STATE OF MICHIGAN

COURT OF APPEALS

SHERYL BYNUM,

Plaintiff-Appellee,

v

THE ESAB GROUP, INC.,

Defendant-Appellant.

UNPUBLISHED
June 4, 1996

No. 173473
LC No. 91-071284-NP

Before: Sawyer, P.J., and Griffin and M. G. Harrison*, JJ.

PER CURIAM.

Defendant appeals as of right a judgment entered following a second jury trial awarding plaintiff $2,211,549 in damages arising out of a robotic welding machine accident. At an earlier trial, a jury rendered a verdict that plaintiff had sustained $50,000 in damages and was comparatively negligent. After the first trial, the trial court ordered a judgment notwithstanding the verdict on the issue of comparative negligence. In addition, when defendant failed to accept an additur, the lower court ordered a new trial on damages, only. Following the second trial and resulting judgment of $2,211,549, defendant appeals. We reverse and remand for a new trial as to all issues.

I

Defendant first contends that the evidence supports the original jury's finding of comparative negligence. When reviewing the trial court's ruling on a motion for JNOV, this Court examines the testimony and all legitimate inferences that may be drawn from it in the light most favorable to the nonmoving party. If reasonable jurors could have reached different conclusions, neither the trial court nor this Court may substitute its judgment for that of the jury. *Thorin v Bloomfield Hills Bd of Ed*, 203 Mich App 692, 696; 513 NW2d 230 (1994).

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* Circuit judge, sitting on the Court of Appeals by assignment.

Our review of the record reveals evidence from which the jury could legitimately have concluded that plaintiff was comparatively negligent. Plaintiff testified that she knew of other methods of servicing the machine which did not necessitate standing on the turntable. Further, although she was aware of other procedures for deactivating the turntable, she elected to stand on it and "pop out" the cycle start button because that procedure involved less down time and because she believed it prevented turntable rotation. Plaintiff admitted that about one week before her accident, a fellow employee had told her that one of the turntables had moved even though the cycle start button had been "popped out." Plaintiff's supervisor testified that plaintiff had not properly serviced the machine because she did not "stop the program and clear the inputs and outputs of the robot cabinet she was going to work with." Finally, a fellow employee of plaintiff's stated that standing on the turntable while changing the welding tip was known to be dangerous.

Because reasonable jurors could honestly have reached different conclusions regarding plaintiff's alleged comparative negligence, the trial court improperly substituted its judgment for that of the jury. *Thorin, supra,* at 696. The grant of JNOV on the issue of plaintiff's comparative negligence is reversed.

II

Defendant next argues that the trial court's order of a new trial on damages was improper because the amount of plaintiff's past medical expenses, cited by the court as exceeding the jury's award for economic damages, was never placed on the record by way of a formal stipulation or exhibit. We disagree.

The standard of review in an appeal from the grant of a new trial on damages is whether the verdict is so clearly or grossly inadequate based on objective considerations relating to the actual conduct of the trial or to the evidence adduced. *Palenkas v Beaumont Hosp,* 432 Mich 527; 443 NW2d 354 (1989). This determination is left to the discretion of the trial court absent a clear abuse of discretion. *Id.*; *Burtka v Allied Integrated Diagnostic Services, Inc*, 175 Mich App 777, 780; 438 NW2d 342 (1989). A verdict that ignores uncontroverted damages is inadequate. *Moore v Spangler*, 401 Mich 360, 372; 258 NW2d 34 (1977).

In the present case, plaintiff's attorney submitted the amount of plaintiff's medical expenses to the jury during closing argument and defense counsel stated that he had no disagreement with the itemization. Under such facts, the trial court did not abuse its discretion by ordering a new trial despite the lack of a formal stipulation regarding medical expenses.

We also disagree with defendant's contention that the trial court erred by granting a new trial because the original award of $50,000 was within the jury's discretion. The jury's failure to award anything for future nonecomic loss, despite uncontroverted testimony that plaintiff's pain and disability will continue into the future, contravenes MCR 2.611(A)(E). The trial court did not err in setting aside the jury's grossly inadequate damage award.

III

After thorough review, we conclude that the trial court correctly ordered a second trial because the initial damage award of $50,000 in damages was grossly inadequate and against the great weight of the evidence. However, the circuit court committed error requiring reversal by granting a JNOV on the issue of comparative negligence. Although arguably the degree of plaintiff's comparative negligence was decided in the first trial and plaintiff's damages were decided in the second, we hold that under the circumstances of this case a new trial as to all issues is in the interest of justice. First, although a partial new trial may be granted under limited circumstances, see, e.g., *Hierta v General Motors Corp (Supplemental opinion)*, 148 Mich App 796; 385 NW2d 690 (1986), in general, the practice of partial retrials is disfavored. *Trapp v King*, 374 Mich 608, 611; 132 NW2d 640 (1965); *Dooms v Stewart Bolling & Co*, 68 Mich App 5, 22-23; 241 NW2d 738 (1976). Further, in view of the vast difference in the damage awards between the first and second trials, it appears that the issue of comparative negligence significantly influenced the determination of plaintiff's damages. Accordingly, we hold that the interests of justice are best served by wiping the slate clean and ordering a new trial as to all issues. MCR 7.216(A)(7).

Reversed and remanded for a new trial. We do not retain jurisdiction. No costs, neither party having prevailed in full.

/s/ David H. Sawyer
/s/ Richard Allen Griffin
/s/ Michael G. Harrison