

**IN THE COUNTY COURT OF HARRISON COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT**

ANGELA HARRIS

PLAINTIFF

VS.

CAUSE NO. D2401-17-913

BRAXTON SHIRLEY

DEFENDANT

OPINION AND JUDGMENT

THIS CAUSE was tried before a Jury on March 26th and 27th of this year, and after deliberating 39 minutes, the jury returned a special verdict form awarding the Plaintiff \$60,000 for pain, suffering, mental anguish, and loss of enjoyment of life; medical expenses totaling \$20,000; and loss wages in the amount of \$336, for a total judgment of \$80,336. Subsequent to the verdict, the Court has entertained several post-trial motions and briefs, which I have now reflected upon, all of which will now be addressed as I have now reflected on the post-trial briefs and arguments.

MOTION TO TAX COSTS AGAINST DEFENDANT

When the Defendant argued its Motion for Remittitur and/or for New Trial on April 16, 2018, the parties advised the Court that there was an accord as to costs, and the Court awards the Plaintiff costs in the sum and amount of \$231.

JURY SELECTION ISSUES

The Defendant Shirley objects to the Court's refusal to excuse two jurors for cause, and the Court will address them individually.

1. Juror #8, Mrs. Johnson

Defendant desired the Court to excuse Johnson for cause based upon the fact that she has worked for multiple plaintiffs' law firms and does so at this time. However, Mrs.

Johnson stated that this would not cause her to lean toward one side and she would have no problem being fair to all parties. She said she would have no issue telling her firm in the event she ruled against the Plaintiff, and further stated that sometimes she feels verdicts are excessive. The Court feels that this assignment of failing to excuse Mrs. Johnson for cause is without merit.

2. Juror #9, Mrs. Miller

Miller advised the Court that her husband had used the Plaintiff's law firm one time 5-10 years ago. She doesn't really remember. But she does remember that the firm did not use the attorney involved in this lawsuit, and, in fact, doesn't remember who the lawyer was. It was a one-time representation. Miller stated she would not lean toward the Plaintiff and what matters to her is the proof. The Court therefore rejects the Defendant's contention that Miler should have been excused for cause.

3. Juror # 1, Mr. Pylon

Pylon is the most interesting to me. The parties had knowledge that the Court does not, as to why jurors are accepted or excused. Notwithstanding that Pylon said it would be difficult for him to award money for pain and suffering, as he feels that extra compensation should not be awarded and he would not feel comfortable awarding monetary damages for pain and suffering but could do it, the Plaintiff accepted him and the Defendant asked that he be excused and used a preemptory challenge for that purpose.

Pylon did ask to speak to the Court and the attorneys at the bench after the jury selection process, and the Court accepts the content of that conversation as represented by defense counsel, which in essence stated that if the proof showed the treatment was not

necessary, that such might not be the responsibility of the Defendant. And for that reason, the Defendant would have kept him. Pylon in essence stated that he would follow the law, which he had told the Court and parties previously, and the Court rejects the Defendant's argument as to Mr. Pylon, and further, is of the opinion that every juror selected stated that they would be fair to both parties.

REASONABLE AND NECESSARY MEDICAL EXPENSES

The Jury returned a verdict for \$20,000 in medical expenses and there is not a scintilla of proof or inference that the reasonable and necessary medical expenses were in excess of \$18,974.61.

Plaintiff's counsel during the post-trial motion of April 16, 2018, argues that defense counsel invited the jury to round the number of medical expenses up to \$20,000. The record does not support this argument in any fashion. Regardless, the evidence does not support an award for medical expenses for \$20,000, and the Court remits the medical award from \$20,000 to \$18,971.61.

PAIN AND SUFFERING

The credible evidence is to the effect that the Plaintiff incurred an injury requiring chiropractic treatment for a little less than three months, and the expenses incurred for that particular treatment was approximately \$6,000. The chiropractic doctor released the Plaintiff approximately a year before the trial of this cause with a 100 percent recovery. The Plaintiff missed three days of work.

The Plaintiff's injuries were soft tissue, and although she incurred another \$12,000-plus in medical bills, the \$12,000 was diagnostic, not invasive, and was not for treatment.

Plaintiff places great emphasis on the multiplier of medical expenses in arguing against a remittitur, but this argument is not convincing to the Court as approximately two-thirds of the expenses and did not have positive findings. For all intents and purposes, the two CT scan tests had negative findings.

To be clear, the Plaintiff testified that she was responsible for all medical expenses to Dr. Powell, but as of the date of the trial she had not been billed for these expenses and could have returned to Powell, as he recommended, if she was having issues and would not have to pay any monies to Dr. Powell at that time. The Plaintiff chose not to return to Dr. Powell and had not seen him for approximately a year prior to the trial. She was last seen by Dr. Powell on May 9, 2017.

No prescription medical bills, or for that matter over-the-counter medicine expenses, were introduced into evidence.

Although not dispositive, it is probative that the Plaintiff in closing arguments asked the Jury to return a verdict of \$50,000 and the verdict was over \$80,000. Moreover, the Plaintiff asked the Jury to return a verdict of \$30,000 for pain and suffering, and an award was made for pain and suffering in twice that amount.

It is not my province or desire to substitute my judgment for that of the Jury. I can not, nor do I desire to, become the seventh juror. Much deference should be given to a jury award. However, the Defendant is entitled to a jury that will respond to reason. And in this circumstance I find that the jury was influenced by bias, prejudice, or passion **AND** that the damages awarded were contrary to the overwhelming weight of the credible evidence. In addition to the remittitur set forth in this opinion as to medical

expenses, the Court orders a remittitur of \$30,000 for pain and suffering, resulting mental anguish, and loss of enjoyment of life.

PLF'S MTN FOR RELIEF OR TO CORRECT ERROR OR MISCALCULATION

The Plaintiff's last motion which was filed April 16, 2018, the same day the Motion for Remittitur and/or New Trial was argued, is a Motion for Relief or to Correct Error or Miscalculation. That motion is denied.

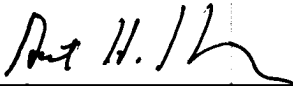
IT IS THEREFORE ORDERED AND ADJUDGED that the Motion for Relief or to Correct Error is denied.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant's Motion for a New Trial is overruled conditioned upon the Plaintiff accepting a remittitur reducing the verdict to the amount of \$49,310.61.

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff's Motion to Assess Costs is granted in the amount of \$231.

IT IS FURTHER ORDERED AND ADJUDGED that if the Plaintiff does not accept the remittitur within ten (10) days, this cause shall be set for a new trial on the issue of damages only, confined to the issue of pain and suffering only.

SO ORDERED AND ADJUDGED, this the 14th day of May, 2018.



GASTON H. HEWES, JR.
COUNTY COURT JUDGE

FILED
MAY 14 2018
CONNIE LADNER
CIRCUIT CLERK

BY: 