

COURT OF APPEAL OF LOUISIANA, THIRD CIRCUIT

Carvell v. Winn

154 So. 2d 788 (3d Cir. 1963) · No. No. 859 · Decided June 18, 1963

SUMMARY

The Louisiana Court of Appeal, Third Circuit, reviewed a personal-injury judgment arising from a rear-end automobile collision in which the defendant's negligence was stipulated. The court upheld the admission of a Texas chiropractor as an expert within the scope of his expertise, affirmed the exclusion of a general illustrative motion-picture X-ray, and found no abuse of discretion in the jury's \$7,000 damages award. The judgment was affirmed, with appeal costs divided equally between the plaintiff and defendants.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                   |
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| COURT                 | Court of Appeal of Louisiana, Third Circuit                                                                                                                                                                                                                                                                                                                                       |
| WRITING FOR THE COURT | Tate, Judge; Tate; Hood; Culpepper                                                                                                                                                                                                                                                                                                                                                |
| JURISDICTION          | Louisiana                                                                                                                                                                                                                                                                                                                                                                         |
| DECIDED               | June 18, 1963                                                                                                                                                                                                                                                                                                                                                                     |
| DOCKET                | No. 859                                                                                                                                                                                                                                                                                                                                                                           |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                          |
| PROCEDURAL POSTURE    | Plaintiff and defendants appealed from a jury verdict awarding plaintiff \$7,000 for personal injuries. Plaintiff challenged the amount as insufficient, and defendants challenged it as excessive. Plaintiff also challenged the exclusion of an illustrative cineradiographic film, while defendants challenged the admission and scope of testimony from a Texas chiropractor. |
| STANDARD OF REVIEW    | Evidentiary rulings concerning expert qualifications, the scope of expert testimony, and admission of motion pictures are reviewed for abuse of discretion. A personal-injury award is reviewed to determine whether it is manifestly excessive or manifestly insufficient, giving substantial discretion to the trial court.                                                     |
| PRECEDENTIAL VALUE    | Published Louisiana intermediate appellate decision; precedential value not otherwise specified in the supplied text.                                                                                                                                                                                                                                                             |
| PARTIES               | Edith Winn et al., Defendants-appellants v. Lucille Thibodeaux Carvell, Plaintiff-appellee                                                                                                                                                                                                                                                                                        |

## TOPICS

expert testimony   personal injury   damages   standard of review   appellate procedure

## PRACTICE AREAS

Torts   Evidence   Personal injury   Appellate procedure   Damages

## QUESTIONS PRESENTED

1. Whether the trial court properly permitted a Texas chiropractor to testify as an expert in chiropractic and physiology.
2. Whether the trial court properly limited the chiropractor's testimony concerning causal relationships between the accident and the plaintiff's later physical ailments.
3. Whether the trial court properly excluded an illustrative cineradiographic motion picture as too general and irrelevant to the issues in the case.
4. Whether the jury's \$7,000 personal-injury award was manifestly excessive or manifestly insufficient.

## HOLDINGS

1. A chiropractor may testify as an expert in a personal-injury action when a proper foundation establishes specialized training, knowledge, and experience within the scope of chiropractic practice, even if the chiropractor is not licensed to practice in Louisiana.
2. A trial court may limit an expert's testimony to the actual field of the witness's demonstrated expertise and may exclude opinions concerning specialized causal relationships not shown by the record to be within that expertise.
3. The admission of illustrative or demonstrative motion pictures is within the trial court's discretion, and exclusion is proper when the film is insufficiently relevant or contains matter too general to bear on the issues in the case.
4. The \$7,000 award was neither manifestly excessive nor manifestly insufficient and therefore was not subject to appellate disturbance.

## KEY QUOTATIONS

*"The trial court is not under a mandatory duty to permit an expert witness to testify to any matter upon which the expert himself says he is qualified to give an expert opinion; the court must have some discretion to limit the witness's testimony as an expert to the actual field of his expertise and as applicable to the facts of the particular litigation then before it."* (791)

*"to be admissible motion pictures must tend to prove or disprove some issue in the case, and consequently the relevancy of motion pictures necessarily depends on the issues in the case and the subject matter of the film."* (793)

*"We expressly make no ruling as to whether or not the proffered film was properly authenticated."* (793)

*“The function of the reviewing court is simply to determine whether the present trial court award is manifestly excessive or manifestly insufficient under all the circumstances of the present case.” (794)*

## FACTUAL BACKGROUND

Lucille Carvell was injured when the vehicle in which she was riding was struck from behind by an automobile driven by Edith Winn. Winn's negligence was stipulated. Carvell sustained neck and back injuries, including nerve-related weakness, atrophy, numbness, pain, headaches, and claimed permanent ligament damage; she was also eight months pregnant and experienced mental distress concerning possible harm to her unborn child. The jury awarded her \$7,000 for personal injuries.

## PROCEDURAL HISTORY

The case was tried before a jury after Miss Winn's negligence was stipulated and damages remained the only disputed issue at trial. The jury awarded plaintiff \$7,000. Both sides appealed, and the Louisiana Third Circuit affirmed the judgment, allocating appeal costs equally between plaintiff and defendants. Rehearing was denied July 9, 1963.

## DISPOSITION

affirmed

## CASES CITED

- England v. Louisiana State Board of Medical Examiners, 126 So. 2d 51 (La. App. 1 Cir. 1961)
- Meyers v. Wells, 273 S.W. 110 (Mo. 1925)
- State v. Carter, 217 La. 547, 46 So. 2d 897 (1950)
- State v. Mills, 229 La. 758, 86 So. 2d 895 (1956)
- Costanzo v. Southern Farm Bureau Casualty Insurance Co., 124 So. 2d 621 (La. App. 3 Cir. 1960)
- Gagliano v. Boh Bros. Construction Co., 44 So. 2d 732 (La. App. Orl. 1949)
- McClung v. Delta Shipbuilding Co., 33 So. 2d 438 (La. App. Orl. 1947)
- Sparks v. Employers Mutual Liability Insurance Co., 83 So. 2d 453 (La. App. 2 Cir. 1955)
- Millers' National Insurance Co. v. Wichita Flour Mills Co., 257 F.2d 93 (10th Cir. 1958)
- Navajo Freight Lines, Inc. v. Mahaffy, 174 F.2d 305 (10th Cir. 1949)
- Richardson v. Missouri-Kansas-Texas Railroad Co., 205 S.W.2d 819 (Tex. Civ. App. 1947)
- Philippi v. New York, Chicago & St. Louis Railroad Co., 136 S.W. 339 (Mo. App. 1940)
- Morris v. E. I. Du Pont De Nemours & Co., 139 S.W.2d 984 (Mo. 1940)
- White v. Robbins, 153 So. 2d 165 (La. App. 3 Cir. 1963)
- Roux v. Brickett, 149 So. 2d 456 (La. App. 3 Cir. 1963)
- Delatte v. United States Fidelity & Guaranty Co., 116 So. 2d 169 (La. App. 1 Cir. 1959)
- Cassreino v. Brown, 144 So. 2d 608 (La. App. 3 Cir. 1962)

