

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	
Henry Pressley,)	Civil Action No.: 2015-CP-40-4689
)	
Plaintiff,)	
)	ORDER GRANTING PLAINTIFF'S
v.)	MOTION FOR NEW TRIAL
)	ABSOLUTE OR IN THE
Eric Sanders,)	ALTERNATIVE FOR A NEW TRIAL
)	<i>NISI ADDITUR</i>
Defendant.)	
)	
)	

This matter came before the Court on October 24, 2016, on Plaintiff's post-trial motions seeking relief in the form of a new trial absolute, new trial under the thirteenth juror doctrine, or relief under the doctrine of new trial *nisi additur*.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court in *Proctor v. Dept. of Health and Environmental Control* determined:

A new trial nisi is one in which a new trial will be granted unless the party opposing it complies with a condition set by the court. The grant or denial of new trial motions rests within the discretion of the trial judge, and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law. The trial court alone has the power to grant a new trial nisi when he finds the amount of the verdict to be merely inadequate or excessive. However, compelling reasons must be given to justify invading the jury's province by granting a new trial nisi remittitur. The consideration for a motion for a new trial nisi remittitur requires the trial judge to consider the adequacy of the verdict in light of the evidence presented. Great deference is given to the trial judge who heard the evidence and is more familiar with the evidentiary atmosphere at trial, and who thus possesses a better-informed view of the damages than this Court.

368 S.C. 279, 319-21, 628 S.E.2d 496, 518 (Ct. App. 2006)(internal citations and quotation marks omitted).

This case involved a rear end motor vehicle collision and was tried before me during the two day period of October 12, 2016 to October 13, 2016. At this trial the Defendant admitted liability, but disputed the damages. However, there was no contrary testimony or evidence to dispute that the medical treatment and bills resulted from the car collision at issue in this trial. Plaintiff submitted undisputed, uncontroverted evidence of loss in the amount of his total medical bills that were \$9,658.00.

The testifying treating physician, Timothy M. Zgleszewski, M.D., was qualified as an expert and gave an undisputed opinion that the injuries, pain, and subsequent treatment were related to the collision. The treating physician also testified that the treatment was reasonable and necessary as were the bills incurred for treatment. There was no testimony or evidence to rebut the treating physician's testimony or opinions.


The Plaintiff has been a brick mason for over forty years and he testified that he suffered injuries to his neck and back that caused radiating pain in his extremities. Plaintiff testified that he missed work due to the injuries, could not sleep at night, and could not engage in normal daily activities. Plaintiff suffered great pain as a result of the accident. He sought a conservative course of treatment that started with chiropractic care and ultimately ended at the pain specialist when he could not tolerate the needles that were required in the procedures. There was no evidence or testimony that Plaintiff ever suffered from injuries to his neck or back prior to the collision.

At the conclusion of the trial, the jury returned a verdict of \$9,888.30, of which almost half was allocated to pain and suffering. The jury verdict was inadequate based upon the evidence and testimony that was presented at trial. This verdict was significantly insufficient and inadequate to compensate the Plaintiff for the actual damages that he suffered as a result of the collision. Therefore, the verdict was not reasonable.

The Trial Judge is vested with the authority to grant a new trial. *Vinson v. Hartley*, 324 S.C. 389, 405, 477 S.E.2d 715, 723 (Ct. App. 1996) ("The grant or denial of new trial motions rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law."); *id.* at 404, 477 S.E.2d at 723 ("The trial judge must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives."); *id.* at 404-05, 477 S.E.2d at 723 ("The failure of the trial judge to grant a new trial absolute in this situation amounts to an abuse of discretion and on appeal this Court will grant a new trial absolute."). For all of the compelling reasons listed above, it is abundantly clear that the verdict in this case was inadequate, in light of the evidence and testimony presented at trial, and granting *nisi additur* is appropriate.

THEREFORE, Plaintiff's Motion for a new trial *nisi additur* is hereby granted, and an additional \$10,000.00 in actual damages is to be paid by the Defendant, bringing the total verdict to \$19,888.30, or a new trial will be granted.

IT IS SO ORDERED.


The Honorable E. Casey Manning
Fifth Judicial Circuit

Jan. 10, 2017
Columbia, South Carolina