IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
CIVIL TRIAL DIVISION

PHILIP T. CALHOUN	:	
v.	:	
	:	DECEMBER TERM, 1999
LEON J. ANTONIOW and	:	
LIRR, INC., and	:	NO. 1949
SCHARDA FUNDERBARK and	:	
RAYMOND ARRINGTON	:	

Myrna Field, J. March 7, 2002

OPINION OF THE COURT

Defendants, Leon J. Antoniow and Lirr, Inc., appeal from this court's order of December 24, 2001, denying their post-trial motion. For the reasons which follow, the motion was properly denied, and judgment in favor the plaintiffs should be affirmed.

This case arises from a motor vehicle accident which occurred at 38th and Chestnut Streets in Philadelphia, on December 8, 1998. Plaintiff, Philip T. Calhoun, sustained injuries when he was a passenger in a taxicab driven by defendant Antoniow, which was hit by a vehicle belonging to defendant Lirr, Inc. The defense presented no medical evidence. After two days of trial, the jury returned a verdict in favor of Mr. Calhoun in the amount of $250,000.

Post-trial motions were timely submitted by plaintiff and both defendants. Plaintiff's motion, seeking imposition of $9,294.52 in delay damages pursuant to Rule 238 of the Pennsylvania Rules of Civil Procedure, was granted and the verdict was molded to $259,924.52.

Concurrently, after submission of briefs by both parties and oral argument thereon, defendants' motion for remittitur, or in the alternative, a new trial, was denied.

In their motion, defendants raised three issues: 1) the verdict was so large as to shock the conscience of the court and must be reduced; 2) the court erred in allowing the testimony of Dr. Eric Lipnack; and 3) the court erred in charging the jury concerning life tables. These will be discussed in turn.

Preliminarily we note that when reviewing a jury's verdict, the evidence must be viewed in the light most favorable to the verdict winner. Boutte v. Seitchik, 719 A.2d 319 (Pa. Super. 1998). A jury's determination is not to be disturbed as long as there is sufficient evidence on the record to support it. Fannin v. Cratty, 331 Pa. Super. 326, 480 A.2d 1056 (1984). It is the province of the jury to determine the credibility of each witness. Commonwealth v. Glover, 399 Pa. Super 610, 582 A.2d 1111 (1990). The jury may decide to accept all, some or none of any witness's testimony. Id.

Defendants seek remittitur, arguing that the verdict was excessive. "The assessment of damages is peculiarly within the province of the jury, and the jury's award will not be set aside ...unless it is so excessive as to shock the conscience of the court or unless it is clearly based on partiality, prejudice or passion." Wasserman v. Fifth & Reed Hospital, 442 Pa. Super. 563, 578, 660 A.2d 600, 607 (1995), and cases cited therein. Here the jury heard testimony from the plaintiff and his wife about how his injuries have affected his quality of life. Additionally, plaintiff's medical testimony was not contradicted by any testimony presented by the defense. If the jury found the plaintiff's evidence to be credible, which they apparently did, then the verdict

is supported by the record. The verdict, while large, did not shock this court and should not be disturbed.

Defendants' second argument is that the testimony of Dr. Eric Lipnack should have been precluded totally or, at a minimum, his testimony regarding Mr. Calhoun's EMG results should have been deleted from the video deposition shown to the jury. Defendants argue that Dr. Lipnack's entire testimony should have been excluded because he failed to specifically state that the accident caused Mr. Calhoun's injuries. While he may not have used that specific language, Dr. Lipnack did testify that plaintiff's injuries were consistent with trauma; that his symptoms arose at the time of the accident; and that Mr. Calhoun was symptom-free before that time. Under these circumstances, the testimony was admissible. Where an obvious causal relationship exists, such that the injuries are either an "immediate and direct" or the "natural and probable" result of the alleged negligent act, expert testimony as to causation is not required. Matthews v. Clarion Hospital, 742 A.2d 1111(Pa. Super. 1999).

Defendants next argue that even if Dr. Lipnack's testimony was admissible in general, he should not have been permitted to offer testimony concerning the diagnosis of lumbar radiculopathy based on tests performed on February 11, 1999, two months after the accident. This argument, too, is without merit. Dr. Lipnack testified that many symptoms change in the four to six weeks following a traumatic injury, and moreover that the symptoms complained of immediately following the accident were not inconsistent with the ultimate diagnosis. On cross-examination and during closing argument, defense counsel disputed the doctor's opinion, but these criticisms went to the weight, not the admissibility of the testimony. It was within the

jury's discretion to accept or reject the doctor's opinion. The admission of the testimony was proper, and thus cannot be the basis for a new trial.

Finally, defendants argue that the court erred in charging the jury concerning the life tables. A trial court has broad discretion in phasing its instructions. A jury charge is adequate so long as the language clearly and accurately presents the law to the jury. Commonwealth v. King, 554 Pa. 331, 721 A.2d 763 (1998). Since there was some testimony that plaintiff's symptoms were permanent, the presentation of the life table information was proper as an aid to the jury in calculating plaintiff's damages. See: Subcommittee notes, Pa. S.S.J.I. (Civ) 6.21.

For all of the foregoing reasons, this court's order of December 24, 2001, denying defendants' post-trial motion, was proper. Judgment as entered in favor of the plaintiff in the amount of $259, 294.52 should be affirmed.

BY THE COURT:

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Myrna Field, J.