

1975

Damages - Failure to Award General Damages in a Personal Injury Action When There Is a Verdict for Substantial Hospital or Medical Expenses - Smith v. Blair

James W. Gusea

Follow this and additional works at: https://scholarship.law.uwyo.edu/land_water

Recommended Citation

Gusea, James W. (1975) "Damages - Failure to Award General Damages in a Personal Injury Action When There Is a Verdict for Substantial Hospital or Medical Expenses - Smith v. Blair," *Land & Water Law Review*. Vol. 10 : Iss. 1 , pp. 273 - 281.

Available at: https://scholarship.law.uwyo.edu/land_water/vol10/iss1/10

This Note is brought to you for free and open access by Law Archive of Wyoming Scholarship. It has been accepted for inclusion in Land & Water Law Review by an authorized editor of Law Archive of Wyoming Scholarship.

**DAMAGES—Failure to Award General Damages in a Personal Injury Action
When There is a Verdict for Substantial Hospital or Medical Expenses.
Smith v. Blair, 521 P.2d 581 (Wyo. 1974).**

Joan Knight Smith sued Clarence Blair for injuries suffered when the vehicle in which she was a passenger was struck from behind by a truck driven by Blair. The plaintiff alleged the accident was a result of the defendant's negligence in driving without due caution or circumspection.

In a jury trial, a verdict was awarded to the plaintiff in the amount of \$2,015.15. The plaintiff appealed, claiming that this verdict was improper and irregular in that it awarded substantial hospital and medical expenses without awarding any general damages for pain and suffering and permanent disability.

The Wyoming Supreme Court, speaking through Justice McIntyre, felt it "clear . . . that the claims for hospital and X-ray bills (in the amount of \$1,410.15) were added to the \$605.00 for medical bills, making the total exactly \$2,015.15."¹ The court thus held that the verdict, which awarded substantial medical and hospital expenses but nothing for general damages, was improper and the case was reversed and remanded for a new trial on the issue of the amount of damages.

INTRODUCTION

Referring to an earlier Wyoming case² involving substantially the same question as presented in *Smith*, the court said that "as a general rule, the failure of a jury to award general damages, in the face of an award for substantial medical and hospital expenses, results at least in an improper or irregular verdict."³

Indeed, there exists substantial precedent in a variety of jurisdictions in support of just such a general rule.⁴ Nevertheless, not all verdicts awarding special but not general

Copyright© 1975 by the University of Wyoming

1. *Smith v. Blair*, 521 P.2d 581, 582 (Wyo. 1974).

2. *DeWitty v. Decker*, 383 P.2d 734 (Wyo. 1963).

3. *Smith v. Blair*, *supra* note 1, at 581.

4. *Wall v. Van Meter*, 311 Ky. 198, 223 S.W.2d 734 (1949). See Annot., 20 A.L.R.2d 276 (1951).

damages are overturned. Moreover, in those cases in which such verdicts were overturned, analysis shows that the courts did not do so simply as a matter of course by blindly applying the general rule. It will be shown through an examination of such cases in jurisdictions other than Wyoming that the evidence presented as to the injury suffered by the plaintiff is the determining factor used by the courts in deciding whether a verdict of this nature will be sustained or overturned.

It is submitted that the application of the above general rule in *Smith* by the Wyoming Supreme Court is very strict, a feature not found in other jurisdictions. It will be shown that the obvious import of the decision in *Smith* is that, as viewed by the Wyoming Supreme Court, an award for substantial medical and hospital expenses without an award for general damages is improper or irregular per se.

A QUESTION OF EVIDENCE

As indicated previously, verdicts awarding special but not general damages are not uniformly held to be invalid. One would be in error, however, to infer that the rationale used by courts in finding verdicts of such a nature invalid differs from and conflicts with the rationale upon which courts have sustained such verdicts. An analysis of the cases involved shows that, although opposite results are reached, a similar line of reasoning is pursued and the same general rule is adhered to by the courts. Whether such a verdict is overturned or affirmed invariably turns upon the question of the evidence presented at trial.

While applying the basic general rule, the bases upon which courts have held a verdict for special but not general damages to be inadequate and invalid differ. In many cases it was obvious that the decision was based upon the evidence presented, the courts holding that the verdict was against the great weight of evidence,⁵ or that the evidence was insufficient to justify the verdict.⁶ Another ground used in support

5. *Fordon v. Bender*, 363 Mich. 124, 108 N.W.2d 896 (1961); *Austria v. Donovan*, 169 So. 2d 377 (Fla. App. 1964).

6. *Gould v. Mans*, 82 S.D. 574, 152 N.W.2d 92 (1967).

of this position was that the jury failed to follow instructions⁷ or that the verdict was contrary to the instructions given the jury.⁸

While the above are the major grounds for holding a verdict for special but not general damages improper, courts have also held the result to be inadequate,⁹ inconsistent,¹⁰ a compromise,¹¹ or a result of mistake, passion, prejudice or partiality.¹² Although these grounds appear to differ, a common factor is seen to run through such cases.

The cases in which the verdict was determined to be invalid were invariably cases in which the general damages were either proven by uncontradicted testimony,¹³ established by uncontroverted testimony,¹⁴ shown by a preponderance of the evidence,¹⁵ or by the weight of the evidence,¹⁶ undisputed,¹⁷ conclusively established,¹⁸ or were such that a reasonable man could not disagree.¹⁹ Such evidence of general damages is not only found in those cases where the verdict was overturned based on evidence²⁰ but also in the cases where the court held that the jury failed to follow instructions²¹ and where the verdict was described as inadequate, inconsistent, a compromise, or a result of passion or prejudice.²²

In overturning verdicts awarding substantial medical expense, but nothing for general damages, courts usually indicate that the basis of their reasoning is that as a general

-
7. *Wall v. Van Meter*, *supra* note 4; *Levy v. Jabara*, 193 Kan. 595, 396 P.2d 339 (1964).
 8. *Schriewer v. Schworer*, 296 Ky. 749, 178 S.W.2d 598 (1944).
 9. *Deschane v. McDonald*, 86 N.W.2d 518 (N.D. 1957).
 10. *Pickel v. Rosen*, 214 So. 2d 730 (Fla. App. 1968); *Burkett v. Moran*, 410 P.2d 876 (Okla. 1965).
 11. *Albee v. Berry*, 254 Iowa 712, 119 N.W.2d 230 (1963).
 12. *Venuto v. Lubik Oldsmobile, Inc.*, 70 N.J. Super. 221, 175 A.2d 477 (1961).
 13. *Wall v. Van Meter*, *supra* note 4; *Levy v. Jabara*, *supra* note 7.
 14. *Cooper v. Christensen*, 29 Mich. App. 181, 185 N.W.2d 97 (1970).
 15. *Franco v. Graham*, 470 S.W.2d 429 (Tex. Civ. App. 1971).
 16. *Fordon v. Bender*, *supra* note 5; *Austria v. Donovan*, *supra* note 5.
 17. *Levy v. Jabara*, *supra* note 7.
 18. *Ashland Coca Cola Bottling Co. v. Brady*, 252 Ky. 183, 66 S.W.2d 57 (1933).
 19. *Deschane v. McDonald*, *supra* note 9.
 20. *Fordon v. Bender*, *supra* note 5; *Austria v. Donovan*, *supra* note 5; *Gould v. Mans*, *supra* note 6.
 21. *Wall v. Van Meter*, *supra* note 4; *Levy v. Jabara*, *supra* note 7; *Schriewer v. Schworer*, *supra* note 8.
 22. *Deschane v. McDonald*, *supra* note 9; *Pickel v. Rosen*, *supra* note 10; *Burkett v. Moran*, *supra* note 10; *Albee v. Berry*, *supra* note 11; *Venuto v. Lubik Oldsmobile, Inc.*, *supra* note 12.

rule such verdicts are invalid. Nevertheless, it is obvious that while strong evidence of general damages is not always given as the reason in holding invalid those verdicts which award substantial medical expenses but nothing for general damages, it is a pervasive undercurrent in such decisions.

In examining those cases in which an award for medical expenses but nothing for general damages has been affirmed, it is obvious that the evidence presented as to the plaintiff's injury was the determining factor. The explanations offered by courts in such circumstances have been that the jury could reasonably have believed that the injury to the plaintiff was trivial or not serious,²³ the jury could reasonably have concluded that the plaintiff suffered no compensable pain or suffering but did incur compensable medical expenses²⁴ or that there was evidence of a pre-existing injury which may have caused the pain and suffering in question.²⁵ In such cases, the decision was based upon what the jury could reasonably have believed or concluded, given the evidence presented in each case.

The foregoing analysis makes it clear that in cases involving a verdict for substantial hospital and medical expenses with no provision for general damages, the evidence as to the plaintiff's injury is the crucial determinant. Whether a preponderance of evidence was indicated in overturning the verdict or a lack of evidence was indicated in sustaining the verdict, the question of evidence decided the issue.

CURRENT TREND

Many courts are now recognizing and articulating the rationale that the appeal from a verdict awarding special but not general damages must turn on the question of evidence presented at the trial concerning general damages and the reasonableness of the jury in arriving at this type of verdict.

-
23. *Davidson v. Schneider*, 349 S.W.2d 908 (Mo. 1961); *Randles v. Lowry*, 4 Cal. App. 3d 68, 84 Cal. Rptr. 321 (1970).
 24. *Miami v. Smith*, 165 So. 2d 748 (Fla. 1964); *Whitney v. Akers*, 247 F. Supp. 763 (W.D. Okla. 1965).
 25. *Alessi v. Farkas*, 118 So. 2d 658 (Fla. App. 1960).

In the case of *Whitney v. Akers*,²⁶ the following reason was given by the court in affirming the verdict: "Under the state of the evidence herein the jury was entitled to find liability for the accident against the defendant, which it did, but to also find from the evidence that the plaintiff just did not receive a personal injury in the accident or any pain and suffering from the same."²⁷

Recognizing that each case involving the propriety of the verdict must be viewed separately, the court in *Gould v. Mans*²⁸ said that they were "not willing to adopt an inflexible rule which would in effect render every verdict approximating a plaintiff's medical expenses inadequate and invalid as a matter of law."²⁹

The Oregon Supreme Court in *Saum v. Bonar*³⁰ modified an earlier, more strict position³¹ similar to that currently applied in Wyoming. There the court reversed the order granting a new trial and ordered a reinstatement of the verdict which awarded special damages, but only \$1 for general damages. The court pointed out that had the record disclosed that the plaintiff had been seriously injured, an award for special damages without general damages would have been improper.³² However, the court recognized that the issue of general damages was contested by the defendant in his pleadings and in the evidence and that the jury could reasonably have believed that the plaintiff suffered no substantial injury or that he had been compensated by the defendant's earlier payment for lost wages.³³

Similarly in *Randles v. Lowry*,³⁴ it was recognized that a verdict for medical expenses alone might be inadequate as a matter of law in those cases in which the evidence clearly

26. *Whitney v. Akers*, *supra* note 24.

27. *Id.* at 765.

28. *Gould v. Mans*, *supra* note 6.

29. *Id.* at 93.

30. 484 P.2d 294 (Ore. 1971).

31. *Flansberg v. Paulson*, 239 Ore. 610, 399 P.2d 356 (1965). A majority of the Supreme Court of Oregon adhered to the rule that an award for medical expenses without an allowance for general damages was improper even in the face of conflicting evidence as to actual injury suffered by the plaintiff.

32. *Saum v. Bonar*, *supra* note 30, at 298.

33. *Id.* at 297.

34. *Randles v. Lowry*, *supra* note 23.

indicated that the plaintiff suffered inconvenience, serious pain, or mental suffering. Nevertheless, the court felt that when there was conflict as to whether the plaintiff suffered any substantial pain or injury "an award for the exact amount of, or even less than, the medical expenses is not necessarily inadequate. . . ."³⁵

Smith RE-EXAMINED

Had the Wyoming Supreme Court applied the above analysis to the facts of *Smith*, it is possible that the verdict of the lower court would have been sustained. This analysis being based upon the fact that, given the disputed evidence as to the extent of the plaintiff's injury, the jury could reasonably have concluded that the plaintiff suffered no compensable pain and suffering as a result of the accident.

The opinion of *Smith* is relatively short (three pages) and is based primarily on the earlier Wyoming decision of *DeWitty v. Decker*.³⁶ The majority opinion touches only briefly on the element of evidence, saying only that "there was testimony pertaining to pain and suffering, loss of wages and disability. There was also testimony regarding treatment which necessarily resulted in pain and suffering."³⁷

At the trial, the plaintiff claimed an injury to her back, but the existence of such an injury was disputed by the defendant. The evidence presented included the following:

35. *Id.* at 324.

36. *DeWitty v. Decker*, *supra* note 2. Even though the evidence as to plaintiff's injury in *DeWitty* was disputed, the court held that a verdict which allowed medical expenses with no provision for general damages was at least improper or irregular. The court recognized not only that the evidence presented as to the injury suffered by the plaintiff was disputed but also that the jury believed that an award for medical expenses alone would compensate the plaintiff. Nevertheless, the court went on to state that when the verdict was returned by the jury in open court it was as evident then as it was on appeal that the verdict was irregular and improper. The court felt that the verdict was defective in matter of substance, as opposed to defective in matter of form. This is in reference to WYO. STAT. § 1-132 (1957): "If a jury disagree, or if when the jury is polled, a juror answer in the negative, or if the verdict is defective in matter of substance, the jury must be sent out again for further deliberation, and either party may require the jury to be polled, which shall be done by the clerk or court asking each juror if it is his verdict." Citing other cases on this point, the court in *DeWitty* held that since the plaintiff had not objected to the form of the verdict given the jury nor to the verdict when it was returned, to give an opportunity for correction, the plaintiff had waived her right to do so. The court sustained the verdict on these grounds.

37. *Smith v. Blair*, *supra* note 1, at 583.

1. The only injury reported at the scene of the accident was to the driver of the vehicle in which the plaintiff was riding.
2. The accident vehicle remained in operating condition and was driven into town by the plaintiff.
3. The plaintiff was x-rayed at the hospital and then walked approximately ten blocks from the hospital to her home.
4. The day after the accident the plaintiff, suffering from nausea and diarrhea, returned to the hospital where x-rays revealed no internal injuries. The plaintiff stated, however, that the nausea and vomiting could have been caused by hepatitis.
5. The accident occurred on March 27, 1969, but after these two initial visits to the hospital the plaintiff did not consult a physician again until November, 1969.
6. The tests conducted on the plaintiff while hospitalized in November, 1969 were all normal.

Based upon such evidence, it would be reasonable for a jury to conclude that the plaintiff had suffered no compensable pain and suffering as a result of the accident caused by the defendant.³⁸

This view was presented in the dissenting opinion by Mr. Chief Justice Parker:

Under the evidence adduced in this case, the jury could have believed that plaintiff was not actually injured but she nevertheless conscientiously thought she had been and proceeded with tests to attempt verification of her belief. Under such circumstances, the jury may have considered it only equitable that the hospital, X-ray, and medical bills be paid by the defendant, but there would be no cause for awarding damages for pain and suffering occasioned by the tests.³⁹

38. The defendant, Clarence Blair, after the accident, entered a plea of guilty to following too closely behind the truck in which the plaintiff was a passenger.

39. *Smith v. Blair*, *supra* note 1, at 583.

The majority opinion, however, adhered to the strict view expressed in *DeWitty*, indicating that when it is "clear that the award was determined by allowing plaintiff substantial expenditures for medical and hospital expenses, without an award for general damages, the award is irregular and improper."⁴⁰

Besides the primary reliance on *DeWitty*, the court cited several other opinions in support of the position taken by the majority. However, these cases differ markedly from the *Smith* case in the all important area of evidence as to the injury suffered by the plaintiff. An examination of the cited cases reveals that the evidence presented therein as to general damages was much stronger and more clearly shown than in *Smith*. In each of the cited cases the evidence of general damages was uncontroverted,⁴¹ established by great weight,⁴² or proven by uncontradicted testimony,⁴³ all of which differ from the evidence as to general damages in *Smith* which was not undisputed nor uncontroverted.

CONCLUSION

It is submitted that whether or not a verdict which awards substantial medical damages yet allows nothing for pain and suffering is invalid should depend upon the evidence relating to the alleged injury and an inflexible rule such as that utilized by the Wyoming Supreme Court should not be mechanically applied in every case. If, from the evidence, the jury could reasonably conclude that the plaintiff suffered no compensable pain and suffering but that the defendant should pay for such medical expenses directly resulting from the accident, such a verdict should be sustained. Similarly, if the evidence of general damages is clearly proved, or is such that a reasonable man could not disagree, a verdict awarding only special damages should be overturned.

The above approach is not currently applied in Wyoming in that the decision in *Smith* indicates that any such verdict

40. *Id.*

41. *Cooper v. Christensen*, *supra* note 14.

42. *Fordon v. Bender*, *supra* note 5; *Franco v. Graham*, *supra* note 15.

43. *Wall v. Van Meter*, *supra* note 4.

is defective in matter of substance, regardless of the evidence presented as to the alleged injury.⁴⁴ An inflexible rule of this nature infringes upon the jury's function as the trier of questions of fact.

Other jurisdictions have recognized that a narrow application of the general rule upon which *Smith* was based constricts the function of the jury. The Wyoming Supreme Court should also recognize this fact. It would preserve the province of the jury if the court adopted a more flexible rule, allowing verdicts awarding substantial medical expense but nothing for pain and suffering, to be sustained if the jury has acted reasonably upon the evidence presented at the trial. By mentioning the evidence as to the plaintiff's injuries, the court has opened the way to effect just such a change.

To the general rule that a verdict awarding the plaintiff, in a personal injury action, the amount of medical expenses but failing to award damages for pain and suffering is invalid as a matter of law, should be added the proviso, if the evidence clearly indicates that the plaintiff suffered serious pain, inconvenience, or mental suffering.

JAMES W. GUSEA

44. While the court in *Smith* did not expressly state that such a verdict was "defective in substance," the court did rely heavily upon *DeWitty* in which the verdict was defined in that manner. In allowing the appeal in *Smith* the court mentioned (as it explained in *DeWitty*) that the irregularity of the verdict was raised by the appellant prior to the discharge of the jury, an obvious reference to the requirement under WYO. STAT. § 1-132 (1957) that an objection to a verdict defective in substance must be raised prior to the discharge of the jury or such right is waived. See note 36 *supra*.