

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 2018-CP-32-02102

Gerald Nelson,

Plaintiff,

v.

Christopher S. Harris and Charles L.
Baughman, Sr. d/b/a K&B Towing, LLC,

Defendant.

RECEIVED

May 01 2020

SC Court of Appeals

**Order Denying Plaintiff's Motion for New
Trial *Nisi Additur* or New Trial Absolute**

This matter comes before the Court pursuant to Plaintiff's Motion for a New Trial *Nisi Additur* or a New Trial Absolute. After having reviewed the salient portions of the record in this matter and having recollected the occasion, this Court respectfully denies the Motion. There is no evidence in the record, nor is there any anecdotal evidence, showing that the jury's verdict in this case was inadequate.

Motion for New Trial *Nisi Additur*

A trial judge may grant a new trial *nisi additur* when a jury's verdict is inadequate. *Bailey v. Peacock*, 318 S.C. 13, 455 S.E.2d 690 (1995). However, to grant such relief, the trial judge must state compelling reasons for invading the province of the jury. *Krepps v. Ausen*, 324 S.C. 597, 607, 479 S.E.2d 290, 295 (Ct. App. 1996). "When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by

passion, caprice, or prejudice.” *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 530, 431 S.E.2d 557, 558 (1993). The test employed by the court in determining whether or not to set aside a verdict on the grounds of either excessiveness or inadequacy is whether the verdict is so shocking as to manifestly show the jury was moved by considerations not founded on the evidence and/or the instructions of the trial judge. *Toole v. Toole*, 260 S.C. 235, 195 S.E.2d 389 (1973). In the case at bar, the jury's verdict is not inadequate in light of issues related to proximate cause and the believability and credibility of the witnesses.

In this case, the jury sat for roughly two days listening to the evidence and arguments presented by the parties. The medical bills were \$8,008.58 and Plaintiff also claimed lost wages for approximately \$11,000.00. Plaintiff only produced W2 forms as supporting evidence to the jury regarding his lost wage claim. The jury's verdict was \$18,500.00. Plaintiff claims that this verdict is inadequate because it did not award anything for Plaintiff's pain and suffering, loss of enjoyment of life, future pain and suffering, mental anguish, or permanency or discounting those damages. This Court finds that the verdict is not inadequate based on the testimony and evidence presented at trial. Furthermore, this verdict was not grossly inadequate or excessive so as to shock the conscience of this Court. Additionally, there is no indication that the verdict reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives.

Proximate cause and the believability and credibility of witness were questions of fact for the jury to decide in this case. The jury was also called on to decide the believability and credibility of each witness that testified. It is reasonable to believe that the jury considered the total special damages claimed by Plaintiff, the believability and credibility of Plaintiff's testimony, the believability and credibility of Plaintiff's mother's testimony, the believability and

credibility of Plaintiff's expert testimony, the believability and credibility of Defendant and Defendant's employer, and the pre-existing medical conditions, to arrive at its verdict of \$18,500.00.

Taking all of the foregoing facts and circumstances into consideration, this Court finds that the jury's verdict was not inadequate or insufficient. Therefore, Plaintiff's motion for a new trial *nisi additur* is denied.

Motion for New Trial Absolute

A trial court may grant a new trial; however, the jury's determination of damages is entitled to substantial deference. *Rush v. Blanchard*, 310 S.C. 375, 426 S.E.2d 802 (1993). This Court 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. *Krepps v. Ausen*, 324 S.C. 597, 607, 479 S.E.2d 290, 295 (Ct. App. 1996). It is the duty of this Court to sustain verdicts when a logical reason for reconciling them can be found. *Daves v. Cleary*, 355 S.C. 216, 231, 584 S.E.2d 423, 430 (Ct. App. 2003). A jury's verdict should be affirmed if it is possible to do so and carry into effect the jury's clear intention. *Daves*, 355 S.C. at 234; 584 S.E.2d at 432. For the reasons stated above, this Court finds that the jury's verdict was not grossly inadequate in light of issues related to proximate cause and the believability and credibility of the witnesses. Therefore, Plaintiff's motion for a new trial absolute is denied.

The Court's Instruction to Only Consider Evidence Presented During Trial

Lastly, Plaintiff contends that this Court's instruction to consider only the evidence presented during trial was inadequate. Plaintiff maintains that the fact that the jury presented a question to the Court regarding insurance is enough to grant a new trial. Plaintiff speculates that

this may be the reasoning behind the jury's verdict, however, it is impossible to speculate as to how a jury arrives at its verdict, and it is not a basis to grant a new trial.

In this case, this Court made an effort to avoid the issue of insurance. Any reference to Defendant's liability insurance was rightfully excluded because its prejudicial affect substantially outweighed any probative value. This Court continued to uphold this rule when it instructed the jury to only consider the evidence presented during trial. The jury never received evidence of liability insurance during trial, and when the jury presented this Court with a question regarding liability insurance, this Court correctly instructed the jury to only consider the evidence presented during trial. Plaintiff submits that the jury blatantly disregarded this Court's instruction. This is speculative, and it is not a basis for granting a new trial. Therefore, Plaintiff's motion for a new trial is denied.

NOW, THEREFORE, the Plaintiff's Motion for a New Trial *Nisi Additur* or a New Trial Absolute is denied.

AND IT IS SO ORDERED.

The Honorable, Judge Donald B. Hocker

Columbia, South Carolina
February ____, 2020



Lexington Common Pleas

Case Caption: Gerald Nelson VS Christopher S Harris , defendant, et al

Case Number: 2018CP3202102

Type: Order/Other

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167