

IN THE COURT OF APPEALS
AT KNOXVILLE

FILED
January 27, 2000
Cecil Crowson, Jr.
Appellate Court Clerk

HARRISON WAYNE HARVILLE,
Plaintiff/Appellant,
v.
ROBERT K. WOLFE,
Defendant/Appellee.

) E1999-02263-COA-R3-CV
) HAMBLLEN COUNTY
) 03A01-9902-CV-00058
)
)
) HON. KENDALL LAWSON
) JUDGE
)
) AFFIRMED IN PART; VACATED
) IN PART; AND REMANDED
)

DOUGLAS R. BEIER, Evans & Beier, Morristown, for Appellant
JAMES W. HARRISON, Taylor, Reams, Tilson & Harrison, for Appellee

O P I N I O N

Goddard, P.J.

Harrison Wayne Harville, the Plaintiff/Appellant,
appeals a judgment rendered in his favor in the Circuit Court for
Hamblen County. The jury found Robert K. Wolfe, the
Defendant/Appellee, to be 51% at fault and Mr. Harville to be 49%
at fault and found damages in the amount of \$35,000, which in
accordance with the jury's findings of fault was reduced to
\$17,850.

Mr. Harville presents the following issues, which we restate, for our review: whether the jury verdict was adequate to compensate him for special damages, pain and suffering, and permanent impairment and whether the trial court erred by not granting his request for an additur.

The standard of review in determining whether an appellate court should require a new trial because of the inadequacy of a jury verdict is whether the amount awarded falls below the range of reasonableness. Smith v. Shelton, 569 S.W.2d 421 (Tenn. 1978). "This Court does not have the authority to grant an additur." Wilkerson v. Altizer, 845 S.W.2d 744, 749 (Tenn. Ct. App. 1992).

The record reveals that on January 24, 1995, Mr. Harville, a self-employed construction laborer, received a phone call from Mr. Wolfe, a friend and neighbor of Mr. Harville's, asking him to assist in setting some trusses for Mr. Wolfe's garage that was under construction. The next day Mr. Harville arrived to help, and during the setting of one of the trusses, Mr. Harville fell and injured his right arm. He was transported by ambulance to Morristown Hamblen Hospital and later to the

University of Tennessee Hospital, where he came under the care of Dr. Michael S. Eilerman, an orthopedic surgeon.

In his deposition, Dr. Eilerman testified that Mr. Harville had a comminuted displaced fracture of his right arm. He further testified that Mr. Harville had undergone six surgeries on his arm and that he had a 29% right upper extremity impairment or a 17% whole person impairment. Dr. Eilerman also stated that in his opinion, Mr. Harville would "have difficulty lifting or carrying weight with the right upper extremity" and would have difficulty using a hammer or performing "repetitive motions with that extremity."

The record discloses that Mr. Harville incurred medical expenses totaling approximately \$41,576.

Mr. Wolfe maintains that the Trial Court properly denied Mr. Harville's motion for an additur. Mr. Wolfe contends that "the necessity and reasonableness of the charges that were incurred was litigated and litigated thoroughly" and that based on the cross-examination of Dr. Eilerman, the jury could have rejected his testimony. There was testimony introduced that the medical expenses were necessary and reasonable. However, Mr. Wolfe failed to provide any evidence that they were not.

Under the authority of Turner v. Jordan, 957 S.W.2d 815 (Tenn. 1997), we do not believe we have the authority to adjust the jury's finding as to fault, and even if we did, under the facts of this case we would be disinclined to do so. We are, however, of the opinion that the jury's award of \$35,000 in damages was not within the range of reasonableness. Mr. Harville's actual award of \$17,850 would not compensate him for his medical expenses, much less pain and suffering or any future impairment.

For the foregoing reasons, the judgment of the Trial Court is vacated and the cause remanded for a new trial as to damages suffered by Mr. Harville, which will be reduced to 51% thereof. Exercising our discretion, we adjudge all costs of appeal against Mr. Wolfe.

Houston M. Goddard, P.J.

CONCUR:

Herschel P. Franks, J.

D. Michael Swiney, J.