Michigan Law Review

Volume 49 | Issue 8

1951

CIVIL PROCEDURE-VERDICTS-NEW TRIAL FOR DEFENDANT BECAUSE OF INADEQUACY OF VERDICT AGAINST HIM

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CIVIL PROCEDURE—VERDICTS—NEW TRIAL FOR DEFENDANT BECAUSE OF INADEQUACY OF VERDICT AGAINST HIM—Plaintiff sued on a contract for a pro rata share of an agreed $750 annual bonus in addition to salary. The evidence was undisputed that plaintiff had worked for at least the first six months of the year, and possibly seven. The jury was instructed that if it should find that there was such a contract, it should return a verdict for a fractional part of $750, the amount depending upon the portion of the year worked. The result was a verdict in favor of plaintiff for only $312.50. The trial court denied defendant's motion for new trial on grounds of a compromise verdict. The court of appeals, reversing, *held* that the verdict could not be justified upon any reasonable hypothesis of the evidence, was violative of the instructions of the court, and should have been for at least $375 if for any amount. *Winn Cigar Co. v. Wilson,* (Ala. App. 1950) 48 S. (2d) 64.

A verdict for a sum less than is clearly authorized by the evidence may indicate either of two things. It may indicate that there was miscalculation or confusion by the jury as to the measure of damages. Of this the defendant cannot complain as it is harmless error; if the plaintiff is satisfied with the award, he should not have to undergo the hardship of another trial. On the other hand, such a verdict may indicate that the jury was undecided as to basic liability and resolved its uncertainty by giving a compromise award. The defendant under such circumstances is prejudiced by the verdict, since each party is entitled to an impartial determination of liability by the jury according to the law of the case; and the law makes no provision for jury compromises.[1] The issue, then, when the jury returns an inadequate verdict, is whether the verdict itself is sufficient proof of compromise to justify putting the plaintiff to a new trial at the instance of the defendant. Though it is quite clear, from the contract sued upon or the evidence produced, that if the plaintiff has established liability, he ought to be awarded a specific amount, one of several specific amounts, or at least a certain minimum award, there is a sharp conflict of authority as to whether defendant is entitled to a new trial.[2] A court may feel more justified in granting a new trial

[1] Stetson v. Stindt, (3d Cir. 1922) 279 F. 209; Angresani v. Tozzi, 217 App. Div. 642, 216 N.Y.S. 161 (1926), affd. 245 N.Y. 558, 157 N.E. 856 (1927); New Home Sewing Machine Co. v. Simon, 107 Wis. 368, 83 N.W. 649 (1900).

[2] Colorado, Kansas, Minnesota, New York, Rhode Island, Missouri, and Alabama appear to favor a new trial. Also supporting this view are New Home Sewing Machine Co. v. Simon, supra note 1; Buck v. Ziemer, 28 Pa. D.C. 549 (1918); Selamakos v. Victory Ice and Ice Cream Co., 246 Ill. App. 178 (1927); Stetson v. Stindt, supra note 1; and cases cited in 31 A.L.R. 1091 (1924) and 174 A.L.R. 765 (1948).

Georgia, Oklahoma, Washington, Arkansas, and California appear to take the contrary view. But, because of inadequate discussion of the problem, and because the facts are not shown in full, it is sometimes difficult to determine whether the court is (1) adhering to the rule which denies a new trial or (2) whether it is not satisfied that plaintiff is entitled to a specific amount, if anything at all. Supporting the view that denies a new trial are Ackerman v. Bryan, 33 Neb. 515, 50 N.W. 435 (1891); and Blair-Parke Coal & Coke Co. v. Fiedler-Davis Fuel Co., 98 W.Va. 374, 127 S.E. 81 (1925). See also Weinstein v. Laughlin, (8th Cir. 1927) 21 F. (2d) 740 and cases in note 4 infra.

The Michigan cases are not clear on the point. See Benedict v. Michigan Beef & Provision Co., 115 Mich. 527, 73 N.W. 802 (1898) and Stretch v. Stretch, 191 Mich. 416, 158 N.W. 185 (1916).

when the trial court's instructions have been rather emphatic as to what amount the jury should return if it finds for the plaintiff than otherwise, as it can then be said that the jury did not follow the law of the case as laid down in the instructions.[3] Even here there is strong authority to the contrary.[4] The rule of the principal case does not apply when the damages are unliquidated,[5] i.e., when a measure of discretion as to damages is properly within the jury's sphere, or when other factors explain the lesser amounts.[6] It is also to be noted that if the jury merely fails to add interest, costs, or some other penalty to the award, no new trial is granted[7] although it is theoretically possible for these amounts, and not only the major portion of damages, to be points of compromise.

Cleaveland J. Rice, S. Ed.

[3] Kundred v. Bitler, 93 Ind. App. 691, 177 N.E. 345 (1931); Tou Velle v. Farm Bureau Co-op Exchange, 112 Ore. 476, 229 P. 83 (1924); Stalter v. Schuyler, 135 N.J.L. 228, 51 A. (2d) 213 (1947) (tort case); Brown v. Byers, 115 Kan. 492, 223 P. 477 (1924); Stetson v. Stindt, supra note 1.

[4] McClung v. Moore, 138 Cal. 181, 71 P. 98 (1902); Jackson v. Kubias, (Iowa 1926) 211 N.W. 245; Chapman v. Vollman-Lawrence Co., (Tex. Civ. App. 1927) 293 S.W. 221. In Jones & Philips v. Patrick, 11 Ga. App. 67, 74 S.E. 700 (1912), the court not only refused to grant a new trial when the jury violated the court's instructions, but also assessed an additional 10% damages against defendant for prosecuting a frivolous appeal.

[5] O'Dell v. Straith, 208 Mich. 497, 175 N.W. 441 (1919); Harcourt & Co. v. Heller, 250 Ky. 321, 62 S.W. (2d) 1056 (1933).

[6] Stretch v. Stretch, supra note 2; Giliuson, Ellingsen & Erickson, Inc. v. Priest, 171 Minn. 25, 213 N.W. 47 (1927); But see Hart v. Gerretson Co., 91 Kan. 569, 138 P. 595 (1914) and Shoemaker v. First National Bank of Appleton City, 200 Mo. App. 209, 204 S.W. 962 (1918).

[7] Lokes v. Kondrotas, 104 Conn. 703, 134 A. 246 (1926); Schwartz v. National Accident Society, 216 Mo. App. 63, 267 S.W. 87 (1924). See Big Rapids National Bank v. Peters, 120 Mich. 518, 70 N.W. 891 (1899) (where the interest on a note was of a sizable amount). Cf. Stretch v. Stretch, supra note 2.