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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

JOHN HANAMAIKAI,

Plaintiff and Appellant,

v.

JEANIE HOWARD,

Defendant and Respondent.

H037346

(Monterey County

Super. Ct. No. M102285)

Plaintiff John Hanamaikai sued defendant Jeanie Howard for personal injuries suffered in a low-speed automobile collision. A jury found defendant 80 percent at fault and awarded plaintiff \$39,954 for past economic loss, which principally consisted of past medical expenses. On plaintiff's motion for a new trial grounded on inadequate damages, the trial court conditionally granted a new trial. It proposed an additur of \$25,000 for past pain-and-suffering general damages but declined to propose an additur for future medical expenses. Defendant accepted the additur. The trial court then calculated an award of \$59,954 in favor of plaintiff (80 percent of \$25,000 + \$39,954), which was less than defendant's \$100,001 offer to settle under Code of Civil Procedure section 998. This triggered defendant's right to costs from plaintiff of \$123,511.89. The trial court therefore offset the amounts and entered judgment in favor of defendant for \$63,557.89. On appeal, plaintiff seeks a new trial as to future medical expenses on the ground that the jury award of zero is inadequate. We affirm the judgment.

SCOPE OF REVIEW

“Damages, even economic damages, are difficult to measure in personal injury cases. There may be disputed facts regarding the amount of medical expenses or lost wages, or disputed inferences about the probable course of events such as the length of incapacitation or whether a continuing disability will worsen, plateau, or improve. [¶] The common law in its wisdom has left these inherently subjective decisions regarding damages with the jury as the trier of fact to apply its collective experience, common sense, and diverse backgrounds. As a further safeguard, the trial judge has considerable discretion to review excessive or inadequate damage awards in connection with a motion for new trial.” (*Abbott v. Taz Express* (1998) 67 Cal.App.4th 853, 856-857.)

Because of these dynamics, an appellate court has limited power to review a jury’s award of damages. (*Johnson v. Stanhiser* (1999) 72 Cal.App.4th 357, 361.) The cases, however, are inconsistent on how to analyze an appeal from an award on the ground of inadequate damages. Some frame the appellate issue as an abuse-of-discretion or substantial-evidence question; others seem to allow for independent review by analyzing whether the award is inadequate on a fair consideration of the evidence; and still others proceed to a legal conclusion whether the award is insufficient as a matter of law. (See *Haskins v. Holmes* (1967) 252 Cal.App.2d 580, 584-585 (*Haskins*).)

Indeed, plaintiff takes one of these approaches and principally argues that the jury’s finding of zero damages for future medical expenses is not supported by substantial evidence. But we disagree with this approach because it opens the door for a retrial before us rather than respects our limited power to review a jury’s award of damages and a trial court’s independent consideration of that award. The same would apply to an approach under the abuse-of-discretion or fair-consideration-of-the-evidence rubric.

“ ‘We generally apply the familiar substantial evidence test when the sufficiency of the evidence is at issue on appeal. Under this test, “ ‘we are bound by the established

rules of appellate review that all factual matters will be viewed most favorably to the prevailing party [citations] and in support of the judgment “In brief, the appellate court ordinarily *looks only at the evidence supporting the successful party, and disregards the contrary showing.*” [Citation.] All conflicts, therefore, must be resolved in favor of the respondent.’ ” [Citation.]

“ ‘But this test is typically implicated when a defendant contends that the plaintiff succeeded at trial in spite of insufficient evidence. In the case where the trier of fact has expressly or implicitly concluded that the party with the burden of proof did not carry the burden and that party appeals, it is misleading to characterize the failure-of-proof issue as whether substantial evidence supports the judgment. This follows because such a characterization is conceptually one that allows an attack on (1) the evidence supporting the party who had no burden of proof, and (2) the trier of fact’s unassailable conclusion that the party with the burden did not prove one or more elements of the case (*Oldenburg v. Sears, Roebuck & Co.* (1957) 152 Cal.App.2d 733, 742 [trier of fact is the exclusive judge of the credibility of the evidence and can reject evidence as unworthy of credence]; *Hicks v. Reis* (1943) 21 Cal.2d 654, 659-660 [trial court is entitled to reject in toto the testimony of a witness, even if that testimony is uncontradicted]).

“ ‘Thus, where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant’s evidence was (1) “uncontradicted and unimpeached” and (2) “of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.” ’ ” (*Sonic Manufacturing Technologies, Inc. v. AAE Systems, Inc.* (2011) 196 Cal.App.4th 456, 465-466.)

There are few cases in which appellate courts have found damages to be inadequate as a matter of law. Some courts have concluded that a verdict awarding full medical expenses to a personal injury plaintiff but awarding nothing for pain and

suffering, is inadequate as a matter of law, at least when it is obvious that pain accompanied an undisputed injury for which jury found the defendant is liable. “[I]n cases where the right to recover is established, and there is also proof that the medical expenses were incurred because of the defendant’s negligent act, ‘[i]t is of course clear that in such situation a judgment for no more than the actual medical expenses occasioned by the tort would be inadequate.’ ” (*Dodson v. J. Pacific, Inc.* (2007) 154 Cal.App.4th 931, 938 (*Dodson*), quoting *Miller v. San Diego Gas & Elec. Co.* (1963) 212 Cal.App.2d 555, 558 (*Miller*); *Haskins, supra*, 252 Cal.App.2d at pp. 586-587; *Wilson v. R.D. Werner Co.* (1980) 108 Cal.App.3d 878, 883; *Gallentine v. Richardson* (1967) 248 Cal.App.2d 152, 155 (*Gallentine*)).) But these cases typically involve a failure to compensate for pain and suffering where there were *egregious* injuries with lengthy durations. (See, e.g., *Dodson, supra*, at pp. 937-938 [plaintiff underwent serious surgical procedure that removed a herniated disk and replaced it with a metal plate]; *Capelouto v. Kaiser Foundation Hospitals* (1972) 7 Cal.3d 889, 891 [infant, whose life was endangered by salmonella infection, was subjected to numerous hospital visits, required intravenous feeding devices, and suffered recurring attacks of severe diarrhea, projectile vomiting, dehydration, shock, and cramps throughout the first year of her life]; *Bencich v. Market St. Ry. Co.* (1937) 20 Cal.App.2d 518, 521 [plaintiff remained in the hospital for six months following his initial injury and later endured partial amputation of his foot due to gangrene]; *Gallentine, supra*, at p. 153 [plaintiff was shot while hunting, spent time in the hospital, took several months to heal, and never recovered to the quality of health prior to shooting].)

The courts have also cautioned that an award for the exact amount of, or even less than, the medical expenses is not necessarily inadequate as a matter of law, because, in the majority of cases, there is conflict on a variety of factual issues, such as whether plaintiff received any substantial injury or suffered any substantial pain, or whether the medical treatment was actually given or given as a result of the injuries, or was

reasonable or necessary. (*Miller, supra*, 212 Cal.App.2d at p. 558.) In short, “It cannot be said, however, that because a verdict is rendered for the amount of medical expenses or for a less amount the verdict is inadequate as a matter of law. Every case depends upon the facts involved.” (*Ibid.* [upholding award for exact amount of medical bills with no damages for pain and suffering].)

Thus, the concept, inadequacy-as-a-matter-of-law, does not lend itself to a definitive scope of review in the context of a damages appeal. We agree, however, that the Supreme Court has stated a simplified, easily applied scope of review for this type of case that respects the differing roles of the jury, trial court, and appellate court.

“It must be remembered that the jury fixed [plaintiff’s] damages, and that the trial judge denied a motion for new trial, one ground of which was [inadequacy] of the award. These determinations are entitled to great weight. The amount of damages is a fact question, first committed to the discretion of the jury and next to the discretion of the trial judge on a motion for new trial. They see and hear the witnesses and frequently, as in this case, see the injury and the impairment that has resulted therefrom. As a result, all presumptions are in favor of the decision of the trial court [citation]. The power of the appellate court differs materially from that of the trial court in passing on this question.” (*Seffert v. Los Angeles Transit Lines* (1961) 56 Cal.2d 498, 506-507 (*Seffert*).)

“Basically, the question that should be decided by the appellate courts is whether or not the verdict is so out of line with reason that it shocks the conscience and necessarily implies that the verdict must have been the result of passion and prejudice.” (*Seffert, supra*, 56 Cal.2d at p. 508; accord, *Bertero v. National General Corp.* (1974) 13 Cal.3d 43, 61.)

This scope of review, of necessity, requires only a circumscribed recounting of the trial in this case.

BACKGROUND

Defendant crookedly parked her car in a McDonald's parking lot. As she backed up to straighten her alignment, she collided with the driver's side of a car in which plaintiff was a front-seat passenger. Both cars were traveling about five miles per hour. Defendant's car suffered minor damage and inflicted moderate damage to the other car's door and window. Plaintiff suffered no visible injuries and declined medical treatment. But he went to the hospital later in the day complaining of back pain, neck pain, and abdominal tenderness. X-rays and CT-scans showed age-appropriate arthritis or degenerative conditions but no injury. Medical experts at trial disagreed about whether the collision had sufficient force to cause an injury. One expert testified that plaintiff's symptoms preexisted the accident. Plaintiff's experts testified that plaintiff would need future medical treatment for pain management. Plaintiff asked the jury to award him \$302,836.28 for future medical expenses.

Before the accident, plaintiff worked for Renaldi Tile & Marble as a tile finisher; he was laid off because of a lack of work; Renaldi's employee in charge of human resources testified that plaintiff was not eligible to be rehired because he was unreliable and dishonest; she explained that plaintiff had failed to return to work after a vacation and claimed undeserved travel reimbursement. After the accident, plaintiff re-opened a workers' compensation claim that was related to a preexisting shoulder injury but he failed to disclose information about the instant accident. After the accident, plaintiff sought medical attention for a work-related hand injury while he was collecting unemployment compensation. After the accident, plaintiff went to work for Superior Tile; in his employment application, he falsely listed himself as having attended four years of graduate school.

DISCUSSION

The jury's award of zero damages for future medical expenses does not shock the conscience or suggest passion or prejudice.

The evidence as to the existence and extent of plaintiff's injuries was in conflict and ripe for jury resolution. Resolution of the conflicts depended, in part, on plaintiff's subjective description of his injuries in the context of his compromised credibility. Indeed, the jury's failure to award damages for future medical expenses is a logical extension of its failure to award general damages for future pain and suffering. Stated another way, since the jury did not believe that plaintiff would suffer compensable future pain and suffering, it could reasonably conclude that plaintiff would not incur compensable future medical expenses to treat future pain and suffering. It "was not bound by the doctors' evaluation of and the necessity for their services." (*Gersick v. Shilling* (1950) 97 Cal.App.2d 641, 648.) "As to the extent of the injuries claimed, the jury was not bound by the doctors' testimony or by that of plaintiff." (*Id.* at p. 649.) As also indicated by the jury's failure to award general damages for past pain and suffering, it is evident that the jury simply did not believe that plaintiff was seriously injured in the negligible, low-impact accident at issue.

DISPOSITION

The judgment is affirmed.

Premo, Acting P.J.

WE CONCUR:

Mihara, J.

Márquez, J.