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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

CHRISTOPHER LINDSEY et al.

Plaintiffs and Appellants,

v.

MARISSA LEIGH ROGE,

Defendant and Respondent.

G044847

(Super. Ct. No. 30-2008-00114749)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Geoffrey T. Glass, Judge. Reversed.

The Traut Firm, Eric V. Traut; Law Offices of Christopher B. Mears and Christopher B. Mears for Plaintiffs and Appellants.

Ford, Walker, Haggerty & Behar, Stephen Ward Moore, and Maxine J. Lebowitz for Defendant and Respondent.

* * *

Plaintiff Christopher Lindsey¹ was a pedestrian in a parking lot when he was hit by a truck driven by defendant Marissa Leigh Roge. Plaintiff sued defendant for negligence. In a special verdict, the jury found defendant was negligent, but that her negligence was not a substantial factor causing harm to plaintiff. Plaintiff contends this latter finding is unsupported by substantial evidence. We agree and reverse the judgment.

FACTS

In November 2006, defendant was driving her father's truck in a neighborhood shopping center. She saw another vehicle driving toward her path. She started braking as she watched to see if the vehicle would stop. After watching the vehicle for a "couple [of] seconds," she turned back and saw a pedestrian (plaintiff) about three feet away. Plaintiff was crossing the lane of traffic toward a restaurant. He had looked both ways and had not seen any moving vehicles or anyone approaching. Now he was looking in the restaurant's direction. Defendant tried to brake, but could not stop the truck in time. The truck hit plaintiff. Moving at a speed of three to four miles per hour, the truck came to a stop within one foot after striking plaintiff. Plaintiff stumbled and rolled, ending up on his back about 10 feet from the front of the truck.

Two years later, plaintiff and his wife sued defendant for negligence and loss of consortium. At trial, the parties presented conflicting evidence on the extent of plaintiff's injuries.

The jury returned a special verdict. The special verdict form instructed the jurors that if they answered any question in the negative, they were to answer no further

¹ Christopher Lindsey's wife, Julie Lindsey, is also a plaintiff in this case. For ease of reference we refer to Christopher Lindsey as "plaintiff" and Julie Lindsey as "plaintiff's wife."

questions. The jury answered only the first two questions on the form. In response to the first question, the jury found defendant was negligent. In response to the second question (the causation question), the jury found defendant's negligence was *not* "a substantial factor in causing harm" to plaintiff. The jury did not proceed to the damages and contributory negligence questions on the special verdict form.

DISCUSSION

Plaintiff "challenges the jury's no-causation finding and resulting defense judgment because experts from *both sides* testified the pedestrian was injured due to the collision; they just differed on the extent of the injuries." Plaintiff concludes "the judgment should be reversed and the case remanded for a trial as to damages because the jury could not have reasonably concluded that the pedestrian suffered no compensable injuries as a result of the driver's negligence."

We apply the substantial evidence standard of review to the jury's finding on the causation question. (*Jonkey v. Carignan Construction Co.* (2006) 139 Cal.App.4th 20, 24.) In doing so, we view the evidence in the light most favorable to the judgment. (*Ibid.*) We draw every reasonable inference and resolve every conflict to support the judgment. (*Ibid.*)

Defendant contends substantial evidence supports a finding she "did not cause plaintiff significant harm." But the causation question did not ask whether defendant caused plaintiff *significant* harm. Rather, the question asked, "Was the defendant's negligence a substantial factor in causing harm to [plaintiff]?" The adjective "substantial" qualifies the degree to which defendant's negligence *caused* harm to plaintiff. Thus, the causation question presented two discrete inquiries to the jury: (1) Did plaintiff suffer any harm in the parking lot incident, and (2) Was the truck's collision with plaintiff a substantial cause of that harm?

We address the second query first. The court instructed the jury that a “substantial factor” causing harm is “more than a remote or trivial factor” and “does not have to be the only cause of the harm.” The court further explained that “[c]onduct is not a substantial factor in causing harm if the same harm would have occurred without that conduct.” (See *Valdez v. J. D. Diffenbaugh Co.* (1975) 51 Cal.App.3d 494, 508 [but for defendant’s negligence, plaintiff’s injury would not have occurred].) Here, plaintiff would not have fallen in the parking lot if defendant’s truck had not hit him. Defendant does not dispute that her truck hit plaintiff. Nor does she contend he would have fallen independently of the accident. (*Hardison v. Bushnell* (1993) 18 Cal.App.4th 22, 26-27 [independent, intervening, and unforeseeable cause of harm relieves defendant of liability].) Thus, if plaintiff suffered any harm, defendant’s truck striking him was clearly a substantial factor in causing it. Once the jurors found defendant was negligent, they could only find that her negligence did not cause plaintiff any harm if it found plaintiff suffered no harm.²

Hence, in this case, the real inquiry presented by the causation question was whether plaintiff suffered any injury. In closing argument, plaintiff’s counsel explained to the jury that the causation question asks, “[D]id this incident cause injuries?” (*Bly-Magee v. Budget Rent-A-Car Corp.* (1994) 24 Cal.App.4th 318, 326 [counsel’s closing argument should explain potentially confusing verdict form to jury].)

Even though the evidence conflicted on whether defendant actually suffered most of the injuries he alleged, or that the accident caused all of the alleged injuries, undisputed evidence showed he did suffer a knee injury caused by the accident. Defense

² Even if the jury believed plaintiff was contributorily negligent and that his negligence was a substantial cause of his injuries, the jury was required to answer the causation question concerning defendant’s negligence first, before proceeding to the special verdict questions on damages and plaintiff’s contributory negligence.

counsel's closing argument conceded: "We have a trabecular fracture to the right knee, or a bone bruise. But other than that, what else? And I submit that there is nothing else."

On appeal, defendant concedes that the evidence at trial was sufficient for the jury to conclude plaintiff suffered "a bone bruise to his knee that healed on its own." Nonetheless, defendant argues the evidence of a bone bruise on plaintiff's knee was insufficient to establish "significant injury," since a doctor who examined plaintiff five days after the accident "found no evidence of swelling, abrasions, bruising, or fluid" on the knee and that plaintiff "had a full range of motion" of his knee. But the doctor, despite these observations, ordered a magnetic resonance imaging test (MRI) of plaintiff's knee. The MRI showed "some blood in the bone," indicating plaintiff had suffered a bone contusion or microfracture of his right knee.³ Plaintiff incurred medical expenses for his office visits with that doctor and associated X-rays and an MRI; the medical bills were introduced into evidence. As already discussed, for purposes of the causation question (as opposed to the issue of damages), plaintiff need only have suffered some harm, not necessarily a significant injury. In sum, because undisputed evidence showed plaintiff suffered a bone contusion or microfracture, the jury's finding (in essence) that plaintiff suffered no harm is unsupported by substantial evidence.

Finally, defendant argues plaintiff's failure to move for a new trial waived the issue of damages. But the jury never reached the issue of damages since it answered the causation question in the negative.

³ Defendant does not contend plaintiff's knee injury occurred after the accident.

DISPOSITION

The judgment is reversed. The case is remanded for a trial on the issues of damages and plaintiff's contributory negligence. Plaintiffs are entitled to their costs on appeal.

IKOLA, J.

WE CONCUR:

O'LEARY, P. J.

MOORE, J.