

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

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COURTHOUSE
GEORGETOWN, DE 19947

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Re: *Jager v. Merena*
C.A. No. 01C-09-015-RFS

Date Submitted: February 9 2004
Date Decided: February 26, 2004

Dear Counsel:

In this motor vehicle accident case, the jury returned a verdict in favor of plaintiff in the amount of \$90,000. The defendant seeks a new trial or remittitur on damages as liability is admitted.

The law is well known and requires no citation. A jury verdict is presumed to be correct. It will not be altered unless the award is so clearly excessive to indicate passion, prejudice, partiality or corruption. A judgment will be set aside which is grossly disproportionate to the injuries suffered so as to shock the Court's conscience and sense of justice. A verdict will only be ignored where the evidence weighs so heavily against it that a reasonable jury would not have returned the result. In this context, the evidence must be viewed in favor of plaintiff.

Here, the plaintiff had a 33 year life expectancy. From the medical evidence, a jury could reasonably find neck strain, stomach pain, left shoulder pain, back strain, herniated disc T 7-8 and left ulnar neuropathy. It could also reasonable find that the last

two injuries were permanent.

During the trial, the defendant offered medical evidence from a doctor to contradict plaintiff's primary physician who testified in person. The defense doctor's deposition was read to the jury. The words of this witness could be seen as not worthy of belief by the jury. For example, this doctor wrote his initial report without seeing plaintiff. The first time plaintiff was seen was about 2 ½ years after the accident. Also, this doctor speculated that numbness suffered in fingers of plaintiff's left hand predated the accident. He felt plaintiff just noticed these injuries after the accident. While admitting plaintiff suffered neck and back injuries as a result of the accident, he took issue with an AMA guideline that permits an opinion of permanency based on subjective findings. It is unusual to experience a look of juror disbelief when a deposition is read into evidence, but this phenomenon occurred at trial.

Under long standing principles, I conclude:

- (1) The verdict is well within the range of what a reasonable jury could return considering the injuries - both temporary and permanent - suffered by plaintiff.
- (2) The conscience of the Court is not shocked as the verdict has a rational basis in the evidence, and it does not reflect passion, prejudice, partiality or corruption. Rather, it fairly compensates plaintiff for the harm caused by defendant.
- 3) The defendant's motion for new trial and/or remittitur is denied.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

RFS/cv

cc: Prothonotary