

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Southern Dotson, :
 Plaintiff, :
 :
 v. :
 :
James Bonilla, :
 Defendant. :

File No.: 2:03-CV-335

JURY CHARGE

Members of the Jury:

Now that you have heard the evidence and the arguments, it is my duty to instruct you on the law.

The plaintiff in this case is Southern Dotson. Ms. Dotson was involved a motor vehicle collision that occurred near Proctorville, Vermont on December 10, 2000. The collision involved a vehicle driven by Garth Olson, in which Ms. Dotson was riding as a front-seat passenger, and a vehicle driven by Mr. Bonilla. Mr. Bonilla has admitted that he is liable for the collision. Ms. Dotson now seeks a determination of damages.

General Instructions

It is your duty as jurors to apply the law that I give you to the facts that you find from the evidence. Your

final role is to consider and decide the fact issues of the case. You are the sole and exclusive judges of the facts. You weigh the evidence, resolve conflicts in the evidence, determine the credibility of witnesses, and if warranted, draw inferences from the facts as you find them. Shortly, I will define the word "evidence" for you and instruct you on how to assess it, including how to weigh the credibility or believability of witnesses.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. You are not to be concerned with the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law is or ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in these instructions and anything other than the evidence presented in this case. Even though counsel may have mentioned a principle of law during their arguments, you must only consider the law as given to you in these instructions when reaching your verdict.

It is the sole province of the jury to determine the facts in this case. By these instructions, I do not intend

to indicate in any way how you should decide any question of fact. Except for instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your findings of fact. I recognize that a judge can have significant influence on a jury. If you think you have perceived some opinion of how I think this case should be decided, I want you not to consider that at all. I am merely the judge here. It is my responsibility to rule on the objections made by counsel and upon the law. It is your sole responsibility to decide the facts and apply the law to those facts.

You are to discharge your duty as jurors in an attitude of complete fairness and impartiality. You should weigh the evidence calmly and deliberately and without the slightest trace of sympathy, bias, or prejudice for or against either party. All parties expect that you will carefully consider all of the evidence, follow the law as it is now being given to you and reach a just verdict.

All Persons Equal Before the Law

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar

stations in life. All persons stand equal before the law, and are to be dealt with as equals in a court of justice.

Evidence

“Evidence” includes in-court sworn testimony of the witnesses given both on direct and cross-examination, out-of-court testimony read from a deposition or shown in a videotape, interrogatories and exhibits admitted into the record, facts judicially noticed by me and facts that have been stipulated. Depositions are testimony of a witness given under oath before trial. A stipulation occurs when all parties agree that certain facts are true.

As I have stated earlier, it is your duty to determine the facts, and in doing so, you may consider only the evidence I have admitted. Any evidence that I have instructed you to consider for a limited purpose must be considered only for that limited purpose. Although the lawyers may call your attention to certain facts or inferences that might otherwise go unnoticed, the lawyers’ statements, objections, and arguments are not evidence in the case. Likewise, when an attorney seeks an objection or requests a conference at the bench, you should draw no inference either positive or negative from such actions. In

the final analysis, it is your recollection and interpretation of the evidence that controls in this case, not any statement or implication that I or the lawyers have made in reference to the evidence.

While you should not speculate or guess about evidence not admitted into the record, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts as they have been established by the evidence in the case. However, in arriving at your verdict, you may not consider any personal knowledge or information pertaining to the facts of this case that you had acquired prior to or during this case that have not been admitted into evidence.

Evidence: Direct and Circumstantial

The law recognizes two types of evidence: direct and circumstantial. Direct evidence is when a witness testifies about something she or he knows by virtue of their own senses - something she or he has seen, felt, touched or heard. Direct evidence may also consist of a physical object or document which in your mind establishes a

particular fact. Circumstantial evidence is evidence that does not directly prove a fact but points to the existence of that fact. Using reason, experience, and common sense, you infer the existence or non-existence of some fact from established facts. For example, if you go to bed at night and there is no snow on the ground, and there is snow the next morning, you could reasonably infer that it snowed during the night even though you did not see it snow. The law makes no distinction between the weight to be given to either direct or circumstantial evidence, but a verdict must be based on all evidence presented.

Liability

Mr. Bonilla has admitted that he is solely responsible and liable to Ms. Dotson for her injuries and harm caused by the collision. Your job will be to determine what injuries and harm were caused by the collision, and the amount of monetary damages that will fairly and fully compensate Ms. Dotson for her injuries.

Credibility of Witnesses

As jurors, you are the sole judges of the credibility or believability of the witnesses. It is your responsibility to determine the weight to be given to the

testimony of each witness. You do not have to accept all the evidence presented in this case as true or accurate. In weighing the testimony you can take into account the witness's ability and opportunity to observe; the manner and conduct of the witness while testifying; any interest, bias, or prejudice the witness may have; the witness's relationship to the parties; the extent to which other evidence supports or contradicts the witness's testimony; and the reasonableness of the witness's testimony.

The weight of the evidence is not determined by the number of witnesses testifying. You may find the testimony of a small number of witnesses or a single witness about a fact more credible than the different testimony of a larger number of witnesses. The fact that one party called more witnesses and introduced more evidence than the other does not mean that you should necessarily find the facts in favor of that party.

Inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses may or may not cause you to discredit such testimony. Two or more persons may well hear or see things differently or have a different point of view regarding the same occurrences.

Innocent misrecollection or failure of recollection is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail and whether the discrepancy results from innocent error or intentional falsehood. After making your own judgment, you will give the testimony of each witness such weight, if any, that you think it deserves. You may accept or reject the testimony of any witness in whole or in part.

Unanimous Verdict and Duty to Deliberate

The verdict must represent the considered judgment of each juror. To return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or

effect of evidence solely because of the opinion of the other jurors, or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges - judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Instructions of Law

It is now my duty to give you instructions concerning the law that applies to this case. It is your duty as jurors to follow the law as stated in these instructions. You must then apply these rules of law to the facts you find from the evidence.

It is the sole province of the jury to determine the facts in this case. By these instructions, I do not intend to indicate in any way how you should decide any question of fact.

Burden of Proof

In a civil case, such as this, the plaintiff has the burden of proving her damages by a preponderance of the evidence.

A preponderance of the evidence means such evidence, which when considered and compared with that opposed to it,

has a more convincing force and produces in your mind a belief that what is sought to be proved is more likely true than not true. In other words, to establish a claim by a preponderance of the evidence merely means to prove that the claim is more likely so than not so. It does not mean certainly or without question, as there is likely to be some question in any case. It refers to the quality and persuasiveness of the evidence, not to the number of witnesses or documents. In determining whether a fact in issue has been proven by a preponderance of the evidence, you may consider the testimony of all the witnesses, regardless of who may have called them, and all exhibits received into evidence, regardless of who may have produced them. A plaintiff may prove that certain injuries were caused by the collision but not others.

In other words, Ms. Dotson must prove that her damages and injuries were more likely than not caused by the collision.

Proximate Causation

Ms. Dotson has the burden of proving by a preponderance of the evidence that the collision was a cause of her injuries. The legal term for this element is "proximate

cause." You may not award damages for any injury from which Ms. Dotson may have suffered or may now be suffering unless she has established by a preponderance of the evidence in the case that such injury was proximately caused by the collision.

A legal or proximate cause of an injury means that cause which, in natural and continuous sequence, unbroken by any intervening cause, produces the injury. An injury is proximately caused by an event when it appears from the evidence in the case that the event played a substantial part in bringing about or actually causing the injury.

An injury or harm may have more than one cause. The law does not require that the Plaintiff prove that the negligent act was the sole or only cause of the injury or condition. Several factors may combine to cause an injury. Plaintiff is required to show only that the collision was a substantial factor contributing to the injury. When considering the issue of proximate cause, it is not relevant that Plaintiff's physical condition prior to the collision may have made her more susceptible to injury or made their injuries greater. The question for you to determine is whether the Plaintiff's injuries were proximately caused by

the collision.

Compensatory Damages Generally

We now come to the damages portion of the Court's charge. As I have already stated, the Defendant has admitted that he was responsible and is liable for the December 10, 2000, collision. Ms. Dotson is therefore entitled to fair and full compensation for the damages that she proves were more likely than not caused by the collision. Compensatory damages are intended to put the plaintiff in the same position she was in prior to the collision. In deciding the total amount of compensation for the damages caused by this collision, you will need to consider the following categories of damages:

1. The cost of all reasonably necessary medical expenses that Ms. Dotson had to pay in the past because of the collision, including all reasonably necessary medical treatment, therapy, medications, and other treatment needed;

2. The cost of medical and other treatment that will be probably necessary in the future, because of the injuries caused by the collision;

3. Any permanent bodily injury sustained by Ms. Dotson;

4. Any loss of enjoyment of life experienced in the past, or likely to be experienced in the future;

5. Any lost income resulting from Ms. Dotson's injuries; and

6. Any past and future physical pain and suffering and mental distress.

The burden is on Ms. Dotson to prove by a preponderance of the evidence the amount of damages she has suffered. Certain claimed damages such as pain and suffering, permanent physical injury, impairment of capacity to enjoy life, and emotional injury are not susceptible to precise monetary calculation. You must consider all pertinent evidence that has been proven to your satisfaction, and then determine an amount of compensation consistent with these instructions that will provide fair, reasonable, adequate, and complete compensation to Ms. Dotson. At the same time, you must keep in mind that the purpose of these damages is to provide compensation for the plaintiff, not punishment for the defendant. You may not award speculative damages or damages based on sympathy. You may award damages to Ms. Dotson for each item or element of damages which she has established, but you should be careful

not to award damages for one item or element which duplicates an award for another item or element. Difficulty in computing damages, however, does not preclude you from assessing damages if there is evidence from which an estimation may be made with reasonable probability.

If you are persuaded that Ms. Dotson will likely continue to suffer injury or harm beyond today, or permanently, you should also include a sum which provides compensation for the categories of any losses in the future. In determining the amount to award, you need to consider how long Ms. Dotson may be expected to live. I instruct you that the normal life expectancy for Ms. Dotson is 58 years.

Medical Expenses

In this case, Ms. Dotson claims that she has incurred and will continue to incur medical expenses. If you find by a preponderance of the evidence that the defendant is liable to the plaintiff for such damages, then you should award Ms. Dotson the reasonable and necessary medical expenses incurred by her, including any reasonable and necessary medical expenses which she is reasonably likely to incur in the future. These include all doctor's bills, hospital bills, expenses for medical appliances, medications, and

other bills of a medical nature which are a proximate result of the collision.

Pain and Suffering, Mental Suffering,
and Loss of Enjoyment of Life

As I already explained, compensatory damages are an attempt to restore Ms. Dotson, that is, to make her whole, as she was immediately prior to her injuries. They are not restricted to actual loss of money. Rather, they cover both the mental and physical aspects of the injury, both tangible and intangible. No evidence of the value of such intangible things needs to be introduced; however, Ms. Dotson must submit to you evidence of such a quality and quantity that you are capable of reasonably estimating the extent of the loss suffered. No definite standard or mathematical formula is prescribed by law by which to fix reasonable compensation for pain and suffering. You must exercise your authority with calm and reasonable judgment, and the damages you fix must be just and reasonable in light of the evidence.

It is difficult to affix a monetary measure to pain and suffering, whether it be physical or mental pain, but it is your duty, as the jury, to award Ms. Dotson such an amount as is in your judgment fair, reasonable, and complete. You

should consider the following elements of damage to the extent you find them proven by a preponderance of the evidence:

a) Ms. Dotson is entitled to recover a sum of money which justly and fairly compensates her for any conscious pain, suffering, and discomfort to date caused by the defendant and the collision. Conscious pain and suffering means pain and suffering of which there was some level of awareness by Ms. Dotson; in other words, if you find that Ms. Dotson was aware of her suffering and pain at the time it occurred, she is entitled to compensation.

b) If Ms. Dotson has shown that, as a result of her injuries, she has been deprived of enjoying life and the usual social, recreational, and physical activities that would have been available to her up to the present time, then you may take that loss into consideration when determining an award for pain and suffering.

c) The law considers anxiety, fear and mental suffering as a proper element of damages. In this case, you are to consider the mental suffering, fear or anxiety that Ms. Dotson has experienced as a result of the collision and her injuries.

Ms. Dotson is also entitled to recover for any pain, suffering, and discomfort that you find she will suffer in the future, her future deprivation of enjoyment of life and the usual social, recreational, and physical activities that would otherwise have been available to her, and her future anxiety, fear, and mental suffering.

Lost Wages

There is also a claim that Ms. Dotson has lost wages as a result of this collision. Ms. Dotson is entitled to recover any loss of earnings that you may find she has suffered as a result of injuries to date.

Permanent Physical Injury

In assessing damages, the law allows you to award the plaintiff a sum which will reasonably compensate her for any permanent injuries caused by the collision. A permanent injury is one that can be reasonably expected to endure for the duration of a person's life. Damages for permanent injury is a separate element of damages to compensate the plaintiff for the duration of a person's life.

Use of Seatbelts

You have heard testimony that Ms. Dotson was not wearing a seatbelt at the time of the collision. However,

you are not to consider this fact in any way in your determination of damages.

Reduction of Future Damages to Present Value

Ms. Dotson has only one opportunity in court to recover damages for her injuries. She cannot institute another action at a later date against this defendant to recover for any of her damages that may accrue at some future time. It therefore follows that whatever she would be entitled to recover in the future on account of her injuries must be included in the amount she recovers now.

In the event that you award future damages, any such award necessarily requires that payment be made now for a loss that Ms. Dotson will not actually suffer until some future date. Under these circumstances, the result is that Ms. Dotson will in effect be reimbursed in advance of the loss, and will therefore have use of money that she would not have received until some future date, but for the verdict.

In order to make a reasonable adjustment for the present use, interest free, of money representing a lump sum payment of anticipated future loss, the law requires that you discount, or reduce to its present worth, the amount of

the anticipated future loss. You should do this by taking (1) the interest rate or return which Ms. Dotson could reasonably be expected to receive on an investment of the lump sum payment, together with (2) the period of time over which the future loss is reasonably certain to be sustained; and then reduce, or in effect deduct from, the total amount of anticipated future loss whatever that amount would be reasonably certain to earn or return, if invested at such a rate of interest over such future period of time; and include in the verdict an award for only the present worth - the reduced amount - of the total anticipated future loss.

Taxation of the Judgment

If you should conclude that Ms. Dotson is entitled to an award of damages, I instruct you that such an award would not be subject to federal or state income taxation. Consequently, you should not add any sum to the award to compensate for presumed income tax effects.

Collateral Source Rule

You are not to concern yourself with any benefits you suspect that Ms. Dotson has received as a result of her injuries. It is not relevant to the case before you whether her medical bills have been paid by insurance in whole or in

part or by whom. You may not consider whether any damages you award will go to Ms. Dotson or to reimburse others.

Notes

You have been permitted to take notes during the trial for use in your deliberations. You may take these notes with you when you retire to deliberate. They may be used to assist your recollection of the evidence, but your memory, as jurors, controls. Your notes are not evidence, and should not take precedence over your independent recollections of the evidence. The notes that you took are strictly confidential. Do not disclose your notes to anyone other than your fellow jurors. Your notes should remain in the jury room and will be collected at the end of the case.

Closing Instructions

I have selected _____ to act as your foreperson. The foreperson has no greater voice or vote than any other juror but is appointed to ensure that some order is established in the manner in which you proceed and is your spokesperson here in court.

A form of special verdict has been prepared for your convenience. You will take this form to the jury room.

Each of the interrogatories or questions on the special

verdict form requires the unanimous answer of the jury. You will take the verdict form into the jury room and when you have reached a unanimous agreement, you will have the foreperson fill out the verdict form, date and sign it. You will then return to the courtroom where the verdict will be read. Each of you may be asked individually if this is your verdict.

Verdict Forms- Jury's Responsibility

It is proper to add the caution that nothing said in these instructions and nothing in any form of verdict prepared for your convenience is meant to suggest or convey in any way or manner any intimation as to what verdict I think you should find. What the verdict shall be is your sole and exclusive duty and responsibility.

Communications with the Court

If it becomes necessary during your deliberations to communicate with the Court, you may send a note through the Courtroom Security Officer, signed by your foreperson. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing, and the Court will never communicate with any member of the jury on any subject touching on the merits of the case other than in

writing, or orally here in open Court.

You will note that all other persons are also forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are never to reveal to any person - not even to the Court - how the jury stands, numerically or otherwise, on the questions before you, until after you have reached a unanimous verdict. You may now retire and commence your deliberations.