

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 2028

LAUREN MINCE

VERSUS

MICHELLE CUDD AND ALLSTATE INSURANCE COMPANY

**On Appeal from the 21st Judicial District Court
Parish of Tangipahoa, Louisiana
Docket No. 2003-000256, Division "F"
Honorable Elizabeth P. Wolfe, Judge Presiding**

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Lauren Mince**

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**MICHAEL E. KIRBY
JUDGE, AD HOC**

BEFORE: ARMSTRONG, KIRBY, AND BELSOME, JJ.¹

Judgment rendered JUN - 8 2007

¹ The Honorable Joan Bernard Armstrong, Chief Judge, the Honorable Michael E. Kirby, Judge, and the Honorable Roland L. Belsome, Jr., Judge, all members of the Fourth Circuit Court of Appeal, are serving as judges *ad hoc* by special appointment of the Louisiana Supreme Court.

BM
JK
AP
Plaintiff, Lauren Mince, appeals the trial court judgment awarding her damages for injuries sustained as a result of an accident involving vehicles driven by plaintiff and defendant, Michelle Cudd, on August 24, 2002.

Plaintiff filed a petition for damages against Ms. Cudd and her insurer, Allstate Insurance Company ("Allstate") on January 21, 2003. Plaintiff alleged that her vehicle was traveling eastbound on Interstate 12 when the vehicle driven by Ms. Cudd suddenly moved into plaintiff's lane of traffic and collided with plaintiff's vehicle causing personal injuries and property damage. Plaintiff subsequently filed a motion for summary judgment on the issues of liability and insurance coverage. The trial court granted the motion, finding that Allstate provided liability coverage to Ms. Cudd on the subject accident date and also finding that liability for the accident was established in favor of Ms. Mince and against Ms. Cudd.

After trial on the amount of damages sustained in the accident, the trial court rendered judgment on June 13, 2006, finding that the accident in question did not cause plaintiff's chronic neck problems, but did cause her minimal neck problems. The court awarded plaintiff property damages and \$3,000.00 for one month's pain and suffering during medical treatment, plus court costs and interest from date of judicial demand. Plaintiff now appeals.

On appeal, plaintiff argues that the trial court erred in its findings on the issue of causation, and that she is entitled to an amended judgment awarding her additional general damages and special damages for her medical expenses. Plaintiff claims that she suffered severe injuries in the accident at issue, and that the trial court erred in finding that she proved entitlement to damages for only one month's pain and suffering.

In reasons for judgment, the trial court stated that the plaintiff testified on direct examination that she was in good health before the accident, and had been badly injured by the accident. Plaintiff further stated that the defendant's vehicle struck her vehicle very hard from the side. Plaintiff testified that her past medical bills for injuries

suffered in this accident have totaled \$24,167.47. The court noted that plaintiff's chief complaints from the accident were neck, arm and back pain. Plaintiff also stated that she is under psychiatric care for depression and could not remember any prior injuries or accidents. Plaintiff testified that she has been on pain medication for some time, and that surgery on two herniated discs in her neck had been recommended.

However, the trial court noted that on cross-examination, plaintiff stated that her vehicle damage totaled \$300.00 for damage and \$500.00 for labor, indicating a low impact collision. Further testimony revealed that plaintiff had numerous prior injuries to her neck, and had been treated for neck and arm pain before this accident. The court noted that while plaintiff stated that she did not recall treatment for chronic neck pain prior to this accident, the medical records showed that she was treated for neck problems in August, October and December of 2001, and in February, May, July and August of 2002.

The trial court further noted that the testimony and records demonstrated that plaintiff had been on a large amount of prescription medicine in 2001 and 2002 prior to the accident at issue. Specifically, the court noted that plaintiff had prescriptions filled for vicoden/lorcet (90), soma/carisoprol (30) and xanax (90) every two weeks from July 2001 through August 2002. The court found that plaintiff did not communicate her prior accidents, pain, treatment history or intervening accidents to the physicians who treated her following the accident at issue.

The trial court also noted that the Louisiana State Trooper who responded to the accident stated that plaintiff reported no injury at the accident scene, although she said she was in shock. The trooper also noted that damage to the vehicles was minor. The defendant's father, who was the owner of the vehicle that struck plaintiff's vehicle, testified that the impact of the accident left only a scratch on his vehicle.

The trial court found that it was apparent at trial that plaintiff either had a terrible memory problem when it came to accidents and injuries in her life, or she lacked veracity when testifying about her medical/accident history. In either event, the

court found that a minimum impact occurred in this accident, and that plaintiff had a prior history of accident/injury to her neck and back as well as intervening accident/injury to her neck and back. The court found that the accident in question did not cause plaintiff's chronic neck problems, but did cause her minimal neck problems, and awarded her property damages as well as \$3,000.00 for one month's pain and suffering during medical treatment, plus court costs and interest from date of judicial demand.

A reading of the trial transcript confirms the trial court's conclusion that plaintiff either had a terrible memory problem or lacked veracity regarding her medical and accident histories. Under either explanation, the conclusion of the trial court was the same: that plaintiff was not a credible witness. When findings are based on determinations regarding the credibility of witnesses, the manifest error-clearly wrong standard demands great deference to the trier of fact's findings; for only the factfinder can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding and belief in what is said. *Rosell v. ESCO*, 549 So.2d 840,844 (La. 1989).

We conclude that the trial court's determination that plaintiff was not a credible witness was reasonable. Based on the evidence presented at trial, the trial court's finding that the accident at issue did not cause plaintiff's chronic neck problems, but rather caused only minimal neck injury to plaintiff was neither manifestly erroneous nor clearly wrong. Furthermore, we conclude that the trial court did not err in awarding plaintiff property damages and \$3,000.00 for one month's pain and suffering during medical treatment.

For the reasons stated above, we affirm the trial court judgment.

AFFIRMED