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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

EDWARD FELIX, Plaintiff and Appellant, v. BRANDON W. ARONSON et al., Defendants and Respondents.	B218160 (Los Angeles County Super. Ct. No. LC071321)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael B. Harwin, Judge. Affirmed.

Biren/Katzman and Matthew B. F. Biren, for Plaintiff and Appellant.

Hager & Dowling, Thomas J. Dowling and Alison M. Holman, for Defendants and Respondents.

Edward Felix appeals from the judgment and the trial court's denial of his motion for new trial after a jury awarded him general and special damages in his personal injury lawsuit. He also appeals from the trial court's reduction of the award and taxing of costs. We affirm.

BACKGROUND

On May 4, 2004, Brandon Aronson (Brandon) was driving a car owned by his father, Seth Aronson (Seth), when he rear-ended a vehicle with Edward Felix at the wheel. Brandon's car hit Felix's car from behind while Felix's car was stopped at a red light. Felix, who worked for Warner Brothers Studios, was driving a company car in the course and scope of his employment. Brandon admitted liability for the accident.

Felix filed a personal injury lawsuit against the Aronsons on April 29, 2005, alleging negligence and seeking general and special damages. Both sides made settlement offers. Jury trial began on January 21, 2009.

At trial, Felix presented testimony by family and friends that before May 4, 2004, he was active physically, rode motorcycles and jet skis, and worked as a special effects foreman. His daughter testified that he had back problems in 1998 and a few years later, and had taken some time off, although his friends testified they were not aware of back problems in 1998. After the accident, Felix seemed to be in more pain, and he stopped working in July 2004. He had surgery in March 2005, had a very difficult and painful recovery, and his activities were restricted. Felix eventually returned to work but could not do everything he used to do. Felix had another surgery in 2007 to remove the screws from the first operation, and had a better recovery, although he did not return to his pre-2004 activity level. A psychiatrist who saw Felix four times in 2007–2008 testified that he diagnosed Felix with low-grade depression and a pain disorder, suggested cognitive therapy, and prescribed an antidepressant. Felix also presented expert testimony by an economist that, from the time Felix first went off work in July 2004 (after the May 2004 accident) to May 2009, his past loss of earnings (offset by his earnings during that period) was $291,788.

Felix testified about his activities before the accident and his work in special effects. He did not work at all in 2005 and returned to work in 2006 to a different and less demanding job. Felix had no back problems before 1997 or 1998, when, after lifting a sailboat mast, he had back pain for which he saw Dr. Hopkins. In 1998, Dr. Hopkins performed Felix's first back surgery to shave a disc, and Felix was working again with no problems in a week or two. In 2001, he again had back pain and went back to Dr. Hopkins, who gave him steroids; Felix felt normal a week later. Felix did not remember Dr. Hopkins saying he needed surgery in 2001. He had forgotten that he had seen Dr. Hopkins in 2001 when he gave his first deposition. He had also forgotten that he saw a chiropractor in 2002 for the same back pain.

After the May 2004 accident, Felix immediately felt back pain and swelling, which worsened when he got home. The next day he went to the studio nurse who sent him to a nearby hospital for X-rays, where he was told he had muscle strain, and went to physical therapy. The doctor told him to go back to work but not to lift anything or bend over. Felix did not miss a day of work for three months, although his back was hurting, he "basically was more or less restricted to the desk," and he avoided physical work. A workers' compensation doctor, Dr. Sanders, had examined Felix: "He basically just watched me walk back and forth, and he said I looked perfectly fine to him." Based on Dr. Sanders's report, workers' compensation disallowed the surgery.

Three months later, in July 2004, Felix went back to Dr. Hopkins, who took him off work and recommended surgery. Felix had the surgery in March 2005, and was immobile and in pain during his recovery. He returned to work six months later, getting a series of temporary jobs through friends. Felix still had some back pain and had a second surgery in January 2007, to remove screws. He returned to work again three months later, in constant pain. His recreational activities were still restricted and he had emotional ups and downs. He had outstanding medical bills, an ongoing workers' compensation case, and disputes with his union health insurance plan.

On cross-examination, Felix testified he did not remember telling Dr. Hopkins he had a back injury in 1997, before his first back surgery in 1998. He had signed an

interrogatory that stated it took four months to recover from the 1998 surgery. He had simply forgotten about the chiropractor when he denied seeing any other doctors for his back between 1998 and the accident in 2004, even though he had picked up X-rays from the chiropractor in 2006 before his second deposition in 2007. He also did not remember telling Dr. Hopkins in 2001 that his back pain was a 10 on a scale of one to 10, or that in 2001 Dr. Hopkins recommended surgery to avoid permanent loss that could not be repaired.

Dr. Hopkins, Felix's orthopedic spine surgeon, testified via depositions videotaped in August 2007. In 1998, Felix had seen him for low back pain which began in 1997, when Felix had lifted a mast onto a sailboat. X-rays showed disc space narrowing in Felix's spine, and a later MRI showed a herniated disc. Although medication initially helped, the pain increased over time, and Dr. Hopkins suggested surgery to trim off the protruding portion of the disc and get pressure off the nerve. Felix had the surgery in June 1998, which resolved some of the pain. In March 2001, Felix returned with leg pain and back pain from lifting at work, and an MRI showed a new piece of disc extruded at the same level. Dr. Hopkins prescribed prednisone and bed rest. The pain returned and Dr. Hopkins recommended surgery to avoid permanent loss that could not be repaired, but Felix did not have the surgery in spite of the warnings. At a later visit in 2001, Felix reported no leg pain but some remaining buttock pain.

Felix returned in July 2004 after the May 2004 accident, with pain of 80 percent in his lower back and 20 percent in his left buttock. Felix did not tell Dr. Hopkins that he had seen a chiropractor in 2002. An MRI showed a decrease in disc space height at a level above the level operated on in 1998. The level operated on in 1998 also showed further narrowing. Felix reported shoulder and neck pain in an August 2004 visit, and continued severe back pain in September, and Dr. Hopkins noted he was "temporarily totally disabled." In December 2004, Felix decided to go ahead with surgery. Felix returned for a February 2005 visit having undergone a second opinion examination by a

workers' compensation doctor.[1] Dr. Hopkins continued to describe Felix as temporarily totally disabled.

Felix had the surgery on March 14, 2005. A preoperative note diagnosed "lumbar spine instability with discogenic back pain and radiculopathy," and Dr. Hopkins believed the source of the pain was the fissuring at the lowest level, which could have related to the earlier surgery in 1998 or to the extruded fragment in 2001. Dr. Hopkins performed a two-level fusion. Felix's disc problems could have occurred without any relationship to trauma, although they also could be caused by trauma; whether or not the accident caused the problems "comes down to believing your patients. If they tell you the symptoms came up after a trauma, I don't have anything else to associate them with." Dr. Hopkins's notes did not report any instability before the accident. Asked whether the accident was the precipitating factor for the need for the surgery, Dr. Hopkins explained that he could not tie the instability to the accident, and he did not believe the narrowing was because of the accident. "[W]hat I do have is a pain generator in a gentleman that was brought on after an event, the event being a motor vehicle accident, if that's clear to you. I don't know what else I can say."

Two months after the surgery, Felix reported that he was using a walker and feeling a lot better, and three months later he said his preoperative pain was gone, although he had some muscle aches. In November 2005, Dr. Hopkins talked to Felix about returning to work without lifting or bending. In March 2006, a year after the

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[1] Dr. Sanders, the workers' compensation doctor, also testified at trial via videotape, but the testimony does not appear in the reporter's transcript or in the joint appendix on this appeal. Nor do the selected portions of the transcript contain the testimony of the Aronsons' witnesses Dr. Scruggs, Dr. Rothman, Dr. Kreitenberg, and Dr. Toth. Felix, the appellant, has the burden of providing an adequate record. (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.) It is not possible to hypothesize what else does not appear in the transcript or joint appendix. Nevertheless, the Aronsons signed on to the joint appendix, and we assume they believe the foreshortened record is adequate to protect their interests on appeal. We therefore disregard the noncompliance and resolve Felix's arguments on the merits. (Cal. Rules of Court, rule 8.204(e)(2)(C).)

surgery, Felix reported some lower back pain, and Dr. Hopkins began to think the screws were the cause. He continued to use the diagnosis "post-traumatic back pain," referring to the accident. Dr. Hopkins removed the screws on January 30, 2007. The fusion remained solid. On Felix's last visit, March 29, 2007, Dr. Hopkins noted he had minimal back soreness, and released Felix back to normal work activities. When pressed to say that the accident caused the need for the surgery, Hopkins responded, "All I can say is that his symptom complex appears to have occurred after the injury, of the accident." "[Y]ou can have a traumatic event that tips you over the edge. But I can't call that."

An expert witness for the defense testified that Felix's medical bills of $278,720.87 were consistent with what comparably qualified health care providers in Southern California would bill. The bills, while consistent with what doctors or hospitals would bill, had a "reasonable value" (the amount that the medical providers would accept in payment) of between $80,000 and $105,000, although the providers were not required to discount the amount. The expert did not know whether Felix's health insurance or workers' compensation would pay any of the bills. If the jury awarded the discounted amount, and the providers would not discount the bills, Felix would have to pay the difference. The witness was aware that workers' compensation and Felix's health insurance were disputing who should pay his medical bills, but whoever paid would pay the discounted amount. Workers' compensation had a right to get any payments it had made back, in the event Felix recovered medical expenses in litigation from a third party.

In closing arguments, Felix's attorney argued that the evidence showed that the past medical bills totaled $278,720 and were consistent with what medical providers in the area would charge. The accident caused "100 percent" of Felix's harm, and therefore the jury should award Felix a total of $2,790,339 for past and future medical expenses, past and future loss of earnings, and past and future pain and suffering. He also argued that to award Felix the discounted value of the medical bills would burden him with a "financial gamble" that could leave him "[$]100 . . . or $150,000 into the hole." He pointed out to the jury that workers' compensation and Felix's health insurance provider would get paid back what they had paid out of any damages for past medical expenses

awarded to Felix. The Aronsons' attorney told the jury that workers' compensation and Felix's health insurance providers had liens only on the amount the jury awarded for medical expenses. The attorney also argued that a defense expert, Dr. Kreitenberg, had examined Felix and reviewed his medical records, Felix's depositions, and Dr. Hopkins's deposition. Dr. Kreitenberg, a medical doctor who also had a degree in biomechanics, looked at photographs of Felix's car and testified that the forces from the impact were sufficient to cause a soft tissue injury. This was consistent with Dr. Toth, who saw Felix right after the accident and diagnosed the injury as a back strain. Dr. Kreitenberg testified that Felix would suffer pain and stiffness for a few months, and Felix continued to work for three months. (Again, neither Dr. Kreitenberg's nor Dr. Toth's testimony is in the record on appeal.) The Aronsons' attorney argued that the jury should award Felix only his medical costs of $2,600 and pain and suffering between $10,000 and $20,000 for the "three-to[-]four-month period when he would have been back to normal." In rebuttal, Felix's attorney argued that Dr. Kreitenberg had also testified that the force of the accident was enough to cause structural damage,[2] and Dr. Toth had sent Felix to get an MRI and referred him to Dr. Hopkins because after three months, Dr. Toth knew Felix's injury was not a back sprain.

The jury was instructed "[t]o recover damages for past medical expenses, EDWARD FELIX must prove the reasonable cost of reasonably necessary medical care that he has received."

The jury returned a verdict on February 10, 2009, awarding Felix $278,720.87 for past medical expenses and general damages of $32,850 for past pain and suffering, for a total of $311,570.87. The jury awarded nothing for future medical expenses, past or future loss of earnings, and future pain and suffering. The trial court entered judgment on March 11, 2009.

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[2] The Aronsons argued that Brandon's car hit Felix's car at around five miles per hour.

Felix filed a motion for new trial, arguing that the zero award for lost earnings and the $32,850 award for past pain and suffering were grossly unreasonable and inadequate, and were not supported by substantial evidence. Felix and the Aronsons each moved to tax costs and the Aronsons moved to reduce the amount of the jury's award of past medical expenses.

The trial court denied the motion for new trial on April 22, 2009, finding "the verdict in this case was not outrageous, outside the realm of the evidence presented at trial or legally improper." In a minute order dated July 9, 2009, the court granted the Aronson's motion to reduce the award of medical expenses, stating "the plaintiff can only recover the actual amount paid for the medical care," and reduced the amount to $143,331.31. The court also awarded $23,898.82 in costs to Felix. and $23,953.11 in costs to the Aronsons. The court filed a revised judgment on July 21, 2009.

Felix filed this timely appeal.

ANALYSIS

Felix contends that the jury verdict was not supported by substantial evidence and the court abused its discretion in failing to grant his motion for new trial, arguing that because the jury awarded him the full amount of his past medical expenses, the failure to award him any lost earnings and the low amount of the award for pain and suffering are fatally inconsistent. Felix also argues that the trial court's reduction of the award of his medical expenses violated the collateral source rule, and the court abused its discretion in taxing costs.

I. Substantial evidence supported the jury verdict, and the trial court did not abuse its discretion in denying Felix's motion for new trial.

The Aronsons argue that denial of a motion for new trial is an unappealable order. Although "this is technically correct, such an order is reviewable on appeal from the judgment." (*In re Marriage of Liu* (1987) 197 Cal.App.3d 143, 153, fn. 4.; see *Fogo v. Cutter Laboratories, Inc.* (1977) 68 Cal.App.3d 744, 748–749.) Felix properly appealed from the judgment, and so the order is reviewable. (*Enyart v. City of Los Angeles* (1999) 76 Cal.App.4th 499, 505, fn. 2.) We review the trial court's ruling on a new trial motion

for an abuse of discretion, "mindful of the fact that the trial judge is accorded a wide discretion in ruling on a motion for new trial and that the exercise of this discretion is given great deference on appeal." (*City of Los Angeles v. Decker* (1977) 18 Cal.3d 860, 871–872.) "In our review of such order *denying* a new trial, as distinguished from an order *granting* a new trial, we must fulfill our obligation of reviewing the entire record, including the evidence, so as to make an independent determination as to whether the error was prejudicial. [Citations.]" (*Id.* at p. 872; *Sandoval v. Los Angeles County Dept. of Public Social Services* (2008) 169 Cal.App.4th 1167, 1176, fn. 6.)

The special verdict in this case asked the jury to answer yes or no whether Brandon's negligence was a substantial factor in causing harm to Felix, and, if the jury answered "yes," the special verdict directed the jury to apportion Felix's damages between past economic loss ("Past medical expenses" and "Past loss of earnings and earnings capacity," calculated separately), future economic loss (medical expenses and loss of earnings, calculated separately), past noneconomic loss (pain and suffering, emotional distress, and loss of enjoyment), and future noneconomic loss (pain and suffering, emotional distress, and loss of enjoyment).[3] The jury found that Brandon's negligence was a substantial factor in causing Felix's injury, and awarded $278,720.87 for past medical expenses and zero for past loss of earnings; zero for future medical expenses and future loss of earnings; $32,850 for past pain and suffering; and zero for future pain and suffering.

Felix argues that it is logically inconsistent to award him all his past medical expenses and yet award him zero for past loss of earnings and only $32,850 for past pain and suffering. "General and special verdicts are deemed inconsistent when they are 'beyond possibility of reconciliation under any possible application of the evidence and instructions.' [Citation.] 'If any conclusions could be drawn thereunder which would explain the apparent conflict, the jury will be deemed to have drawn them.' [Citation.]

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[3] The joint appendix contains only a blank special verdict. We rely on the jury's answers as reported in the judgment.

Where the jury's findings are so inconsistent that they are incapable of being reconciled and it is impossible to tell how a material issue is determined, the decision is '"against law"' within the meaning of Code of Civil Procedure section 657. [Citation.] '"The inconsistent verdict rule is based upon the fundamental proposition that a factfinder may not make inconsistent determinations of fact based on the same evidence. . . ." [Citations.] An inconsistent verdict may arise from an inconsistency between or among answers within a special verdict [citation] or irreconcilable findings. [Citation.] Where there is an inconsistency between or among answers within a special verdict, both or all the questions are equally against the law. [Citation.] The appellate court is not permitted to choose between inconsistent answers.' [Citation.]" (*Oxford v. Foster Wheeler LLC* (2009) 177 Cal.App.4th 700, 716.) A new trial is the proper remedy for inconsistent verdicts. (*Stillwell v. The Salvation Army* (2008) 167 Cal.App.4th 360, 374–375; *Shaw v. Hughes Aircraft Co.* (2000) 83 Cal.App.4th 1336, 1344.)

Felix's better argument is that the awards for pain and suffering and for lost wages were inadequate or not supported by sufficient evidence. There is no inconsistency on the face of the special verdict form, which allowed the jury to calculate the categories of damages separately and did not require that recovery for medical expenses required an award of lost wages (or vice versa).[4] The amount of damages is a factual question, committed first to the discretion of the jury and subsequently to the discretion of the trial judge, on a motion for new trial. (*Seffert v. Los Angeles Transit Lines* (1961) 56 Cal.2d 498, 506.) We presume that the trial court's decision is correct, and will interfere only if the award is so excessive, or so inadequate, that it shocks the conscience and compels the conclusion that the jury acted out of passion or prejudice. (*Fagerquist v. Western Sun*

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[4] The jury was instructed that for Brandon's negligence to be a substantial factor in causing Felix's harm, it did not have to be the only cause of the harm; that to recover past medical expenses, Felix must prove the reasonable cost of the reasonably necessary medical care he received; and that to recover past lost earnings, Felix must prove the earnings he had lost to date. The jury was also instructed, "No fixed standard exists, for deciding the amount of . . . damages" for pain and suffering.

Aviation, Inc. (1987) 191 Cal.App.3d 709, 727.) The size of an award alone does not compel that conclusion. (*DiRosario v. Havens* (1987) 196 Cal.App.3d 1224, 1241.)

We consider Felix's arguments in light of Code of Civil Procedure section 657, which provides that a new trial may be granted on the grounds of inadequate damages (subd. (5)) or insufficiency of the evidence (subd. (6)), and states, "A new trial shall not be granted upon the ground of insufficiency of the evidence to justify the verdict or other decision, nor upon the ground of excessive or inadequate damages, unless after weighing the evidence the court is convinced from the entire record, including reasonable inferences therefrom, that the court or jury clearly should have reached a different verdict or decision."

A. Pain and suffering

We reject Felix's argument that the award of $32,850 for past pain and suffering is inadequate. Some courts have concluded that a verdict awarding full medical expenses to a personal injury plaintiff but awarding nothing for pain and suffering, is inadequate as a matter of law, at least when it is obvious that pain accompanied an undisputed injury for which jury found the defendant is liable. "[I]n cases where the right to recover is established, and there is also proof that the medical expenses were incurred because of the defendant's negligent act, '[i]t is of course clear that in such situation a judgment for no more than the actual medical expenses occasioned by the tort would be inadequate.'" (*Dodson v. J. Pacific, Inc.* (2007) 154 Cal.App.4th 931, 938, quoting *Miller v. San Diego Gas & Elec. Co.* (1963) 212 Cal.App.2d 555, 558 (*Miller*); *Haskins v. Holmes* (1967) 252 Cal.App.2d 580, 586–587; *Wilson v. R. D. Werner Co.* (1980) 108 Cal.App.3d 878, 883; *Gallentine v. Richardson* (1967) 248 Cal.App.2d 152, 155.) Courts have also, however, cautioned: "It cannot be said, however, that because a verdict is rendered for the amount of medical expenses or for a less amount the verdict is inadequate as a matter of law. Every case depends upon the facts involved." (*Miller*, at p. 558 (upholding award for exact amount of medical bills with no damages for pain and suffering); *Haskins v. Holmes*, at p. 586; *Abbott v. Taz Express* (1998) 67 Cal.App.4th 853, 857.) "If the evidence clearly indicates that plaintiff suffered serious pain, inconvenience, or mental

suffering, a verdict for medical expenses alone might be inadequate as a matter of law. [Citations.] However, an award for the exact amount of, or even less than, the medical expenses is not necessarily inadequate if there is a conflict as to whether the plaintiff suffered any substantial injury or pain." (*Randles v. Lowry* (1970) 4 Cal.App.3d 68, 73–74; *Miller*, at p. 559.)

Felix did not receive zero or a de minimis award for past pain and suffering; the jury awarded him $32,850. He therefore is disputing the amount of general damages. "'The question as to the amount of damages is a question of fact. In the first instance, it is for the jury to fix the amount of damages, and secondly, for the trial judge, on a motion for a new trial, to pass on the question of adequacy. Whether the contention is that the damages fixed by the jury are too high or too low, the determination of that question rests largely in the discretion of the trial judge. The appellate court has not seen or heard the witnesses, and has no power to pass upon their credibility. Normally, the appellate court has no power to interfere except when the facts before it suggest passion, prejudice or corruption upon the part of the jury, or where the uncontradicted evidence demonstrates that the award is insufficient as a matter of law. In determining whether there has been an abuse of discretion, the facts on the issue of damage most favorable to the respondent must be considered.'" (*Miller, supra*, 212 Cal.App.2d at pp. 558–559.)

There was evidence at trial that Felix had back pain as early as 1997 or 1998 and had back surgery in 1998. The evidence also showed that Felix returned to Dr. Hopkins with back pain in 2001, when Dr. Hopkins recommended another surgery; and saw a chiropractor in 2002. The jury was entitled to conclude that the preexisting condition contributed to Felix's pain after the 2004 accident and the need for further surgery in 2005. Even Dr. Hopkins would not say that the accident caused the pain which brought Felix back into his office after the accident. This was evidence upon which the jury could have concluded that some of Felix's pain and suffering was attributable not to the accident, but to that preexisting condition. Sufficient evidence therefore supported the jury's award. "'[T]he evidence presented as to [plaintiff's] alleged preexisting injury was sufficient for the jury to determine that perhaps not all of plaintiff's alleged injuries and

damages were causally connected to this accident.'" (*Sumpter v. Matteson* (2008) 158 Cal.App.4th 928, 935.)

Further, the jury could have disbelieved Felix's testimony that the back pain followed immediately upon the accident. There was evidence that Felix had not disclosed his treatment in 2001 or his visits to a chiropractor in 2002 in answers to interrogatories and at his deposition. Felix also claimed that he could not remember that Dr. Hopkins had recommended surgery three years before the accident. The trial judge was also entitled to consider Felix's credibility in deciding the new trial motion. (*Fountain Valley Chateau Blanc Homeowner's Assn. v. Department of Veterans Affairs* (1998) 67 Cal.App.4th 743, 751.)

The trial court did not abuse its considerable discretion in denying the motion for new trial on the ground that the jury award of $32,850 in damages for pain and suffering was inadequate.

B. Past lost earnings

The jury awarded Felix his past medical expenses and zero past lost earnings. Felix supplies us with no case (nor are we aware of any) holding that a jury awarding medical expenses *must* necessarily also award past lost earnings. Stripped of the simple assertion that the special verdict is inconsistent, Felix's argument is that the zero damage award is so inadequate that it is not supported by any reading of the evidence. We disagree. As *Miller* cautioned, "[e]very case depends on the facts involved." (*Miller, supra*, 212 Cal.App.2d at p. 558.) "It was a question of fact . . . [¶] to what extent the impairment of plaintiff's earning ability is traced to defendant's negligence." (*Harris v. Los Angeles Transit Lines* (1952) 111 Cal.App.2d 593, 598.)

The evidence was clear that, as a result of the back surgery in 2005, Felix was off work, and that back pain continued to limit his ability to work thereafter. Nevertheless, there was also evidence that Felix had back pain as early as 1997 or 1998, had back surgery in 1998, had back pain again in 2001, and had seen Dr. Hopkins again in 2001, when Dr. Hopkins warned him he risked permanent, irreparable loss if he did not have surgery. Felix also saw a chiropractor for back pain in 2002. Just as the jury could

conclude that the preexisting condition, not the accident, caused some of Felix's pain and suffering, it was entitled on this record to conclude that the preexisting condition, not the accident, caused the back pain that limited Felix's ability to work. (*Sumpter v. Matteson*, *supra*, 158 Cal.App.4th at p. 935.) Further, as we noted above, there was evidence from which the jury could also have concluded that Felix was not credible. Sufficient evidence supported the jury verdict.

It was the responsibility of the trial court to weigh the evidence and judge Felix's credibility in deciding the new trial motion. (*Kelly-Zurian v. Wohl Shoe Co.* (1994) 22 Cal.App.4th 397, 413.) The court in *Miller* pointed out that an examination of the record compelled the conclusion, as in this case, "that there was a substantial conflict as to whether plaintiff received any substantial injury. . . . The evidence would here amply support a finding that plaintiff received no injury whatever. It is not for this court to weigh the evidence. Our province goes no further than a determination that there was substantial evidence to support the verdict." (*Miller*, *supra*, 212 Cal.App.2d at p. 560.) In *Miller*, as in this case, there was evidence that the plaintiff was "being something less than frank and truthful with regard to the extent of her injury," impeaching her testimony. (*Id.* at p. 562.) The court affirmed the denial of the new trial motion: "In the final analysis, however, the question of whether there existed . . . prejudice as may have affected the jury's verdict was a matter primarily addressed to the trial court upon motion for new trial. We find no abuse of discretion in the order denying that motion." (*Ibid.*)

Similarly, in this case there was conflicting evidence whether the accident or Felix's preexisting condition caused Felix's injury.[5] In *Morseman v. Mangum* (1960) 177 Cal.App.2d 218, a jury awarded a plaintiff an amount equal to his medical bill and his vehicle repair bill, but no damages for loss of earnings or pain and suffering. Because

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[5] The jury also heard testimony and argument that Felix would be liable for the full amount billed for his medical expenses if the bills were not discounted, and that workers' compensation and Felix's health insurance provider had liens on his recovery. The jury conceivably settled on an award of medical expenses in an attempt to be fair, while concluding that an award of past lost wages was not justified by the evidence.

there was conflicting testimony about the nature and extent of his injuries, including evidence of "preexisting ailments," the court of appeals concluded that the damages award was not inadequate as a matter of law and a motion for new trial was properly denied. (*Id.* at p. 223.) "The jury might have found that the medical bill or the truck repair bill was excessive or that a part of the medical bill related to the preexisting ailments; and in such event, it might have regarded the total amount of those bills as sufficient to include the amount of damage, if any, sustained by [plaintiff] for loss of earnings and for pain and suffering." (*Id.* at p. 222.) The trial court's determination that a new trial was not warranted is entitled to our deference. (*Id.* at p. 223 [noting "the trial judge, in denying the motion for new trial, passed on the adequacy of the award of damages."].)

"The determination of a motion for a new trial rests so completely within the court's discretion that its action will not be disturbed unless a manifest and unmistakable abuse of discretion clearly appears." (*Jiminez v. Sears, Roebuck & Co.* (1971) 4 Cal.3d 379, 387.) On this record, we find no such abuse of discretion, and affirm the trial court's denial of the motion for new trial.

II. The trial court did not err in reducing the award of damages for past medical expenses.

After trial, the Aronsons filed a motion to reduce the jury verdict, relying on *Hanif v. Housing Authority* (1988) 200 Cal.App.3d 635 (*Hanif*) and *Nishihama v. City and County of San Francisco* (2001) 93 Cal.App.4th 298 (*Nishihama*). *Hanif* and *Nishihama* "held that when a plaintiff has medical insurance, damages are limited to the amount actually paid or incurred, not to any greater amount a medical provider billed, even if that amount was reasonable." (*Olsen v. Reid* (2008) 164 Cal.App.4th 200, 203; *Greer v. Buzgheia* (2006) 141 Cal.App.4th 1150, 1157.) In a minute order dated July 9, 2009, the court granted the Aronsons' motion to reduce the award of medical expenses, stating "the plaintiff can only recover the actual amount paid for the medical care," and reduced the amount to $143,331.31.

Felix asks us to reverse the reduction of his damage award, based on three recent cases which concluded that reducing a damages award pursuant to *Hanif* and *Nishihama* where a plaintiff's health insurance pays less than the billed amount in full satisfaction of the medical debts violates the collateral source rule. The California Supreme Court has granted review in each of those three cases, however, and they may not be relied upon as authority. (*Howell v. Hamilton Meats & Provisions, Inc.* (2009) 179 Cal.App.4th 686, review granted March 10, 2010, S179115; *Yanez v. SOMA Environmental Engineering, Inc.* (2010) 185 Cal.App.4th 1313, review granted September 1, 2010, S184846; *King v. Willmett* (2010) 187 Cal.App.4th 313, review granted October 13, 2010, S186151; see Cal. Rules of Court, rules 8.1105(e)(1), 8.1115(a).)

In *Hanif*, the court of appeals held "an award of damages for past medical expenses in excess of what the medical care and services actually cost constitutes overcompensation." (*Hanif, supra*, 200 Cal.App.3d at p. 641.) "[W]hen the evidence shows a sum certain to have been paid or incurred for past medical care and services, whether by the plaintiff or by an independent source, that sum certain is the most the plaintiff may recover for that care despite the fact it may have been less than the prevailing market rate." (*Ibid*.) This is because medical expenses are economic damages, which "represent actual pecuniary loss caused by the defendant's wrong." (*Nishihama, supra*, 93 Cal.App.4th at p. 306.) In both cases, the courts of appeals reduced the amounts of medical costs awarded to the plaintiffs to the actual amounts paid, modifying the judgments, so that the plaintiffs recovered only "the actual amount expended or incurred for past medical services so long as that amount is reasonable." (*Hanif*, at p. 643; *Nishihama*, at p. 309.)

The Aronsons' motion to reduce the medical expenses damages award included declarations from Felix's health insurer and from his employer's workers' compensation attorney, with billing statements as exhibits, showing that the insurer had paid an adjusted amount of $134,734.67 and workers' compensation had paid $4,173.47 toward Felix's medical bills, which the providers accepted as payment in full. The Aronsons argued that the award for past medical expenses should be reduced to $143,331.31, and Felix did not

dispute the amount of the reductions. The trial court agreed and reduced the award to $143,331.31.

Pursuant to *Hanif*, *supra*, 200 Cal.App.3d 635 and *Nishihama*, *supra*, 93 Cal.App.4th 298, the trial court did not err in reducing the amount awarded as past medical expenses.

III. The trial court did not err in awarding costs.

On July 20, 2006, Felix made a settlement offer under Code of Civil Procedure section 998 (section 998) for $360,000 ($345,000 against Brandon, and $15,000 against Seth). On January 31, 2008, the Aronsons made a section 998 offer for $350,000.

After the verdict, both sides filed cost memoranda. The Aronsons filed a motion to tax Felix's costs, arguing that he was precluded from obtaining certain costs and prejudgment interest because Felix's total judgment (before reduction) of $311,570.87 was less than Felix's section 998 offer of $360,000. Felix also filed a motion to tax costs, arguing that the Aronsons could not recover any costs because their section 998 offer to compromise was an invalid joint offer. The trial court heard the motions to tax costs with the motion to reduce the award of medical expenses. In a minute order dated July 9, 2009, the trial court concluded "although the [Aronsons'] Section 998 CCP offer was for $350,000.00 it is clear that since one defendant's policy limit was $15,000.00 that the amount offered for co-defendant was $335,000.00. The 998 offer by [Felix] was $360,000.00 total. Therefore pursuant to CCP Section 998 [Felix] did not achieve a more favorable judgment." The court awarded $23,898.82 in costs to Felix, and $23,953.11 in costs to the Aronsons.

Section 998, subdivision (d) provides, "If an offer made by the plaintiff is not accepted and the defendant fails to obtain a more favorable judgment or award . . . the court . . . in its discretion, may require the defendant to pay a reasonable sum to cover postoffer costs of the services of expert witnesses . . . actually incurred and reasonably necessary in either, or both, preparation for trial . . . or during trial . . . of the case by plaintiff, in addition to plaintiff's costs." Felix argues, first, that the trial court should have included some of his pre and postoffer costs (totaling $44,153.32) in determining

whether the judgment was more favorable to the Aronsons. As Felix admitted at the hearing, however, once the trial court reduced the medical bills "it's no question [the judgment] didn't exceed" Felix's section 998 offer of $360,000 ($345,000 as to Brandon and $15,000 as to Seth), even with the addition of the costs. As we concluded above, the trial court did not err in reducing the award for medical expenses, and so even if the costs had been added to the judgment, the judgment would still be below Felix's section 998 offer. We therefore need not consider whether the trial court abused its discretion under section 998, subdivision (d).

Felix's second argument is that the Aronsons should not have been awarded costs, because their joint offer of $350,000 was invalid. Section 998, subdivision (c)(1) provides, "If an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment or award, the plaintiff shall not recover his or her postoffer costs and shall pay the defendant's costs from the time of the offer." The Aronsons offered $350,000, which is unquestionably more than the judgment Felix obtained after the medical costs were reduced. Felix argues, however, that the offer was legally invalid because it was a joint offer from which it was not possible to determine what amount was offered by each defendant.

A joint offer is not invalid if it does not prevent a determination "whether the party awarded costs had actually received the more favorable judgment." (*Stallman v. Bell* (1991) 235 Cal.App.3d 740, 746; *Johnson v. Pratt & Whitney Canada, Inc.* (1994) 28 Cal.App.4th 613, 629.) The court in this case had no difficulty determining that, because Seth's liability limit was $15,000, the amount offered for Brandon was $335,000 (the offer of $350,000 minus Seth's policy limit). As Felix acknowledges, Seth's liability as the owner of the vehicle was limited to $15,000 under Vehicle Code section 17151, subdivision (a). The bulk of the Aronson's section 998 offer was obviously for Brandon's liability.[6] It was clear that the damages awarded by the jury, after the proper

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[6] We note that the special verdict form only mentioned Brandon, and Felix explains "[t]he jury verdict form only mentioned defendant Brandon Aronson because the parties and the court concurred that if a verdict was returned against Brandon, both

reduction by the trial court, were less than $335,000. The trial court was able to determine whether Felix obtained a more favorable judgment (Felix did not), and so the Aronsons' joint offer was not invalid.

DISPOSITION

The judgment is affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

MALLANO, P. J.

ROTHSCHILD, J.

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defendants would be jointly and severally liable for the first $15,000 (Seth being vicariously liable as the vehicle's owner for the driver's negligence, but only to a statutory maximum of $15,000) and Brandon would be severally liable for the balance; the judgment entered by the court reflected this allocation."