

STATE OF MICHIGAN
COURT OF APPEALS

MAR 09 1989

WILLIAM CARSON BALKEMA and
ELIZABETH LOIS BALKEMA,

Plaintiff-Appellants,

v

No. 102927

JANICE SUE ASH,

Defendant-Appellee.

Before: Weaver, P.J. and Holbrook and Brennan, JJ.

PER CURIAM.

In this no-fault case, plaintiffs appeal by right from an order denying their motion for judgment notwithstanding the verdict or a new trial and approving defendant's taxed bill of costs, entered August 11, 1987, by the Kent County Circuit Court. We affirm.

Plaintiffs first argue that the jury verdict in favor of defendant is against the great weight of the evidence presented at trial and, therefore, the trial court should have granted their motion for judgment notwithstanding the verdict or a new trial.

In DiFranco v Pickard, 427 Mich 32, 59; 398 NW2d 896 (1986), our Supreme Court stated the applicable standard of review for a motion for judgment notwithstanding the verdict or a new trial:

"If a material factual dispute existed, or reasonable minds could have differed on whether the plaintiff sustained a serious impairment of body function, the issue should have been submitted to the fact-finder. If the issue was properly submitted to the trier of fact, its findings generally should not be disturbed. In a bench trial, the judge's findings of fact must be affirmed unless they are clearly erroneous....In a jury trial, the jury's findings of fact, as reflected in its verdict, must be affirmed unless they are against the great weight of the evidence...." (Citations omitted).

This Court affords deference to the trial judge's decision since the trial judge, having heard the witnesses, is

uniquely qualified to judge the jury's assessment of their credibility. We will not substitute our judgment for that of the jury unless our review of the record discloses a miscarriage of justice. Beard v Detroit, 158 Mich App 441, 452; 404 NW2d 770, lv den 428 Mich 901 (1987).

We have reviewed the record of the trial and conclude that the jury verdict was no miscarriage of justice. Contrary to plaintiff's arguments, there is sufficient evidence in the record to support the jury's finding that Elizabeth Balkema's injury did not result in the serious impairment of a bodily function. The verdict, when reviewed under the applicable standards, was not against the great weight of the evidence. The trial court did not abuse its discretion in denying plaintiffs' motion for judgment notwithstanding the verdict or a new trial.

Plaintiffs also argue that the trial court erred by awarding costs to defendant. Plaintiffs contend that it would be inequitable to assess costs against them because the threshold for non-economic loss under the no-fault act changed so dramatically between the time of mediation and trial.

MCR 2.403(O)(1) provides:

"If a party has rejected an evaluation and the action proceeds to trial, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the mediation evaluation. However, if the opposing party has also rejected the evaluation, a party is entitled to costs only if the verdict is more favorable to that party than the mediation evaluation."

Plaintiffs cite to no authority in support of their argument that they should be relieved from the mandate set forth in MCR 2.403(O)(1). Furthermore, we do not believe that the circumstances of this case warrant equitable relief. We are not moved by plaintiffs' "if we knew then what we know now" argument. Thus, we affirm the order of the trial court awarding costs to defendant.

Affirmed.

/s/ Elizabeth A. Weaver
/s/ Donald E. Holbrook
/s/ Thomas J. Brennan