IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

ELIZABETH NELSON and CHRISTOPHER NELSON,	:	C.A. No. K12C-01-014 WLW
Plaintiffs,	:	
v.	:	
ABILEM FREGOSO,	:	
Defendant.	:	

Submitted: August 21, 2014
Decided: November 18, 2014

ORDER

Upon Plaintiffs' Motion for New Trial, or in the Alternative, Additur.
Granted in part; Denied in part.

Edward C. Gill, Esquire of the Law Office of Edward C. Gill, P.A., Georgetown, Delaware; attorney for Plaintiffs.

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

WITHAM, R.J.

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

Plaintiffs Elizabeth Nelson and Christopher Nelson (hereinafter "Plaintiff" or "Plaintiffs") seek to recover damages from Defendant Abilem Fregoso (hereinafter "Defendant") for injuries sustained in a motor vehicle accident that occurred on November 18, 2010. This matter proceeded to a jury trial from August 11 through August 13, 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 a recovery, Delaware law reduces the plaintiff's recovery in proportion to the plaintiff's negligence.
>
> If you find contributory negligence was a proximate cause of the accident, you must determine the degree of that negligence,

> expressed as a percentage, attributable to Elizabeth Nelson. Using 100% as the total combined negligence of the parties, you must determine what percentage of negligence is attributable to Elizabeth Nelson.

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:

> 3. Apportion the amount of negligence between defendant Fregoso and plaintiff Nelson that you have found were the proximate cause of the accident.
>
> Defendant Fregoso "50"[1] %
> Plaintiff Nelson "50" %
> Total 100%
>
> If you have found that plaintiff was 51% or greater the proximate cause of the accident you have found for the defendant and you should return to the Courtroom. If you have not so found answer No. 4.
>
> 4. What total amount of damages do you find that plaintiffs have suffered as a proximate result of the November 18, 2010 accident, without deductions for any negligence on behalf of plaintiff?
>
> Elizabeth Nelson $ "0"
> Christopher Nelson $ "0"

After the jury was excused, the Plaintiff made an oral motion for a new trial on

[1] Quotations indicate where the Jury Foreperson hand wrote a response on the Special Verdict Form requiring an answer.

the issue of damages alone, arguing that a result of zero damages was not supported by the evidence and "shocked the conscience." Plaintiff filed the instant motion later, arguing that a new trial be limited to the issue of damages only, and alternatively, in the event that the Court denies Plaintiff's motion for a new 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 issue of liability and damages, like in *Cain v. Sadler*,[2] are intermingled.

STANDARD OF REVIEW

The Court presumes that the jury verdict is correct.[3] 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 the jury disregarded the evidence or law."[4] 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."[5] When it is alleged that the jury's answers to interrogatories in a special verdict form are inconsistent, the Court must determine

[2] *Cain v. Sadler*, 2014 WL 2119994 (Del. Super. May 9, 2014).

[3] *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)).

[4] *Littleton v. Ironside*, 2010 WL 8250830, at *1 (Del. Super. Oct. 6, 2010) (citation omitted).

[5] *Lawson*, 2006 WL 258310, at *4 (citations omitted).

"whether there is any rational basis on which to maintain the jury verdict."[6] If there is any possible explanation which avoids the inconsistency, the verdict will be upheld.[7]

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.[8] 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.[9]

Both parties rely on *Cain* as justification for seeking a new trial. Like in *Cain*, it is apparent that the members of the jury misunderstood the applicable law in the case at bar. The jury did not award any damages despite being obligated to do so. 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

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[6] *Citisteel USA, Inc. v. Connell Ltd. P'ship*, 712 A.2d 475, 1998 WL 309801, at *4 (Del. May 18, 1998) (ORDER).

[7] *Id.*

[8] *Duphily v. Del. Elec. Co-op., Inc.*, 662 A.2d 821, 834 (Del. 1995).

[9] 10 *Del. C.* § 8132.

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 to Plaintiff if Plaintiff's negligence was 50% or less. Despite finding Plaintiff to be 50% negligent, the jury awarded Plaintiff no compensation. 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. . . ."[10] 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.[11] A new trial on damages alone will not be granted when the issues of damages and liability are "inexorably intertwined."[12] As in *Cain*, there are numerous explanations as to why the jury awarded 50/50 negligence.

It is possible that the jury believed each party was 50% at fault, but did not understand how Plaintiff was to be awarded a recovery. Or, it is possible that the jury wrongly believed that under Delaware law, it could award zero dollars in damages to

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[10] Del. Super. Ct. Civ. R. 59(a).

[11] *Lawson*, 2006 WL 258310, at *7 (citations omitted).

[12] *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)).

the Plaintiff. Another possibility is that the members of the jury could not agree on a precise apportionment of negligence, or on whether Plaintiff's negligence exceeded Defendant's, and settled for a 50-50 apportionment. Based on these possibilities, 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 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.

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

WLW/dmh