

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 CA 2397

WILLIAM SIMMS

VERSUS

**ALLSTATE INSURANCE COMPANY
AND UNKNOWN INSURER**

Judgment Rendered: September 19, 2007

Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Case No. 2003-13257

The Honorable Patricia T. Hedges, Judge Presiding

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William Simms

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Allstate Insurance Company

BEFORE: GAIDRY, McDONALD, AND McCLENDON, JJ.

McDonald, J. dissents

GAIDRY, J.

An undersinsured motorists insurer appeals a judgment against it and in favor of its insured, on the grounds that the trial court erred on the issue of medical causation and abused its discretion in the award of general damages. For the following reasons, we affirm the judgment.

FACTS AND PROCEDURAL HISTORY

This action arose from a motor vehicle accident of July 14, 2002. The plaintiff, William Simms, was operating his pickup truck and was stopped while preparing to execute a left turn when his truck was struck on the driver's side by a van. As the result of the collision, Mr. Simms sustained injuries and received medical and chiropractic treatment. He subsequently compromised his claims against the other driver and that driver's automobile liability insurer for its applicable liability limits of \$25,000.00.

Mr. Simms filed suit against his own underinsured motorist insurer, Allstate Insurance Company (Allstate), on July 11, 2003. Allstate answered the suit, denying liability.

The matter was tried by the trial court on May 18, 2006. It was stipulated by the parties that the other driver was entirely at fault, that Mr. Simms incurred medical and chiropractic expenses of \$8,333.90, and that Allstate had previously paid \$1,000.00 under its medical payments coverage. At the conclusion of the bench trial, the trial court took the matter under advisement pending the submission of posttrial memoranda.

On May 31, 2006, the trial court issued its written reasons for judgment, finding that Mr. Simms had sustained general damages in the amount of \$40,000.00, in addition to his medical expenses. Based upon its factual findings, the trial court rendered judgment in favor of Mr. Simms and against Allstate for its underinsured motorists coverage limits of \$10,000.00.

Allstate appeals, contending that the trial court was manifestly erroneous in its findings as to the nature, causation, and duration of Mr. Simms's injuries, and that it abused its discretion in the award of general damages.

STANDARD OF REVIEW

An appellate court's review of factual findings in a civil appeal is governed by the manifest error-clearly wrong standard. In order to reverse a factual determination by the trier of fact, the appellate court must apply a two-part test: (1) the appellate court must find that a reasonable factual basis does not exist in the record for the finding; and (2) the appellate court must further determine that the record establishes that the finding is clearly wrong (manifestly erroneous). *Stobart v. State through Dep't of Transp. and Dev.*, 617 So.2d 880, 882 (La. 1993). Further, when factual findings are based upon determinations regarding the credibility of witnesses, the manifest error standard demands great deference to the trier of fact's findings. *Rosell v. ESCO*, 549 So.2d 840, 844 (La. 1989). If the findings are reasonable in light of the record reviewed in its entirety, this court may not reverse even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. *Id.* Thus, where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong. *Stobart*, 617 So.2d at 883.

CAUSATION

In a personal injury suit, the plaintiff bears the burden of proving a causal relationship between the accident and the injuries complained of. *American Motorist Ins. Co. v. American Rent-All, Inc.*, 579 So.2d 429, 433 (La. 1991). The trial court's finding regarding causation is a factual finding and must be reviewed under the manifest error standard. *Robling v. Allstate Ins. Co.*, 97-0582, p. 4 (La. App. 1st Cir. 4/8/98), 711 So.2d 780, 783.

The evidence shows that at the time of the accident at issue, Mr. Simms was 69 years old. He was involved in a prior slip-and-fall accident on February 7, 1999; a prior motor vehicle accident on May 11, 2000; possibly two other motor vehicle accidents in 2000 and 2001; and a subsequent motor vehicle accident on September 4, 2003. The medical evidence documents that he was treated for complaints of neck, shoulder, and low back pain as the result of the prior motor vehicle accident of May 11, 2000, that he had received chiropractic treatment for neck and back pain through May of 2001, and underwent physical therapy for accident-related symptoms through December 10, 2001 (seven months prior to the accident at issue). The subsequent accident in 2003 also involved neck, arm, and low back complaints.

Allstate challenges the trial court's apparent acceptance of the treating chiropractor's diagnosis of a "disc injury" at the C5-6 disc level, based upon an MRI study. Allstate also emphasizes the fact of Mr. Simms's poor memory regarding the various accidents and their related symptoms, contending that his injuries amounted to, at most, an aggravation of pre-existing degenerative conditions and soft-tissue injuries of four to six months' duration. Although a trial court's determination of credibility is entitled to deference on appellate review, where documents or objective evidence so contradict the witness's story, or the story itself is so internally inconsistent or implausible on its face, that a reasonable factfinder would not credit the witness's story, a court of appeal may find manifest error even in a finding purportedly based upon a credibility determination. *Toston v. Pardon*, 03-1747, p.12 (La. 4/23/04), 874 So.2d 791, 800.

There is no reason why we should not afford deference to the trial court's credibility assessment of Mr. Simms. Despite Mr. Simms's

inconsistent recollection relating to his other accidents and injuries and the nature and duration of the symptoms related to them, the medical and chiropractic records do not refute the trial court's findings as to the nature and effect of the injuries related to the accident at issue. We note that in its reasons, the trial court did not specifically find that the focal disc bulge or protrusion at the C5-6 level was directly caused by the accident at issue. Although Allstate's expert medical witness questioned the causal relationship of that disc bulge to the accident at issue, his testimony was equivocal on that issue. It was undisputed, however, that the injuries sustained in the accident were superimposed upon and probably exacerbated pre-existing degenerative disc disease and arthritis.

GENERAL DAMAGES

The role of an appellate court in reviewing general damages is not to decide what it considers to be an appropriate award, but rather to review the exercise of discretion by the trier of fact. *Wainwright v. Fontenot*, 00-0492, p. 6 (La. 10/17/00), 774 So.2d 70, 74; *Youn v. Maritime Overseas Corporation*, 623 So.2d 1257, 1261 (La. 1993), *cert. denied*, 510 U.S. 1114, 114 S.Ct. 1059, 127 L.Ed.2d 379 (1994). The discretion vested in the trier of fact in fixing general damages has consistently been described as "great, and even vast, so that an appellate court should rarely disturb an award of general damages." *Youn*, 623 So.2d at 1261.

Although the medical evidence was conflicting as to whether Mr. Simms struck his head and lost consciousness for a period of time following the collision, the trial court made a factual finding that he did. Its conclusion that he sustained such a concussion is not manifestly erroneous. Despite Allstate's efforts to impeach Mr. Simms regarding his contradictory statements concerning his other injuries and medical history, the trial court

expressly concluded that his trial testimony was, for the most part, credible and discounted the impact of his incomplete medical history provided to the treating and examining health care providers.

A defendant takes the plaintiff as he finds him and is responsible for all natural and probable consequences of his tortious conduct. When the defendant's negligent action aggravates a preexisting injury or condition, he must compensate the victim for the full extent of that aggravation. *Perniciaro v. Brinch*, 384 So.2d 392, 395 (La. 1980). The trial court weighed the conflicting evidence regarding the extent of aggravation of Mr. Simms's preexisting cervical pathology and concluded that at least some component of his symptoms at the time of trial were attributable to the accident-related injury, despite his other injuries. Regardless of whether this court would have reached a different conclusion on that contested factual issue, we cannot conclude that the trial court's finding in that regard was manifestly erroneous. Such being the case, we likewise cannot conclude that the trial court abused its vast discretion in the quantum of its award of general damages for a minor head injury or concussion, soft-tissue injuries of the cervical and lumbar spine, and aggravation of preexisting degenerative disc disease of the cervical spine, whether a true traumatic disc injury occurred or not.

The judgment of the trial court is affirmed. All costs of this appeal are assessed to the defendant-appellant, Allstate Insurance Company.

AFFIRMED.