2000-1121 (La.App. 4 Cir. 5/2/01)

Darrel PARKER

v.

DELTA WELL SURVEYORS, INC.

No. 2000–CA–1121.

Court of Appeal of Louisiana,
Fourth Circuit.

May 2, 2001.

Deckhand, who sustained cervical and lumbar strains in fall, brought action under Jones Act and in general negligence against vessel owner. The Plaquemines 25th Judicial District Court, No. 42–243, Luke Petrovich, J. Ad Hoc, rendered judgment against vessel owner in amount of $697,896.22 and assessed vessel owner with 60% comparative fault and deckhand with 40% comparative fault. Vessel owner filed motion and order for suspensive appeal, and deckhand filed devolutive appeal. The Court of Appeal, Jones, J., held that: (1) awarding deckhand $300,000 in general damages was not abuse of discretion; (2) deckhand was entitled to award for past wage loss and loss of future earning capacity; (3) deckhand was entitled to $10,000 award for future medical expenses; and (4) assessing deckhand with 40% comparative fault in causing fall was not manifestly erroneous.

Affirmed.

Murray, J., concurred in part and dissented in part and assigned reasons.

1. Damages ⚿131(4)

Awarding $300,000 in general damages to deckhand, who sustained cervical and lumbar strains in fall and brought action against vessel owner, was not abuse of discretion, where individuals who sustained similar injuries in other cases were given larger general damages awards and physician who performed two surgeries on deckhand testified that deckhand would suffer from temporary 10-15% permanent partial total body medical impairment.

2. Appeal and Error ⚿1013

Standard of review for damage awards requires showing that trier of fact abused great discretion accorded in awarding damages and in apportioning fault; to constitute abuse of discretion, award or apportionment must be so high or so low in proportion to injury or fault that it shocks conscience.

3. Damages ⚿95, 103, 117

General damages do not have common denominator and are determined on case-by-case basis.

4. Damages ⚿37, 38

Deckhand, who sustained cervical and lumbar strains in fall on vessel and brought action against vessel owner, was entitled to award for past wage loss and loss of future earning capacity, where forensic accountants indicated that deckhand would earn lower wages when he returned to work, claimant was 28 years old, and physician testified as to possibility and likelihood of recovery such that deckhand still had 15% chance of not fully recovering.

5. Damages ⚿187

Expert testimony of economist might best prove past wage loss and future earning capacity; however, injured worker's own testimony, if credible and truthful, may suffice in proving his claim for damages.

6. Damages ⚿100

Very nature of lost earning capacity makes it impossible to measure loss with any kind of mathematical capacity; facts of each case must take into account variety of factors, including plaintiff's condition prior

to accident, his work record prior to and after accident, his previous earnings, likelihood of his ability to earn certain amount but for accident, amount of work life remaining, inflation, and plaintiff's employment opportunities before and after accident.

7. Damages ⇐135

Deckhand, who sustained cervical and lumbar strains in fall on vessel and brought action against vessel owner, was entitled to $10,000 award for future medical expenses; although physician failed to specify what kind of treatments deckhand may need in future, physician testified that deckhand might incur future medical expenses, deckhand's medical expenses at end of trial totalled $42,742.16, and deckhand was 28 years old.

8. Damages ⇐191

Injured claimant's future medical expenses need not be established with mathematical certainty.

9. Seamen ⇐29(4)

Assessing deckhand, who brought Jones Act and general negligence action against vessel owner, with 40% comparative fault in causing fall which resulted in cervical and lumbar strains was not manifestly erroneous; although proximate cause of injury was unseaworthy condition of vessel, deckhand used unsafe method to empty oil from reservoir and deckhand could have avoided injury by fastening barrel on which he stood to base of crane, obtaining ladder, or having coworkers hold barrel. Jones Act, 46 App.U.S.C.A. § 688.

10. Seamen ⇐29(1, 4)

In Jones Act case, court should determine negligence of employer according to standard of reasonable employer under like circumstances, and should determine contributory negligence of seaman according to standard of reasonable seaman under like circumstances.

Lawrence D. Wiedemann, Wiedemann & Wiedemann, New Orleans and Jack E. Truitt, The Truitt Law Firm, Madisonville, Counsel for Darrel Parker.

Daniel E. Knowles, III, Brien J. Fricke, Burke & Mayer, New Orleans, Counsel for Delta Well Surveyors, Inc.

Court composed of Judge CHARLES R. JONES, Judge PATRICIA RIVET MURRAY, and Judge DENNIS R. BAGNERIS, Sr.

[1]JONES, Judge.

After a trial on the merits, the district court rendered judgment in favor of the plaintiff, Darrel Parker. Mr. Parker seeks reversal of the district court's decision assessing him with 40% comparative fault. Defendant, Delta Wells Surveyors, appeals the decision of the district court in regard to the monetary damages awarded to Mr. Parker. We affirm.

FACTS

Mr. Parker, a 28–year–old deckhand, was employed aboard the M–44 motorized vessel owned by Delta Well Surveyors. The M–44 is a self-propelled twin screw spud barge located in a slip of Tiger Pass in Venice, Louisiana. In March of 1997, while the M–44 was spudded down against the dock, Mr. Parker was loading equipment owned by IronFab onto the barge. IronFab is an individual business whose yard was approximately one hundred feet from where Mr. Parker was loading. He noticed a hydraulic line on the crane was leaking oil into the dry gear box not intended to receive oil. If the reservoir was not emptied the oil would spill onto the

deck and cause a safety hazard to all aboard. There was no ladder available onboard the vessel. Mr. Parker stood on a 55–gallon drum to remove the [2] oil from the reservoir of the crane by using a 1–gallon plastic drum. He testified that he had seen his superior, Capt. Henry Lee, empty the reservoir by standing on a 5–gallon bucket. Capt. Lee did nothing to stop Mr. Parker from using the 55–gallon drum to stand on. Capt. Lee himself testified that the oil was leaking onto the crane and had been for about a week prior to Mr. Parker's accident. Capt. Lee further testified that he *did* report the condition to the proper authorities and nothing had been done to fix the problem. Capt. Lee testified that he "jerry-rigged" the mechanism to stop the oil from leaking onto the deck. His testimony was corroborated by Roberto Williams, an employee of IronFab who sometimes worked upon Delta's M–44. Mr. Williams testified that he had complained about the oil leak to Capt. Lee on several occasions approximately four to five months prior to the accident. On this particular day, when Mr. Parker attempted to correct the ongoing problem, he fell onto the deck from standing on the 55–gallon drum and sustained injuries.

Mr. Parker was treated at Meadowcrest Hospital immediately following the accident. He suffered injuries to his head, back, right leg, right knee, rectal region and suffered prostate problems. He was treated by numerous physicians, including, but not limited to, Dr. Kenneth Adatto, an orthopedic; Dr. Barrett Richter, a chiropractor; Dr. Nichols Franco, a urologist and Dr. Kenneth Vogel, a neurosurgeon. Mr. Parker was diagnosed with multiple contusions and cervical and lumbar strain. He endured two surgical procedures. He has not worked since the accident.

[3] *PROCEDURAL HISTORY*

Mr. Parker sued his Jones Act employer for the unseaworthiness of the M–44 and in general negligence on the part of Delta. He filed a Petition for Damages in the 25th Judicial District Court. After a trial on the merits on August 23, 1999, the district court rendered judgment against Delta in the amount of $697,896.22 assessing Delta with 60% comparative fault and Mr. Parker with 40% comparative fault. The total sum of Mr. Parker's award is $418,737.74:

Pain and suffering, mental anguish and loss of life's enjoyment and disability (past and future)	$ 300,000
Past medical expenses	$ 42,742.16
Future medical expenses	$ 10,000
Past lost wages	$ 45,000.28
Future lost wages and/or impairment of earning capacity	$295,154.06
Future vocational rehabilitation expenses	$ 5,000

Delta filed its Motion and Order for a Suspensive Appeal requesting that this Court reverse the district court's judgment with regard to the awards for general damages, past wage loss, loss of future earning capacity, future vocational rehabilitation expenses and future medical expenses. Mr. Parker has taken a devolutive appeal, complaining that the assessment of 40% comparative fault is without merit.

DISCUSSION

Abuse of Discretion

[1, 2] Delta contends that the general damages awarded to Mr. Parker were so grossly high as to constitute an abuse of discretion by the district court. "The standard of review for damage awards requires a showing that the trier of fact abused the great discretion accorded in awarding damages and in apportioning [4] fault; the award or apportionment must be so high or so low in proportion to the

injury or fault that it shocks the conscience." *Courteaux v. DOTD,* 745 So.2d 91 (La.App. 4th Cir.1999). The district court's Reasons for Judgment states:

> "General damages of at least $350,000 are supported by the Fourth Circuit's recent decision in *Valley v. Specialty Restaurant Corp.,* 726 So.2d 1028 (La. App. 4th Cir.1999). In that case, the plaintiff, like Darrel Parker, underwent both lumbar and cervical neurotomies performed by Dr. Vogel. The general damage award of $350,000 was affirmed on appeal and would be an appropriate award in this case, particularly **considering the testimony adduced at trial**." (Emphasis added).

Delta contends that *Valley* is not analogous with the instant case because Mr. Parker's medical procedures were not as extensive as the plaintiff in *Valley.* Delta further suggests that the case law indicates that an award to Mr. Parker for his injuries should be limited to $40,000. Although the instant case and *Valley* may not have similar findings of fact, the district court found *Valley* analogous enough to rely on it and that is not an abuse of discretion.

Dr. Vogel testified by deposition that he performed back surgery and subsequently neck surgery on Mr. Parker. More specifically, Dr. Vogel testified that Mr. Parker underwent a lumbar neurotomy to correct the back and a cervical facet arthrogram and block to correct the neck. He testified that Mr. Parker received "satisfactory results" from the lumbar neurotomy. He further explained that the goal of the neck surgery was to resolve 80 percent or 90 percent of Mr. Parker's pain. After the neck surgery was performed in June of 1999, Dr. Vogel prescribed rehabilitation therapy and was going to evaluate Mr. Parker in a year. Dr. Vogel concluded in his testimony that Mr. Parker would suffer from "temporary ten to fifteen percent permanent partial total body medical impairment".

[5] This Court in *Pryor v. United Services Auto. Ass'n,* 729 So.2d 658 (La.App. 4th Cir.1999) upheld an award to the plaintiff of $550,000 for past and future pain and suffering. The injuries suffered by the plaintiff in *Pryor* were similar to those endured by Mr. Parker. *Pryor* arouse out of an automobile accident wherein plaintiff sued for damages sustained from the accident. The jury awarded a total of $1,185,000, $550,000 of which constituted past and future physical and mental pain and suffering. This Court affirmed the decision of the district court stating, "[An] award of $550,000 for past, and future pain and suffering was *not abusively low,* where driver suffered injuries to her neck, wrist, and lower back after the accident, endured four surgeries . . . although she had clearly improved since the accident, and her treating physician testified that he expected to discharge her from his care in the very near future". *Id.*(emphasis added).

[3] From the record in the matter subjudice, it appears that Mr. Parker's condition at trial had improved. Although, unlike *Pryor* and *Valley,* Mr. Parker underwent only two surgeries, according to the district court, the testimony adduced at trial was enough to award Mr. Parker $300,000 in general damages. "General Damages do not have a common denominator and are determined on a case by case basis". *Bernard v. Royal Insurance Co.* 586 So.2d 607 (La.App. 4th Cir. 1991). The district court did not abuse its discretion in awarding Mr. Parker these damages. The amount awarded to Mr. Parker does not "shock the conscious" enough such that this Court finds it proper to reduce the amount.

Past Wage Loss and Loss of Future Earning Capacity

[4, 5] Delta maintains that the record does not support the district court's award of past wage loss and future earning capacity. "Expert testimony of an economist might best prove this type of loss. However, the plaintiff's own testimony, if [6] credible and truthful, may suffice in proving his claim". *Sherlock v. Berry,* 487 So.2d 555 at 558 (La.App. 4th Cir.1986). The district court relied on testimony from the plaintiff and evidence from plaintiff's forensic accountant Dan Cliffe and defendant's forensic accountant, Kenneth Boudreaux, Ph. D. The parties agreed that Cliffe's report would be entered into evidence on behalf of the plaintiff in lieu of live testimony. It is apparent that the district court considered the testimony of both experts and concluded:

> "The evidence did clearly show, though, that Parker would be able to return to work through this time next year, and only then would he begin to earn a rate much less then he had at Delta. Given a net of minimum wage, the future wage loss of $295,154.06".

[6] Supporting testimony by vocational rehabilitation expert Nancy Favaloro deduced that although Mr. Parker can possibly work as a crane operator, as argued by Delta, it would be difficult to secure such a position in the parish in which he lives. She also testified that it is very possible that his pay would not be greater than that which he received at Delta. "The very nature of lost earning capacity makes it impossible to measure loss with any kind of mathematical capacity; facts of each case must take into account a variety of factors, including plaintiff's condition prior to accident, his work record prior to and after accident, his previous earnings, likelihood of his ability to earn a certain amount but for accident, amount of work life remaining, inflation and plaintiff's employment opportunities before and after the accident." *Finnie, Jr. v. Vallee,* 620 So.2d 897.

At the time of trial Mr. Parker was twenty-eight years old and had worked at Delta since 1996. Considering his age and length of employment it can be concluded that he had a future in this business had he not been injured.

[7] Delta argues that Dr. Vogel did not assign permanent restrictions on Mr. Parker. However, Dr. Vogel testified that it is possible that Mr. Parker would be restricted in his employment. When questioned about whether Mr. Parker would have a permanent 50–pound weight lifting restriction, Dr. Vogel stated, "It's possible. You know, if at some point in time, let's say six months down the line, he says 'Look, I'm relatively pain free and I'd like to do some work', we could probably do a functional capacity evaluation and determine if he's able to do either light or sedentary work".

Dr. Vogel testified as to the *possibility* and *likelihood* of recovery; however, his testimony concluded without certainty that Mr. Parker would fully recover. The fact still remains that Mr. Parker has a 15% chance of not fully recovering. Although his chances of recovery are higher then his chances of not recovering, we cannot ignore that Mr. Parker *may* fall within the 15% that does not recover completely and the district court was correct in recognizing this fact.

Future Medical Expenses

[7, 8] Delta further argues that the record does not support the $10,000 awarded to Mr. Parker for future medical expenses. However, Dr. Vogel did testify that Mr. Parker might incur future medical expenses but failed to specify what kind of treatments Mr. Parker may need.

"Future medical expenses need not be established with mathematical certainty". *Molony v. USAA Property and Casualty Ins. Co.,* 708 So.2d 1220 at 1221 (La.App. 4th Cir.1998).

Considering that at the end of the trial Mr. Parker's medical expenses totaled $42,742.16, the award of $10,000 for future medical expenses is very reasonable.

The district court does not explain in its Reasons for Judgment how this amount was determined; yet, the possibility of future medical expenses coupled [8]with the amount of medical bills incurred and Mr. Parker's age in and of itself justifies the award.

Comparative Fault

[9, 10] By his cross appeal, Mr. Parker maintains that the district court erred in assessing him 40% comparative fault in causing the accident. There is no question that the district court found that Mr. Parker's injuries were indeed caused by the unseaworthy condition of Delta's vessel and thus the proximate cause of his injuries. In assessing fault, the district court relied on the Supreme Court's standard in addressing Jones Act negligence in *Vendetto v. Sonat Offshore Drilling Co.,* 725 So.2d 474 (La.1999):

> "In a Jones Act case, the court should determine the negligence of the employer according to the standard of a reasonable employer under like circumstances, and should determine the contributory negligence of the seaman according to the standard of a reasonable seaman under like circumstances." Citing *Foster v. Destin Trading Corp.,* 96–0803, 700 So.2d 199 (La.1997)".

The trial court concluded, after considering the witnesses' testimony, that Mr. Parker's action and/or inaction amounted to 40% comparative fault. The court made reference to the unsafe method used by Mr. Parker to empty the reservoir, the fact that he could have tied the barrel to the base of the crane to prevent it from sliding, or obtained a ladder from IronFab, or had his nearby co-workers hold the unstable drum. All of these factors played a role as to how the trial court was able to decide the issue of comparative fault.

The district court did not commit manifest error in assessing Mr. Parker with 40% comparative fault. The court assigns reasons which are consistent with the evidence presented at trial.

[9]***DECREE***

There was no abuse of discretion in the award for general damages, past and future wage loss and future medical expenses allocated to Mr. Parker. Nor did the district court err in assessing Mr. Parker 40% comparative fault. Thus, for the reasons herein assigned, we affirm the judgment of the district court.

AFFIRMED.

MURRAY, J., concurs in part and dissents in part with reasons.

[1]MURRAY, J., concurring in part and dissenting in part with reasons.

While I agree with the majority's determination that the evidence supports an award for loss of earning capacity, I must respectfully dissent regarding the amount of that award. In addition, I concur in affirming the award for future medical expenses.

An award for loss of earning capacity requires only the presentation of "medical evidence which indicates with reasonable certainty that there exists a residual disability causally related to the accident" at issue. *Aisole v. Dean,* 574 So.2d 1248, 1252 (La.1991). This medical evidence may be corroborated and complemented by lay testimony, including that of the

plaintiff. *Bize v. Boyer*, 408 So.2d 1309, 1312 (La.1982); *McDonough v. Royal Sonesta, Inc.*, 626 So.2d 438, 440 (La.App. 4th Cir.1993). Moreover, because public policy favors bringing a case to trial as quickly and efficiently as possible, "[t]he fact that an injured party has not reached maximum recovery and has not been assigned a disability rating does not defeat his claim for loss of future wages." *Whigham v. Boyd*, 97–0693, p. 10 (La.App. 4th Cir.10/1/97), 700 So.2d 1163, 1168. The trial court's determination that a loss of future earnings has been proven is a factual finding that cannot be disturbed on appellate review unless it was without foundation and/or [2]was clearly wrong. *Buffinet v. Plaquemines Parish Comm'n Council*, 93–0840, pp. 20–21 (La.App. 4th Cir.7/27/94), 645 So.2d 631, 644 (citations omitted).

In this appeal, the defendant asserts that there was no evidence that Mr. Parker would have any permanent impairment of his earning capacity, but only a temporary restriction to light-duty work. However, the evidence outlined below establishes, to a reasonable certainty, that Mr. Parker has suffered a permanent disability as a result of the injuries to his back and neck.

Initially, Mr. Parker's back and neck injuries were treated conservatively from March 21, 1997 to July 27, 1998 by Dr. Kenneth N. Adatto, an orthopedic surgeon, and by a chiropractor, Dr. Barrett S. Richter, from April 2, 1998 to September 9, 1998. However, because this treatment brought little improvement, Mr. Parker consulted Dr. Kenneth E. Vogel, a neurosurgeon, on September 22, 1998. Based upon the physical exams, diagnostic tests, and review of records of Mr. Parker's prior care, Dr. Vogel performed a four-level bilateral lumbar neurotomy on December 2, 1998. This procedure resulted in a significant reduction in Mr. Parker's back pain, but his neck condition continued to worsen. On July 1, 1999, Dr. Vogel did a medial branch neurotomy at five levels on the right side of Mr. Parker's neck, to be followed by rehabilitation therapy for one year.

When Dr. Vogel was first deposed on May 7, 1999, he testified that after a neurotomy, "85 percent of the patients when they reach MMI do not have a disability. We're able to lift the disability at one year." Because Mr. Parker had had such good results from the lumbar neurotomy, Dr. Vogel expected a similar recovery after the cervical procedure, which had not yet been scheduled. Dr. Vogel was then questioned about the potential effect of the cervical neurotomy, [3]combined with the prior back surgery, on Mr. Parker's work capacity:

> Q: .... How is [the cervical neurotomy] going to affect his disability, if at all?
>
> A: In isolation, the statistics are the same, however, if at the end of a year he says, Oh, my neck and back are feeling pretty good, I would probably tell him, Look, you don't have a disability, and I want you to go back to work, but I would advise when you go back to work you avoid the heavy lifting, pushing, and pulling.
>
> Q: So even if he has the neurotomy on the neck, you'd still probably tell him there is a fifty-pound restriction in effect?
>
> A: Right. But I might—instead of saying I'm going to lift this at one year, since he's had both of them, I might say, Look, it might be prudent that when you went back to work, that you avoid lifting, pushing or pulling greater than 50 pounds on a permanent basis simply because you had both your neck and low back injured.

Dr. Vogel then explained that his usual procedure was to do a functional capacity evaluation after the one-year recovery period for a definitive measurement of what the individual could tolerate. When questioned further about a permanent versus a temporary 50–pound restriction, Dr. Vogel stated that he believed the permanent restriction "would be prudent" in this case.

Dr. Vogel was re-deposed on August 20, 1999, after the cervical neurotomy had been performed and just three days before trial. Dr. Vogel again stated that he expected Mr. Parker to reach maximum medical improvement within one year of the most recent procedure, by July 1, 2000. Regarding the extent of disability, the doctor explained:

> A: He'll have a temporary 10 to 15 percent permanent [sic] partial total body medical impairment. He'll be asked to avoid those activities requiring him to lift, push or pull greater than 50 pounds or repeatedly hyperextend or flex his neck for at least one year. At one year he will be re-evaluated to determine if there's any permanent disability.
>
> Q: So the disability that you just stated lasts for a year and then you re-evaluate in a year to determine whether or not that is going to [4]be a permanent disability?
>
> A: Yes.

On cross-examination, Dr. Vogel conceded that "at this point" he could not say "one way or the other" whether the 50–pound restriction would be temporary or permanent, or even that Mr. Parker would not be able to do some light or sedentary work before the one-year recovery period had lapsed. However, while he again emphasized that a functional capacity evaluation would be necessary before Mr. Parker could be released to return to work, Dr. Vogel did not contradict his earlier deposition testimony that, in his opinion, a permanent restriction on lifting, pushing and pulling "would be prudent." Thus, the testimony of plaintiff's treating physician supports the trial court's conclusion that, although maximum recovery would not be reached until several months after trial, there was a *reasonable certainty* of a residual disability resulting from this accident.

Additional support for this determination, noted in the trial court's written reasons, is found in the report of Dr. Robert L. Applebaum, the defendant's expert in neurological surgery. Dr. Applebaum examined Mr. Parker on April 13, 1999, after the lumbar neurotomy but before the cervical neurotomy had been performed. In his report prepared the day after this examination, Dr. Applebaum wrote in part:

> Examination at the current time shows no significant mechanical and equivocal neurological findings.... **I feel he could return to some form of moderate work with no prolonged bending or stooping or lifting any loads greater than 40 to 50 pounds.** This could perhaps be best documented by a functional capacity evaluation.

[Emphasis added.] The trial court acknowledged that when Dr. Applebaum was later deposed on August 18, 1999, he retracted his opinion regarding any restrictions, testifying that he believed he "was mistaken" when he dictated that recommendation because he now saw no basis for it. On cross, however, Dr. [5]Applebaum admitted that he had no "specific recollection of Darrel Parker" and was testifying based solely upon his notes and records. Accordingly, despite the later disclaimer, Dr. Applebaum's report provides further factual support for the trial court's decision that Mr. Parker's injury resulted in some loss of earning capacity.

While I thus agree that it was not manifestly erroneous to compensate Mr. Parker for a loss of earning capacity, I must dissent from the majority's decision to affirm the amount awarded for this element of damages. Although an award for loss of earning capacity "is inherently speculative and is not susceptible of calculation to a mathematical certainty," the record must contain evidence that reasonably supports the assigned value of the loss. *Reichert v. Bertucci*, 96–1213, pp. 8–9 (La.App. 4th Cir.12/4/96), 684 So.2d 1041, 1046.

In this case, the trial court awarded Mr. Parker $295,154.06 for future lost earnings, stating in the written reasons that the amount was based upon an economist's loss estimate "net of minimum wage." However, the determination that the plaintiff would be limited to minimum wage positions is contrary to the deposition testimony of Nancy T. Favaloro, offered by the plaintiff as an expert vocational rehabilitation counselor. Based upon her interview with Mr. Parker and her review of his medical records, Ms. Favaloro opined that once he could return to work he would be limited to semi-skilled, light-to-medium employment. In the commuting area of Port Sulphur, Louisiana, where Mr. Parker lives, she found jobs within that classification paid an entry-level wage between six and seven dollars per hour, or approximately $15,000 per year. Given this uncontradicted testimony, it was manifestly erroneous for the trial court to award Mr. Parker an amount based upon future earnings at minimum wage rates, rather than at $6 or $7 per hour.

[6]Finally, I concur with the majority in affirming the trial court's award for future medical expenses. When a need for future medical care is established by the evidence but the cost is uncertain, a reasonable award may be made. *Stiles v. K Mart Corporation*, 597 So.2d 1012, 1013 (La. 1992). In this case, Dr. Vogel testified unequivocally that although Mr. Parker was not expected to undergo any additional surgery, he would require some form of medication and/or therapy to manage pain and discomfort for the rest of his life. Because the plaintiff was only 28 years old at the time of trial, I cannot say that an award of $10,000.00 for future care was an abuse of the trial court's discretion.

2000-1037 (La.App. 4 Cir. 5/9/01)

STATE of Louisiana

v.

Sidney E. MAYBERRY.

No. 2000–KA–1037.

Court of Appeal of Louisiana,
Fourth Circuit.

May 9, 2001.

Defendant was convicted in the Criminal District Court, Orleans Parish, No. 406–093, Terry Alarcon, J., of possession of cocaine in amount between 28 and 200 grams, and he appealed. The Court of Appeal, Kirby, J., held that: (1) officers had reasonable suspicion of criminal activity so as to support stop and frisk; (2) officers properly seized drugs from lawfully stopped defendant; (3) arrest was legal; (4) exigent circumstances warranted securing apartment in which defendant lived while officers applied for search warrant; and (5) search of apartment was legal under consent exception to search warrant requirement.

Affirmed.