

15-0393

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

CHARLES M. CORRA and

ELIZABETH G. CORRA,

Plaintiffs,

v.

RYAN LYNN HARNISH,

Defendant.

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APR 10 2015

BOWLES RICE LLP

CASE NO.: 13-C-293

ORDER

The plaintiff, Charles Corra, (hereafter "plaintiff") and the defendant, Ryan Harnish, (hereafter "defendant") were involved in a two vehicle accident in Wood County on October 4, 2012. The defendant admitted liability for the accident. The plaintiff had preexisting neck and back conditions and made no claim that they were caused by or aggravated by the accident. The plaintiff did claim that he suffered injury to his right knee as a proximate result of the accident for which he underwent arthroscopic surgery performed by Dr. Tokodi on December 26, 2012.

It is undisputed that the plaintiff had a preexisting medical condition known as "chondromalacia" affecting the back of his right knee's patella and that during surgery Dr. Tokodi found torn cartilage on plaintiff's femoral condyle. The arthroscopic procedure was directed at these conditions and injury. The central issues in the case were whether the accident was a proximate cause of plaintiff's injuries and whether the arthroscopic surgery was reasonable and necessary.

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CAROLE JONES
CLERK CIRCUIT COURT

The two physicians who examined or treated the plaintiff testified on his behalf and the defendant called a physician who testified as a non-treating expert. All the physicians were deposed though only defendant's expert also testified live.

The Court's Jury Instructions respecting proximate cause, preexisting conditions, reasonable and necessary medical expenses and damages were as follows:

"Responsibility for the accident which occurred between the Plaintiff, Charles Corra's vehicle and the Defendant, Ryan Harnish's vehicle, has been admitted by Mr. Harnish. Nevertheless, before a party may recover damages he must prove he was injured or suffered an aggravation or acceleration of a pre-existing medical condition and not only that the other party was negligent but also that such negligence was a proximate cause of the injury or the aggravation or acceleration of a pre-existing condition.

An injury is proximately caused by an accident when the evidence shows that the accident played a substantial part in bringing about or actually causing the injury and without which it would not have occurred; that is, the injury was either a direct result or a reasonably probable consequence of the accident. The accident need not be the only cause of the injury but it must be a proximate cause of such injury.

Mr. Corra cannot recover damages for any injury he sustained or any conditions he had which existed prior to the time of the accident except to the

extent that any such prior injury or condition was aggravated or accelerated by the accident and you may award Mr. Corra damages that proximately resulted from such aggravation or acceleration.

You may presume that any hospital, doctor, chiropractic or other medical bills incurred because of an injury were necessary and reasonable. However, the reasonableness and necessity of any hospital, doctor, chiropractic or other medical bills incurred may be rebutted by medical testimony. Accordingly, the medical expenses incurred by Charles Corra are presumed to be necessary and reasonable and may be considered as an item of his damages unless the Defendant, Ryan Harnish, introduces evidence they were not and if, after considering all the evidence, you find the Plaintiff's medical bills, in their entirety or in part, were unreasonable or not necessary as a result of the accident, you may disregard those bills or such part of them found unreasonable or unnecessary as a result of the accident, as an item of the Plaintiff's damages."

The jury's verdict entailed its answers to two questions. The jury found that the plaintiff, Charles Corra, suffered injuries as a proximate result of the defendant's negligence and awarded damages for plaintiff's past medical expenses of \$9,620.59 as well as an amount for past pain and suffering. The medical expenses awarded clearly did not include any amount for the plaintiff's arthroscopic surgery but only covered medical expenses incurred up to the surgery.

There is now before the Court Plaintiffs' Motion for New Trial and supporting memoranda and Defendant's Response in Opposition with memorandum. The applicable law is clear that a court cannot grant a new trial unless it finds the verdict to be against the clear weight of the evidence.

The Court notes that it was the jury's determination that the plaintiff suffered injuries as a proximate result of the defendant's negligence. The clear weight of the evidence, indeed the only evidence presented, showed that the plaintiff's injuries were to his right knee. No evidence was presented respecting injuries to plaintiff's neck and back and no claim was made respecting same. The Defendant's theory of the case was that the injuries sustained by the plaintiff were a result of his preexisting conditions: patella chondromalacia and osteoarthritic changes in his right knee and that these conditions were not a proximate result of the subject accident. More specifically, the defendant argued that the medical evidence, particularly Dr. Santrock's testimony, demonstrated that plaintiff's grade III chondromalacia behind his right kneecap and osteoarthritis caused the defect on his medial femoral condyle which was remedied by the surgery performed by Dr. Tokadi and that the accident did not cause these conditions and defect.

The jury's verdict, however, is compatible only with a conclusion that the accident aggravated or accelerated plaintiff's preexisting condition and he therefore suffered injuries proximately caused by the accident. Nevertheless, the verdict awarded plaintiff his medical expenses incurred up to but excluding his arthroscopic procedure. This element of the verdict is

consistent only with a conclusion that the surgery performed by Dr. Tokodi was not reasonable and necessary.

The Court finds that such conclusion is against the clear weight of the evidence and that the jury's verdict as to damages cannot stand. The only evidence presented which may possibly supports this view was the testimony of Dr. Santrock.

The defendant's expert testified on direct examination:

- Q. Okay. So as a result of reviewing all those records did you formulate an opinion as to whether or not the surgery that Dr. Tokodi performed on December 26, 2012 was because of or made necessary because of the accident with Mr. Harnish?
- A. No. I felt that the accident itself could[n't] have caused the lesion as described to me and that it had most likely been in the knee before. So, therefore, *the surgery was directed at a preexisting condition*. Transcript p. 13 LL 7-14

While Dr. Santrock certainly explained and supported the basis for his opinion that the defect found on plaintiff's medial femoral condyle was not caused by the accident, he did not address on direct examination whether the accident aggravated or accelerated plaintiff's preexisting conditions and defect. His direct testimony was couched in terms of "cause" and "result":

- Q. So do you have an opinion as to whether or not the defect is directly related to the preexisting chondromalacia? In other words, what's the cause of it? How did it get there?

A. I think it occurred somewhere over time. I don't think it's a result of the accident for the reasons I've just stated. Transcript p. 19 LL 2-6.

Dr. Santrock's direct testimony focused on a notion that Dr. Tokodi's arthroscopic surgery on the plaintiff was "directed at a preexisting condition" or that the preexisting condition was the condition Dr. Tokodi "operated on":

Q. And so is what you're saying is that most likely the *condition that Dr. Tokodi operated on* was as a result of this preexisting patella chondromalacia?

A. And the defect on the medial femoral condyle.

Q. Which was caused by the back of the patella?

A. Yes. I don't think it was caused by the accident. It was caused by what I would consider long-term wear and tear. Transcript p. 25 LL 2-7.

It is noteworthy that Dr. Santrock's testimony on cross-examination is expressed in different terms and within a different context. It is this Court's view that the differences are not a matter of semantic distinctions but have crucial significance relevant to the fact issues the jury was to decide and to the issues of law which the Court presently addresses.

Dr. Santrock had been deposed before his trial testimony.

Q. All right. I think me and you agree on the fact that his knee was aggravated by the accident, correct?

A. Yes, sir, I said that.

Q. Okay. We went in-depth talking about that during your deposition. Do you recall that back on October 28, 2014?

A. Yes, sir.

Q. And the surgery was necessary because of the aggravation to his knee?

A. Well, the surgery was necessary because of the problem in the knee that I obviously didn't think was caused by the accident.

Q. I'm going to show you page 37 of your deposition transcript, Doctor (indicating). You were sworn in for this deposition, correct?

A. Yes, sir.

Q. Okay, and it was in Mr. Mohler's office in Charleston, correct?

A. Yes, sir.

Q. And I asked you, "And it's your opinion that that was aggravated in the motor vehicle accident, correct?" And your response is, "Yes, the symptoms showed up after the accident." I next asked you, "Okay, so prior to the accident he had no symptoms in his right knee, the accident occurred, and at a minimum aggravated the arthritis and degenerative conditions in his right knee?" And your answer was, "Correct"?

A. Yes, sir.

Q. And then I asked you, "And that's your opinion to a reasonable degree of medical probability," and you said, "Yes, sir."

And then in the report, "Successful knee surgery, the arthroscopic procedure helped assist in alleviating the symptoms in Mr. Corra's right knee, correct?" And you said, "Yes, sir." Right?

A. Right.

Q. So the surgery was successful and it did alleviate aggravation of the knee condition that you've testified to, correct?

A. Right.

Q. "So regardless of whether the defect was caused in the accident or not the surgery helped him with his right knee pain?" And you said, "It appeared to, yes, sir." Correct?

A. Correct.

Q. And again I asked you if that's your opinion to a reasonable degree of orthopedic probability and you said based upon your review of the records, yes.

You go on to indicate that the surgery was a reasonable and necessary medical intervention for Mr. Corra with respect to the heightened symptoms of right knee pain following the motor vehicle accident, and then you explain there. Could you go ahead and read that, please?

A. Show me where you are, please?

Q. Line 8.

A. "Well, as I mentioned before, I believe I would have extended non-operative treatment for a little longer, considering the lack of a specific diagnosis other than the one condition he diagnosed."

Q. Okay, and that was the chondromalacia of the patella?

A. That's correct.

Q. Okay, so you would have -- you would have not done surgery right away, correct?

A. That is correct.

Q. Okay, and I said that, "That may or may not have helped his condition, correct?" And you said, Yes, that's correct.?"

A. Right.

Q. But we know the surgery helped his condition. That's your opinion today, right? The surgery did help his condition.

A. Well, something did. It could have been the surgery or five weeks non-weight bearing, but something did help and at that time I was aware that the surgery most likely was the factor that helped his knee problem.

Q. Okay, and that would – the surgery was the fastest way to get him back to work, correct?

A. Yes, we discussed that. Yes.

Q. Okay, so that would have been a reasonable option for Dr. Tokodi in fixing his right knee to get him back to work as soon as possible; the surgery, correct?

A. Yes, sir.

Q. *Okay. So we can agree, just to make sure it's clear for the jury, that at a minimum Mr. Corra's right knee was aggravated as a result of the trauma from the motor vehicle accident?*

A. *Yes, his symptoms showed up after the accident. (Emphasis added)*

Transcript pp. 29-31.

While Dr. Santrock testified on direct examination it was his opinion that Mr. Corra's right knee did not sustain any direct force trauma in the accident and that preexisting conditions along with wear and tear caused the medial femoral condyle, such testimony is consistent with the conclusion that the accident aggravated or accelerated these conditions and defect. Moreover, the Jury answered: "Yes" to the question: "Do you find that Charles Corra suffered injuries as a proximate result of Ryan Harnish's negligence?"

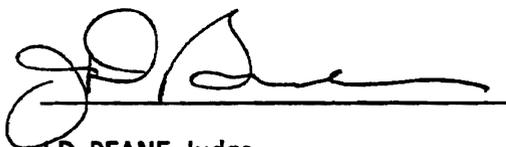
Finally, respecting the crucial question whether Dr. Tokodi's arthroscopic surgery on

Mr. Corra was reasonable and necessary, taking Dr. Santrock's testimony as a whole, both on direct and cross examination, along with all other evidence presented on the issue, the Court finds that the jury's verdict excluding the expense of this surgery is against the clear weight of the evidence.

The Court is aware a possible interpretation of the jury's responses to the questions propounded to it is that it reflects a verdict for the defendant perversely expressed or an inconsistent compromise between radically opposing views. The Court is not inclined to base its decision on the pending motion upon its speculation as to the motives and process behind the jury's verdict. Nevertheless, the Court believes that to grant a new trial solely on the issue of damages would be a miscarriage of justice and it is therefore **ORDERED** that a new trial be granted in this civil proceeding as to all parties and on all issues.

The Clerk of this Court shall mail a copy of this Order to all parties.

ENTER this 6th day of April 2015.



J.D. BEANE, Judge

STATE OF WEST VIRGINIA
COUNTY OF WOOD, TO-WIT:

I, CAROLE JONES, Clerk of the Circuit Court of Wood County, West Virginia, hereby certify that the foregoing is a true and complete copy of an order entered in said Court, on the 6 day of April 2015, as fully as the same appears to me of record.

Given under my hand and seal of said Circuit Court, this the 6 day of April 2015

Carole Jones
Clerk of the Circuit Court of
Wood County, West Virginia

By: [Signature], Deputy