



Yant v. Allstate Insurance Co.

2005 | Cited 0 times | Court of Appeals of Arkansas | June 8, 2005

NOT DESIGNATED FOR PUBLICATION

On July 10, 2000, Jeffery Yant was a passenger in the vehicle driven by Leah Yant, his wife, when they were involved in a motor-vehicle accident with Arkansas State Trooper Ronald Robinson. The Yants had uninsured-motorist coverage under their insurance policy with Allstate Insurance Company, and the Yants filed suit to recover their medical expenses and other damages under that provision. At trial, the jury found that Leah Yant was ninety percent responsible for the accident and that Trooper Robinson was ten percent at fault. The jury awarded Jeffery Yant \$8000 in damages. Jeffery Yant filed a motion for a new trial,¹ arguing that his medical expenses totaled \$12,071.47, and that the jury's \$8000 verdict was inadequate and clearly contrary to the preponderance of the evidence; the trial court denied this motion. Yant now appeals, arguing that the trial court erred in not granting his motion for a new trial. We affirm.

Under Rule 59(a)(5) and (6) of the Arkansas Rules of Civil Procedure, a new trial may be granted to a party when there was "error in the assessment of the amount of recovery, whether too large or too small," or when "the verdict or decision is clearly contrary to the preponderance of the evidence or is contrary to the law." In *Depew v. Jackson*, 330 Ark. 733, 735-36, 957 S.W.2d 177, 178 (1997) (citations omitted), our supreme court held:

When a motion for a new trial is made on the ground that the verdict was clearly against the preponderance of the evidence and is denied by the trial court, this court will affirm if there is substantial evidence to support the verdict. Substantial evidence is evidence of sufficient force and character to compel a conclusion one way or the other with reasonable certainty. The evidence must force the mind to pass beyond suspicion or conjecture. In examining whether substantial evidence exists, the verdict is given "the benefit of all reasonable inferences permissible in accordance with the proof."

When the primary issue in a motion for new trial is the alleged inadequacy of the jury's award, the appellate courts will affirm the trial court's denial of a new trial unless there is a clear and manifest abuse of discretion; an important consideration on review is whether a fair-minded jury might reasonably fix the award at the challenged amount. *Luedemann v. Wade*, 323 Ark. 161, 913 S.W.2d 773 (1996); *Garrett v. Brown*, 319 Ark. 662, 893 S.W.2d 784 (1995); *Kempner v. Schulte*, 318 Ark. 433, 885 S.W.2d 892 (1994); *Younts v. Baldor Elec. Co.*, 310 Ark. 86, 832 S.W.2d 832 (1992); *National Bank of Commerce v. McNeill Trucking Co.*, 309 Ark. 80, 828 S.W.2d 584 (1992); *Warner v. Liebhaber*, 281 Ark. 118, 661 S.W.2d 399 (1983).



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In the present case, Yant contends that the trial judge abused his discretion by refusing to grant him a new trial based upon the inadequacy of the damages the jury awarded to him. In making this argument, Yant alleges that "the jury failed to take into account all the elements of the total injury proven," and that appellee did not present any evidence that Yant's medical bills were unnecessary or due to his activities since the accident, or that the injuries were not the result of the July 10, 2000 collision. We disagree.

The medical bills that Yant asserted were related to the injuries he sustained in the accident included July 10, 2000 bills from Metropolitan EMS (\$642.10), Baptist Memorial Medical Center (\$4021.72), and Radiology Consultants (\$358.00); July 17, 2000 bills from Smithville Regional Hospital (\$1572.15) and Capital Imaging (\$397.00); bills from August 2, 2000 through August 20, 2001, from Bastrop Back and Neck Clinic (\$2880.00); an undated invoice from Edmond Medical Association (\$68.00); an April 11, 2002 bill from Austin Radiological Associates (\$1575.00); and an April 9, 2002 bill from Clinical Pathology (\$557.50).

Yant testified that he was in pain after the accident; that he was "pretty much hurting about everywhere"; that his back, head, shoulder, legs, and neck hurt after the accident; that his back was still hurting; and that his legs were numb. But, on cross-examination, Yant acknowledged that after the accident, he began a job that required him to drive a truck approximately seventy hours a week. Allstate also presented Yant's medical records from Austin Heart Institute from October 2003 in which Yant stated that he had been waterskiing.

Yant further testified at trial that he was a low-key, passive person until the car wreck, but that he now has trouble controlling his temper and has periods of time where he "turns into an idiot." However, on cross-examination, Allstate questioned Yant about a 1980 military medical record that noted passive-aggressive traits were detected in Yant and stated that Yant told physicians that he would get upset with his sister and would have to smoke marijuana to calm down.

Dr. Robert Harrell, the emergency-room physician who treated Yant at Baptist Memorial Medical Center on the date of the accident, testified that Yant's principal complaint was back pain and confusion; however, x-rays of his spine and neck revealed no acute problems. A CT scan of Yant's head was also negative, and his spine was not tender. Dr. Harrell testified that when appellant was discharged later that day, he was no longer confused and could carry on a conversation in an appropriate manner. Dr. Harrell advised Yant to return to the ER if there were any further problems, but Yant did not return.

The deposition of Dr. James Polsky, the chiropractor who treated Yant in Bastrop, Texas, was read to the jury. He stated that Yant came to him about two weeks after the accident complaining of pain in the head, neck, lower back, mid-back, and left knee. It was Dr. Polsky's opinion that, as a result of the July 2000 accident, Yant suffered a severe contusion to the head resulting in bio-mechanical changes of the cervical spine and mid-back or thoracic spine; whiplash; sever lumbar strain of the



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low back; loss of motion in the low back; and contusions to the left knee. He stated that he treated Yant from July 31, 2000, until March 29, 2002, and that when he last saw Yant, there were still residual head and neck problems that he believed were related to the accident. It was Dr. Polsky's opinion that Yant would always have some slight impairment, that it would be difficult for Yant to look up or down for any period of time, and that it would be difficult for him to sit for long periods of time.

On cross-examination, Dr. Polsky stated that he had not relied upon any of the medical records from Baptist Memorial Medical Center or Smithville Regional Hospital in treating Yant. He further admitted that he had no independent knowledge of how the injuries occurred except what Yant had told him. Dr. Polsky released Yant to return to work on August 15, 2000, a little over one month after the accident, though he continued to see Yant for some time thereafter.

It is the jury's province to determine credibility of the witnesses; a jury may believe or disbelieve the testimony of any or all witnesses, even if the evidence is uncontradicted or unimpeached. See Luedemann, *supra*; Garrett, *supra*; Kempner, *supra*. The fact that medical expenses have been incurred and liability is disputed does not mandate an award equal to those expenses; the reasonableness and necessity of medical expenses are questions of fact to be determined by the jury. Kempner, *supra*.

In the present case, we hold that there was substantial evidence to support the jury's verdict. The jury was entitled to believe that not all of the medical expenses set forth by Yant were related to the July 2000 accident, especially the medical bills from Edmond Medical Association, Austin Radiological Associates, and Clinical Pathology. None of the evidence presented causally connected these three bills to the accident. Further, the Austin Radiological Associates and Clinical Pathology bills were incurred almost two years after the accident. The jury awarded Yant an amount of compensation that covered all of the medical bills that directly related to the wreck and also a portion of the expenses incurred at the Bastrop Back and Neck Clinic. We hold that a fair-minded jury could arrive at the amount awarded by this jury to Yant, and the trial judge did not abuse his discretion when he denied Yant's motion for a new trial.

Affirmed.

Robbins and Neal, JJ., agree.

1. Although the style of the case is Leah Yant and Jeffery Yant, Leah Yant did not file a Motion for New Trial. Therefore, Jeffery Yant is the sole appellant on appeal of the denial of his motion for a new trial.

