffering but not medical expenses or wage loss. ***Becker v. State Farm Mut. Auto. Ins. Co.,*** 141 Wis. 2d 804, 822, 416 N.W.2d 906 (Ct. App. 1987).

See WIS JI—CIVIL 1766. "[T]here is no necessary percentage relationship" between categories of damages because "[e]ach may bear a different relationship on the facts to causation and each has its own standard for determining and evaluating its monetary compensation." ***Rupp***, 17 Wis. 2d at 25.

The jury's awards for medical expenses and pain and suffering are not logically repugnant. As noted by the trial court, a "conservative jury" could have determined that $7500 would reasonably compensate Billups for his pain and suffering. Also, the jury might have determined that though Billups's medical expenses were necessitated by injuries from the accident, his testimony exaggerated the degree of disability, pain or distress experienced thereafter. *See* ***Staehler***, 206 Wis. 2d at 622-23 (award of damages for medical expenses but not pain and suffering was not inconsistent where the jury was not required to find Staehler's testimony concerning pain and suffering credible). Further, there was conflicting evidence concerning Billups's pre-existing shoulder pain. As explained by the trial court, the jury could simultaneously believe that the medical expenses were necessitated by injuries sustained in the accident, and that Billups's pre-existing problems contributed to his discomfort and distress. [3]

Finally, we reject the City's argument that ***Jahnke***, 56 Wis. 2d 642, 653, is inapplicable because, whereas Jahnke received limited medical attention for de minimis injuries, Billups

[3] This is not a run-of-the-mill appeal where a defendant claims there is insufficient evidence to support damages, or an injured plaintiff seeks to increase a jury's pain and suffering award. At bottom, the City is suggesting we must infer from the jury's pain and suffering award that, contrary to the instructions provided, the jury improperly awarded medical expenses attributable solely to Billups's pre-existing condition. We disagree. The jury was duly instructed not to award damages for any pre-existing condition unless it was satisfied that such condition "was aggravated by the injuries received in the accident ….." *See* WIS JI—CIVIL 1720. Ample credible evidence supports the jury's medical expense and pain and suffering awards. *See* ***D.L. v. Huebner***, 110 Wis. 2d 581, 634, 329 N.W.2d 890 (1983). On the evidence presented, these awards are reconcilable and consistent.

underwent extensive medical treatment. First, Jahnke was not awarded *any* pain and suffering damages. In the instant case, the jury's awards for both past and future pain and suffering, as well as for lost wages, manifest its determination that Billups's medical treatment was necessitated by injuries from the accident. Second, as stated previously, there need not be a correlation between the amount of physical pain or psychological distress Billups subjectively experienced and the medical cost of repairing his injuries.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals