

STATE OF SOUTH CAROLINA
COUNTY OF MARION

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Kerry Silliman n/k/a/ Kerry Brown,

Case No. 2012-CP-33-688

Plaintiff,

v.

ORDER.

The Sherwin-Williams Company,

Defendant.

This matter is before the Court by way of a post-verdict motion that was filed by Defendant The Sherwin-Williams Company (Sherwin-Williams). The Court conducted a hearing for this motion on January 10, 2014. Appearing at the hearing for Sherwin-Williams were Nicholas W. Gladd of Turner, Padgett, Graham & Laney, P.A., of Columbia, South Carolina, and Clifford S. Mendelsohn of Tucker Ellis LLP of Cleveland, Ohio, who is admitted *pro hac vice*. Martin L. Stark and Joseph S. Sandefur of Parsons, Ouverson, Stark & Guest, PA of Murrells Inlet, South Carolina, and John S. Nichols of Bluestein, Nichols, Thompson & Delgado, LLC, of Columbia, South Carolina, appeared at the hearing for the Plaintiff, Kerry Silliman n/k/a Kerry Brown (Plaintiff).

Sherwin-Williams asks the Court to order a new trial absolute or a new trial *nisi remittitur*, and makes several arguments in support of its motion. In deciding this motion, the court considered the written motion itself, the memorandum that Sherwin-Williams submitted in support of its motion, the written return that Plaintiff filed in opposition, and the arguments that all counsel ably presented during the hearing. After reviewing and carefully considering all of the arguments and the authorities the parties presented, the Court respectfully denies Sherwin-

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Williams' motion.

Sherwin-Williams' first argument is that the jury's verdict is grossly excessive and was based on passion, caprice, prejudice or other improper considerations. See O'Neal v. Bowles, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993) ("If the amount of the verdict is grossly inadequate or excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial judge must grant a new trial absolute."). This Court disagrees.

"The question of whether a verdict awarded for unliquidated damages is excessive presents a difficult problem; for the amount which a jury might properly award in such cases cannot be determined with any degree of certainty, but is largely a matter of judgment based upon the facts and circumstances of each case." Watson v. Wilkinson Trucking Co., 244 S.C. 217, 224, 136 S.E.2d 286, 289 (1964). "In determining the question, the facts must be viewed in the light most favorable to the plaintiff and, where the amount of a verdict bears a reasonable relationship to the character and extent of the injury sustained, it is not excessive." Id. When the facts are viewed in that light, there is evidence from which the jury could have concluded that this wreck dramatically (and permanently) altered Plaintiff's lifestyle and her enjoyment of life. This view of the evidence justifies a substantial award of damages.

There was also nothing in this case to suggest that the jury's verdict was based on anything other than its reasoned view of the evidence and this court's instructions on the law. Compare Wachovia v. Beane, 397 S.C. 612, 616-17, 725 S.E.2d 715, 717-18 (Ct. App. 2012); Sanders v. Prince, 304 S.C. 236, 238-39, 403 S.E.2d 640, 642 (1991); and Small v. Springs Industries, 292 S.C. 481, 486, 357 S.E.2d 452, 455 (1987) (all involving strong evidence of defective verdicts). In short, the Court determines that while this verdict may be generous, it is

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not grossly excessive. The court also determines that this is not a vicious verdict that was driven by an improper consideration such as something that was not admitted in evidence. Bruno v. Pendleton Realty Co., 240 S.C. 46, 124 S.E.2d 580 (1962).

Sherwin-Williams' second argument is that the jury's verdict is excessive because testimony by Plaintiff and one of her treating physicians should not have been admitted. As to the testimony of the plaintiff's doctor, the court adheres to the view that this physician's opinion on causation was not based on conjecture, was not equivocal, and was stated to a reasonable degree of medical certainty. See Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 111, 410 S.E.2d 537, 543 (1991) (expert testimony as to connection between plaintiff's injuries and the acts of the defendant is sufficient where evidence is such as to judicially impress that the opinion represents the expert's professional judgment as to the most likely cause).

As to the testimony from Plaintiff, the Court continues to believe that it was within the Court's discretion to allow Plaintiff to describe what she experienced before and after her surgery. Previous cases have recognized that the lay mind may draw a reasonable inference of causation when an injury occurs soon after an accident and when the results are within the experience of an ordinary person. See Carter v. Anderson Mem'l Hosp., 284 S.C. 229, 233, 325 S.E.2d 78, 80-81 (Ct. App. 1985) ("Although the lay mind is not competent to pass on some conditions, there are situations where injury occurs soon after an accident, results are within the experience and observation of the ordinary person and circumstances are such that the lay mind may draw reasonable inferences of causation, even where in conflict with medical testimony.") with Gambrell v. Burleson, 252 S.C. 98, 105-106, 165 S.E.2d 622, 625 (1969) a plaintiff plaintiff in good health prior to an injury begins to complain on the day of the injury with what he claims to be a condition resulting from the injury, this fact alone may be sufficient evidence of

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causation, even when the only medical opinion testimony is that there is no causal connection.”). The Court deemed Plaintiff’s testimony fell within this category (and is still of that view), and the Court also determined that this testimony might be helpful to the jury; the testimony allowed Plaintiff to explain her view of the harm she suffered as a result of the wreck that led to this lawsuit.

Sherwin-Williams’ third argument is that this court should grant a new trial under the thirteenth juror doctrine. See Folkens v. Hunt, 300 S.C. 251, 254-55, 387 S.E.2d 265, 267-68 (1990) (setting forth the rules governing the Thirteenth Juror doctrine). The Court disagrees.

The thirteenth juror doctrine allows the trial judge to grant a new trial “based on the facts” if the judge believes that the facts do not justify the verdict. Lane v. Gilbert Const. Co., Ltd., 383 S.C. 590, 681 S.E.2d 879 (2009). Having presided over this trial, having seen and heard the witnesses testify, having considered the parties’ arguments, and having consulted the relevant authorities, the Court determines that this is not a case where the facts do not justify the verdict.

Sherwin-Williams’ fourth and final argument is that the jury’s verdict is unduly liberal and that the court should grant a new trial *nisi remittitur*. The Court disagrees and declines this request.

Although this verdict may be generous, non-economic components of damage like pain, suffering, and loss of enjoyment of life are incapable of exact measurement and generally, the court entrusts the jury to make this finding of fact. See, e.g., Mims v. Florence County Ambulance Serv. Comm’n, 296 S.C. 4, 7, 370 S.E.2d 96, 99 (Ct. App. 1988); see also Edwards v. Lawton, 244 S.C. 276, 281, 136 S.E.2d 708, 710-711 (1964). Non-economic damages are a large component of the jury’s award in this case, but when the evidence in this case is viewed in

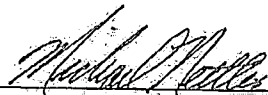
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the light most favorable to Plaintiff, the evidence suggests that this wreck was violent, traumatic, and has tremendously impacted Plaintiff's quality of life. This may be a large non-economic damages verdict, but the jury determined that the evidence in this case merited a large non-economic damages award. On this record, the Court believes that this determination by the jury was reasonable.

For the foregoing reasons, the court respectfully denies Sherwin-Williams' post-verdict Motion in its entirety.

IT IS SO ORDERED.



Honorable Michael G. Nettles
Presiding Judge

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