

| | | |
|--------------------------------|---|---------------------------------|
| ROGER L. MILLS, | : | IN THE COURT OF COMMON PLEAS OF |
| | : | LYCOMING COUNTY, PENNSYLVANIA |
| Plaintiff | : | |
| | : | |
| vs. | : | NO. 99-00,962 |
| | : | |
| ALL-PHASE ELECTRIC SUPPLY CO., | : | |
| | : | |
| Defendant | : | MOTION FOR POST-TRIAL RELIEF |

Date: August 16, 2001

OPINION and ORDER

Before the Court is Plaintiff’s Motion for Post-Trial Relief which was filed May 10, 2001, following a jury trial in which a verdict in favor of the Defendant was rendered. A hearing and argument were held on June 22, 2001. For the reasons to be explained in this opinion, Plaintiff’s Motion will be DENIED.

Facts

The jury found that the Defendant was negligent. However, the jury answered “no” in response to special verdict question: “Was the negligence of Defendant All-Phase Electric Supply Co. a substantial factor in bringing about the harm to Plaintiff Roger Mills?” Mills now moves for a new trial based upon the fact that the verdict was contrary to both applicable law and the evidence submitted to the jury in that the jury could not find that the Plaintiff was not injured at all as a result of a dock-plate incident that occurred on October 23, 1998.

Plaintiff Roger Mills’ (hereafter “Mills”) Complaint against Defendant alleged he suffered personal injuries as a result of a dock-plate falling on his foot while he was in the process of unloading materials from his employer’s truck to Defendant All-Phase Electric

Supply Co.'s (hereinafter "All-Phase") loading dock on October 23, 1998. At trial (held May 7-9, 2001) Mills asserted his left foot injury resulting from the fallen dock-plate was severe and that he remained disabled, probably permanently, as a result of suffering chronic debilitating and constant pain diagnosed as Reflex Sympathetic Dystrophy (RSD) resulting from the dock-plate injury. At trial All-Phase agreed that: after Mills' foot had been struck by the dock-plate his big toe on his left foot was bruised; he was taken to the hospital emergency room immediately after the incident by All-Phase's terminal manager where his toenail was drilled to allow an accumulation of blood under the big toenail to be released; two other toes were reddened; Mills was then given some pain medication and sent home; he returned to work ten days later but left work three days later complaining his toe still hurt to an extent it prevented him from working. All-Phase disagreed, however, that there was a causal relationship between the dock-plate incident of October 23, 1998 and any RSD that Mills might be suffering. In support of its position All-Phase introduced the expert medical testimony of Dr. Wilheimina C. Korevaar, who testified that there was an absence of a causal relationship between Mills work injury and his RSD symptoms. Dr. Korevaar, in particular, testified that RSD has its onset within days of the causal event, but there were no abnormalities connected with RSD exhibited by Mills until May 2000, other than an extended bruising of the toenail. Dr. Korevaar's testimony also cast doubt on the credibility of the origin and extent of Mills supposed symptoms as she noted several physical findings and observations from her recent examination of Mills which were inconsistent with his asserted disability and on-going pain syndrome. Thus at trial, the contest was not whether Mills sustained an injury as a result of the incident, but what was the extent of the injury. And while evidence concerning this contest occupied

most of the time of the three-day trial, the jury's verdict centered on the limited testimony concerning the way in which the accident involving the dock-plate occurred.

The dock-plate incident of October 23, 1998 was described in the testimony of Mills and All-Phase's employee, Jeffrey Dowling. For the most part their testimony was consistent. Mills had backed his tractor-trailer truck into the loading dock at All-Phase to unload a delivery. Dowling came out onto the loading dock as Mills was walking toward it. Both men went to the rear truck doors and opened them. Mills went inside the truck to obtain the items to be delivered. Dowling began to deploy the dock-plate. The dock-plate is made of steel, approximately 1/4" thick and when open and deployed is about 6 feet in length and 12" in width. It is attached to the loading dock and when not deployed, hanging in front of it in a folded position. When deployed it is to be lifted up above the truck bed and it then unfolds by itself and drops downwards to form a metal bridge over the narrow gap between the rear of the truck bed and the loading dock. As Dowling tried to lift up the dock-plate using a metal hook designed for that purpose, the dock-plate jammed. Dowling continued to lift on it with the hook.

Mills testified he observed Dowling having difficulty and told him to wait and he would help; making eye contact with Dowling while he said this. According to Mills, he then returned to the rear part of the trailer and had bent down to pick up an item to use to pry on the dock-plate when the plate suddenly came down on his left foot.

Dowling testified that as he began to deploy the dock-plate by lifting it with metal hook, it stuck. Initially he could not get it loose and he then put some effort into it. The dock-plate then sprung loose and came down striking Mills' foot. Dowling further testified that

once the dock-plate starts to deploy it cannot be stopped in mid-air and that he had no previous or subsequent difficulty in deploying the dock-plate. Most at odds with Mills' version of the incident was Dowling's testimony that he did not know Mills was in the area where the dock-plate would come down because the last he had seen him, Mills, was inside the trailer a couple of feet checking the delivery items. Dowling said he was focused on the dock-plate and did not see Mills come toward the rear of the truck. Dowling on cross-examination stated he heard Mills say "I'm grabbing a stick."

Dowling's testimony also had acknowledged that trucks, in backing into the loading dock, usually stopped several inches from the dock when they touched bumpers attached to the dock. However, on occasions when trucks backed too close to the dock and when they did not strike the bumpers they would then have to move forward several inches in order for the dock-plate to be deployed.

Dowling acknowledged that after the incident Mills had a black and blue foot and that he had said to Mills he was sorry. Dowling further testified he did not believe he was at fault for Mills' foot being struck by the dock-plate.

Mills pursued two basic theories of negligence on the part of All-Phase at trial. First, Mills contended to the jury that the design of All-Phase's loading dock was defective, in that certain types of trucks, such as the one he was driving that day could back up to the dock between the bumpers in such a way as to impede the operation of the dock-plate, and preclude or impede the dock-plate's deployment. Secondly, Mills asserted All-Phase was responsible for Dowling's negligent manner of deploying the dock-plate when he knew or should have known Mills was standing in the area where the dock-plate would strike him when it was deployed.

All-Phase contended that the risks inherent in the operation of the dock-plate were present, not when the dock-plate's deployment was impeded, but when it was in fact deployed. Mills simply stated All-Phase argued the risk of injury and the injury Mills sustained arose when the dock-plate operated in the manner intended. All-Phase asserted Mills was negligent for standing in the area where it was obvious the dock-plate would land. All-Phase also contended that Dowling had not been negligent in failing to observe Mills position as he exerted effort to deploy the dock-plate.

Discussion

Plaintiff's Motion for Post-Trial Relief requests the Court to order a new trial because the jury's determination that defendant's negligence was not a substantial factor in causing the injury to plaintiff, bore no rational relationship to the evidence adduced at trial that an injury did occur as a result of defendant's negligence. This Court agrees with Defendant that the jury's verdict was consistent with the evidence.

At the request of both parties the jury was given Pennsylvania Suggested Standard Civil Jury Instruction 3.25 on the issue of Legal Cause, as follows: "In order for the Plaintiff to recover in this case, the Defendant's negligent conduct must have been a substantial factor in bringing about the accident. That is what the law recognizes as legal cause. A substantial factor is an actual, real factor, although the result may be unusual or unexpected, but it is not an imaginary or fanciful factor or a factor having no connection or only an insignificant connection with the accident." There is no dispute that the jury was correctly instructed on legal cause, but plaintiff now contends that the verdict was contrary to the applicable law and the evidence submitted to the jury.

This Court relies upon *James v. Nolan*, 614 A.2d 709 (Pa.Super. 1992), in determining that the jury verdict was consistent with the law and facts of the case. In *James*, appellant filed a negligence suit, as executor of his wife's estate, against the McKeesport Hospital's blood bank and its director, after his wife contracted AIDS from infected blood. *Id. at 711*. The jury found that Mrs. James became infected with HIV as a result of the blood exposure, and that appellees negligently breached a duty of care owed to Mrs. James. However, the jury found that appellees' negligent breach of the duty owed to Mrs. James was not a substantial factor in causing her harm. *Id. at 713*. Thereafter, an appeal was taken, Mr. James contending the jury's verdict was inconsistent with the facts adduced at trial. The James' Court noted it is firmly established that strict form is not required in a verdict; all that is essential is that a jury's intention be clearly understood and free of ambiguity. *Id.* A review of the trial court's charge to the jury revealed that the jury could have decided the way that it did for at least two reasons; either because Mrs. James' own knowledge of the fact that the blood had not yet been tested mooted the appellees' negligence as a substantial factor, or because Mrs. James' own conduct was the sole substantial factor of her harm. *Id. at 714*. The Superior Court in *James* held that the jury's verdict was supported by the record, and therefore was consistent with the law and the facts.

Likewise, the jury in Mills here could easily have found Mills own conduct was the only substantial factor in causing his foot to be injured. The jury did not have to accept Mills' testimony as to his version of the incident. In view of the assault on Mills' credibility introduced through the testimony of Dr. Korevaar it is quite likely the jury did not accept his version when contrasted with the plausible testimony of Jeffrey Dowling. The jury could easily

have concluded Dowling was not negligent. Even if the jury's finding of negligence was based upon some act or failure of Dowling the Jury could have concluded that his negligence was not a substantial factor in the dock-plate striking Mills but rather Mills walking into the area where the dock-plate was obviously going to come down was the actual real factor involved in causing his injury.

It is also feasible the jury could have accepted the Plaintiff's theory that there was some defect in the set up of the dock, but then could have found that that defect, the possibility of the dock-plate sticking, did not contribute to the accident, since the accident occurred from the dock-plate being deployed as All-Phase's counsel strenuously argued. Possibly the jury accepted Mills' claim that All-Phase's employee Jeff Dowling was negligent in failing to instruct Mills to move his truck some inches further away from the dock, to facilitate the operation of the dock-plate, but then concluded that his failure to so instruct Mills was an insubstantial factor in causation of the accident, again, with the direct cause being Mills' own negligence in putting his foot in the impact area of the dock-plate, while Dowling was attempting to deploy it. In addition, this Court does not recall that any testimony was ever elicited from Jeffrey Dowling to the effect that the position of Mills' truck being too close to the dock was the cause of the dock-plate jamming. Therefore, while the jury could believe the dock was negligently designed they also could have found the design failure had nothing at all to do with this incident. We will never know what the jury's theory was, but, as in *James v. Nolan*, there are various reasonable theories which the jury could reasonably have adopted in coming to the verdict presented. The fact finders' decision should not be disturbed. *See also, Davis v. Mullen*, 773 A.2d 764 (Pa. 2001).

Defendant further contends, and this Court agrees, that Plaintiff's Motion for a new trial should be denied because Plaintiff waived the issue when it was not raised at trial. If the Plaintiff believed that the jury's verdict was inconsistent at the time it was rendered, then Plaintiff had an obligation to ask the court to ask the jury for an explanation, while the jury was still impaneled. In *Curran v. Greate Bay Hotel and Casino*, 643 A.2d 687, this issue was addressed on appeal. The Superior Court held that the jury's answers to the interrogatories were irreconcilably inconsistent, but that a party's failure to request an interrogation of a jury delivering an inconsistent verdict results in a waiver. *Id.* The reason for this rule is made abundantly clear in this case where Mills now argues the verdict was inconsistent with the evidence. As noted above, we do not know which of several possible theories the jury relied upon (if any of those suggested herein). Had Plaintiff raised this inconsistency at trial the Court could at least have made further inquiry of the jury as to which theory of negligence it found Plaintiff had established. This alone may have explained away any perceived inconsistency. If not, the Court could have asked the jury to further refine its findings as to what they believed the substantial factor in causing Mills' toe injury to be and perhaps specifically to advise all concerned if it was Mills' own negligence which was the real cause of that injury. Therefore, this Court also finds that the Motion for New Trial is waived because Plaintiff failed to raise the issue at trial when the verdict was announced.

Conclusion.

While it is clear, and uncontested, that Mills' toe was injured as a result of the fallen dock-plate, it is unclear whether Defendant's negligence was the cause of that injury, whether it was the initial bruise or the disabling RSD. Therefore, the jury's verdict bore a rational relationship to the evidence and it is this Court's determination that the jury's verdict in the instant case was consistent with both the applicable law and the evidence adduced at trial.

ORDER

For the foregoing reasons, the Plaintiff's Motion For Post-Trial Relief in the form of a new trial are hereby DENIED.

BY THE COURT:

William S. Kieser, Judge

cc: Rhonda L. Davis, Esquire
Jonathan E. Butterfield, Esquire
Judges
Suzanne R. Lovecchio, Law Clerk
Gary L. Weber, Esquire (Lycoming Reporter)