

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STEVEN V. CAIN, :  
 : C.A. No. K10C-01-046 WLW  
 Plaintiff, :  
 :  
 v. :  
 :  
 DAVID C. SADLER, :  
 :  
 Defendant. :

Submitted: April 28, 2014

Decided: May 9, 2014

**ORDER**

Upon Plaintiff's Motion for a New Trial,  
or, Alternatively, Additur.

*Granted in Part; Denied in Part.*

William D. Fletcher, Jr., Esquire of Schmittinger & Rodriguez, P.A., Dover,  
Delaware; attorney for Plaintiff.

Brain T. McNelis, Esquire of Young & McNelis, Dover, Delaware; attorney for  
Defendant.

WITHAM, R.J.

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Before the Court is Plaintiff's motion for a new trial, which Plaintiff seeks solely as to the issue of damages. In the alternative, Plaintiff seeks additur. Defendant does not oppose a new trial on both liability and damages, but does oppose a new trial strictly on the issue of damages and also opposes Plaintiff's alternative motion for additur. The Court has carefully considered the parties' submissions and the applicable legal authority. For the reasons set forth below, Plaintiff's motion is **GRANTED IN PART** and **DENIED IN PART**, and a new trial is ordered on both liability and damages.

### **BACKGROUND**

Plaintiff Steven V. Cain (hereinafter "Plaintiff") seeks to recover damages from Defendant David C. Sadler (hereinafter "Defendant") for injuries sustained in a motor vehicle collision that occurred on March 21, 2008. This matter proceeded to a jury trial on March 24, 2014. Liability and damages were both contested issues.

This Court issued a jury instruction on comparative negligence, which stated in pertinent part:

Under Delaware law, a plaintiff's contributory negligence doesn't mean that the plaintiff can't recover damages from the defendant as long as the plaintiff's negligence was no greater than the defendant's negligence. Instead of preventing recovery, Delaware law reduces the plaintiff's recovery in proportion to the plaintiff's negligence. . . .If you find that Steven Cain's negligence is no more than half the total negligence, I will reduce the total amount of Steven Cain's damages by the percentage of his contributory negligence. If you find that Steven Cain's negligence is more than half the total negligence, Steven Cain

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may not recover any damages.

The Court issued to the jury a special verdict form which the jury was instructed to use for assigning percentages to the respective negligence of Plaintiff and Defendant, if any. The verdict form included the following:

(If the percentage of negligence you attributed to Plaintiff Cain is 50% or less then go to Question No. 4. If the percentage of negligence you attributed to Plaintiff Cain is greater than 50%, go no further and please summon the Bailiff.)

4. State the amount of compensation you award Steven Cain for his injuries and damages, proximately caused by the motor vehicle accident of March 21, 2008. Do not reduce your award by the amount of negligence you attributed to Plaintiff Steven Cain, if any. The Court will calculate the reduction if it applies.

The jury reached a verdict on March 28, 2014. The Court Clerk, reading from the special verdict form completed by the jury, engaged in the following exchange with the Jury Forelady:

THE CLERK: Do you find that defendant, David C. Sadler, was negligent in a manner proximately causing injury to plaintiff, Stephen [*sic*] V. Cain?

THE FORELADY: Yes.

THE CLERK: Do you find that plaintiff, Steven V. Cain, was [contributorily] negligent in a manner [proximately] causing injury to himself?

THE FORELADY: Yes.

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THE CLERK: State the percentage of negligence of defendant Sadler.

THE FORELADY: 50 percent.

THE CLERK: Please state the percentage of negligence [of] plaintiff Cain.

THE FORELADY: 50 percent.

THE CLERK State the amount of compensation you award Stephen [*sic*] Cain for his injuries and damages proximately caused by the motor vehicle accident of March 21st, 2008.

THE FORELADY: We have no amount.

THE CLERK: Zero is your verdict?

THE FORELADY: I'm sorry.

THE CLERK: Zero?

THE FORELADY: Zero.

Following this exchange, the Court held a brief sidebar conference with counsel, during which counsel for Plaintiff stated "we need to have an understanding from the foreperson are they awarding zero or that they are not considering damages."

Thus, the Court engaged in the following exchange with the Jury Forelady:

THE COURT: Madam Forelady, I'm going to ask you your response to question No. 4, and the bailiff should give back to you your jury verdict sheet form for you. Before you respond, let

me also ask you this. If your [answer] to [question] No. 3 that you read to the Court is 50 percent for each party, what is your response to question No. 4?

THE FORELADY: We decided that no monies would be given to either side because each side was responsible for the accident.

THE COURT: Very well. Thank you.

The jury was subsequently excused, and Plaintiff's instant motion followed. Plaintiff argues that the jury's verdict of \$0 is inadequate and unacceptable as a matter of law. Plaintiff requests that if a new trial is granted, it be limited to the issue of damages only, because there is "no need to retry the issue of negligence." Alternatively, in the event that the Court denies Plaintiff's motion for a trial, Plaintiff seeks additur. Defendant, while not opposing a new trial on both liability and damages, argues that a new trial cannot be granted on damages alone because the Jury Forelady's comments to the Court reflect a clear misunderstanding of the law regarding comparative negligence.

#### **STANDARD OF REVIEW**

The Court presumes that the jury verdict is correct.<sup>1</sup> On a motion for a new trial, "[t]he Court will only set aside a verdict as insufficient if it is clear that the verdict was the result of passion, prejudice, partiality, corruption, or if it is clear that

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<sup>1</sup> *Smith v. Lawson*, 2006 WL 258310, at \*3 (Del. Super. Jan. 23, 2006) (citing *Mills v. Telenczak*, 345 A.2d 424, 426 (Del. Super. 1975)).

the jury disregarded the evidence or law.”<sup>2</sup> Stated differently, a jury verdict will not be set aside unless it is against the great weight of the evidence, the verdict shocks the Court’s conscience, or the Court is otherwise convinced that the jury “disregarded the applicable rules of law.”<sup>3</sup> When it is alleged that the jury’s answers to interrogatories in a special verdict form are inconsistent, the Court must determine “whether there is any rational basis on which to maintain the jury verdict.”<sup>4</sup> If there is any possible explanation which avoids the inconsistency, the verdict will be upheld.<sup>5</sup>

### **DISCUSSION**

A new trial may be ordered when a jury issues a verdict that is “patently contrary” to the jury instructions and manifests a misunderstanding of the applicable law.<sup>6</sup> Under Delaware law, a plaintiff’s contributory negligence does not bar the plaintiff from recovery so long as the plaintiff’s negligence is not greater than the defendant’s negligence.<sup>7</sup>

It is clear from the record and the Court’s exchange with the Jury Forelady that

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<sup>2</sup> *Littleton v. Ironside*, 2010 WL 8250830, at \*1 (Del. Super. Oct. 6, 2010) (citation omitted).

<sup>3</sup> *Lawson*, 2006 WL 258310, at \*4 (citations omitted).

<sup>4</sup> *Citisteel USA, Inc. v. Connell Ltd. P’ship*, 712 A.2d 475, 1998 WL 309801, at \*4 (Del. May 18, 1998) (ORDER).

<sup>5</sup> *Id.*

<sup>6</sup> *Duphily v. Del. Elec. Co-op., Inc.*, 662 A.2d 821, 834 (Del. 1995).

<sup>7</sup> 10 *Del. C.* § 8132.

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the jury fundamentally misapprehended the applicable law in this case. The Jury Forelady told the Court that there was “no amount” of damages despite being obligated to award damages, and the Forelady’s stated “we decided that no monies would be given to either side because each side was responsible for the accident.” Delaware law on a plaintiff’s ability to recover damages, even when their contributory negligence is equal to the defendant’s negligence, was clearly conveyed to the jury through the Court’s jury instruction on comparative negligence. The instruction specifically informed the jury that if the jury found Defendant’s negligence to be the proximate cause of the accident, the only instance in which Plaintiff would be unable to recover damages was if Plaintiff’s contributory negligence exceeded Defendant’s. The Jury’s verdict is also inconsistent with the special verdict form, which instructs jurors to determine the amount of compensation due Plaintiff if Plaintiff’s negligence was 50% or less. Despite finding Plaintiff to be 50% negligent, the jury awarded Plaintiff no compensation. There is no rational basis for this inconsistency, other than a misapprehension by the jury as to the law and their duties under the jury instructions, which is corroborated by the Forelady’s statements to the Court. Because the jury’s verdict manifests a misunderstanding of the applicable law as well as the jury instructions and special verdict form, a new trial must be ordered.

Plaintiff seeks a new trial strictly on the issue of damages. Rule 59 of the Superior Court Rules of Civil Procedure provides that a new trial can be granted “on

all or part of the issues in an action in which there has been a trial. . . .”<sup>8</sup> A new trial may be granted on the issue of damages only when the issue of liability was effectively determined by the jury, or when the issue of liability is distinct from the issue of damages.<sup>9</sup> A new trial on damages alone will not be granted when the issues of damages and liability are “inexorably intertwined.”<sup>10</sup>

It is very possible that the jury correctly determined Defendant to be 50% negligent and Plaintiff to be 50% contributorily negligent, and simply erred as to their understanding of Plaintiff’s ability to recover. It is also very possible that the jury reached its 50-50 apportionment of negligence because of a fundamental misapprehension of the principles of comparative negligence under Delaware law; *i.e.*, the jury reached its 50-50 apportionment because the jury wrongly believed that such apportionment would result in no damages being awarded. Another possibility is that the members of the jury could not agree on a precise apportionment of negligence, or on whether Plaintiff’s negligence exceeds Defendant’s, and settled for a 50-50 apportionment. Based on these possibilities, and given the comments by the Jury Forelady, the Court cannot conclude that the jury effectively determined the issue of liability. Thus, based on the particular circumstances of this case, and given the clear determination that contributory negligence exists, the Court finds the issues

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<sup>8</sup> Del. Super. Ct. Civ. R. 59(a).

<sup>9</sup> *Lawson*, 2006 WL 258310, at \*7 (citations omitted).

<sup>10</sup> *Cooke v. Murphy*, 2013 WL 6916941, at \*2 (Del. Super. Nov. 26, 2013) (citing *Chilson v. Allstate Ins. Co.*, 2007 WL 4576006, at \*4 (Del. Super. Dec. 7, 2007)).

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of liability and damages to be inexorably intertwined.

Accordingly, a new trial is ordered both on liability as well as damages. Because Plaintiff's motion for a new trial is granted, there is no need to reach Plaintiff's alternative motion for additur.

### **CONCLUSION**

Plaintiff's motion for a new trial is **GRANTED**, but the new trial shall be on both liability and damages. Plaintiff's alternative motion for additur is **DENIED**.

**IT IS SO ORDERED.**

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/s/ William L. Witham, Jr.  
Resident Judge

WLW/dmh