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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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BISHOP, J. dissenting. This case involves two questions not previously decided by either this court or our Supreme Court. The first question is whether, in a personal injury action, the amount of economic damages awarded by a jury should be reduced only by collateral source payments for the damages actually awarded. Second, if a collateral source reduction is warranted only for the specific damages awarded, which party should have the burden of proving the nexus between the damages awarded and the collateral source payments. Because I answer the first question in the affirmative and would place the burden of proof on the defendant with respect to the second, I would reverse the judgment of the trial court.

My analysis follows two related tracks. First, I believe the language of General Statutes § 52-225a, when understood in the context of its purpose, leads to my conclusion. Second, because the statute is in derogation of the common law, it should be narrowly construed to achieve no more than its stated purpose of abrogating the common-law collateral source rule.

As a starting point, nothing in tort reform negated the basic notion that ''[t]he purpose of damages in a tort action is to restore the injured party to his original position.'' D. Wright, J. Fitzgerald & W. Ankerman, Connecticut Law of Torts (3d Ed. 1991) § 169, p. 449. To the extent reasonably possible, this includes damages for lost earnings and medical and hospital bills reasonably incurred for injuries proximately caused by the defendant's negligence, as well as for less tangible noneconomic damages. Tort reform did, however, alter the landscape by changing the common-law collateral source rule that a defendant is not entitled to be relieved from paying any part of the compensation due for injuries proximately resulting from his act where payment for such injuries or damages comes from a collateral source wholly independent of him. In 1985 and 1986, through a series of legislative changes, the legislature enacted tort reform, which abrogated this common-law collateral source rule. The chief purpose of the change regarding the collateral source rule was to prevent plaintiffs from receiving a double payment for the same damages. It was not intended to provide an avenue to take away damages awarded to a plaintiff if the result would prevent him from being made whole.

The language of § 52-225a regarding reduction for collateral sources is silent on the issue of whether economic damages awarded by a fact finder may be reduced by the amount of collateral payments for *any* economic damages sustained by the plaintiff, or whether a defendant is entitled to a reduction of economic damages only for the collateral payments made

for the damages *actually assessed* by the fact finder. I do not share the majority's conclusion that the repeated use of the word "total" in two portions of the statute makes it clear that the legislature intended for any award of economic damages to be reduced by the amount of payments of any other economic damages, regardless of whether the damages for which collateral payments made were, in fact, part of the jury's award. Accordingly, I would resort to statutory construction to glean the intention of the General Assembly in enacting the collateral source portion of § 52-225a.

Our Supreme Court and this court often have employed statutory construction to glean the intent of this legislation and, in doing so, uniformly have determined that the principal purpose of the portion of tort reform dealing with collateral sources was to change the common law so as to prevent a plaintiff from receiving a double recovery for the same damages. See *Alvarado* v. *Black*, 248 Conn. 409, 417, 728 A.2d 500 (1999); *Corcoran* v. *Taylor*, 65 Conn. App. 340, 344, 782 A.2d 728, cert. denied, 258 Conn. 925, 783 A.2d 1027 (2001). In *Corcoran*, this court opined that "[t]he language and legislative history of § 52-225a clearly indicate that § 52-225a was intended to prevent plaintiffs from obtaining double recoveries, i.e., collecting economic damages from a defendant and also receiving collateral source payments." (Internal quotation marks omitted.) *Corcoran* v. *Taylor*, supra, 344–45.

Section 52-225a (a) provides in relevant part that "[i]n any civil action . . . wherein. . . damages are awarded to compensate the claimant, the court shall reduce the amount of such award which represents economic damages . . . by an amount equal to the total of amounts determined to have been paid under subsection (b) of this section . . . ." Subsection (b) provides in relevant part that "[u]pon a finding of liability and an awarding of damages by the trier of fact . . . the court shall receive evidence . . . concerning the total amount of collateral sources which have been paid for the benefit of the claimant . . . ."

In this instance, I believe that the term "damages" in § 52-225a has to be understood in the context of the purposes of tort reform. In relevant part, § 52-225a (a) provides that "wherein liability is admitted or is determined by the trier of fact and damages are awarded to compensate the claimant, the court shall reduce the amount of such award which represents economic damages, as defined in subdivision (1) of subsection (a) of section 52-572h . . . ." General Statutes § 52-572h (a) provides in relevant part that " '[e]conomic damages' means compensation determined by the trier of fact for pecuniary losses including, but not limited to, the cost of reasonable and necessary medical care, rehabilitative services, custodial care and loss of earnings or earning capacity excluding any noneconomic damages . . . ."

The majority reads those statutes as permitting the reduction from the economic award of any medical expenses or lost wages that the plaintiff had claimed and that had been paid by collateral sources, regardless of whether the jury had compensated the plaintiff for them specifically. I believe this result frustrates the stated purpose of tort reform to avoid double payments to plaintiffs. In fact, if the majority is correct in its understanding of the statute, then tort reform serves not only to deny plaintiffs double payments, but also to deny them payments for economic losses *not* covered by the jury's award of damages. It also has the potential of negating a jury's economic damages award when that award was not the subject of a collateral source payment.

I believe that the majority misconstrues the contextual use of the term ''damages'' in § 52-225a. We know, from our common understanding of tort law, that a fact finder may make an award for economic damages only to the extent that the damages have been proximately caused by the defendant's negligence and to the extent that the amount of damages is reasonable. Thus, in the case of medical and hospital bills, it is axiomatic that a fact finder may award economic damages only in reasonable amounts for reasonably necessary medical and hospital expenses proximately related to the defendant's negligence. It is from these specific awards only that collateral payments may be deducted.

With respect to the statutory scheme, § 52-572h provides a generic definition of economic damages. We therefore know that economic damages include several different types of pecuniary loss, including medical and hospital expenses and loss of income. Once it is known whether an item falls within the category of economic damages, we then must look to § 52-225a to determine the application of the collateral source rule. To give meaning to the stated intent of tort reform, a more reasonable understanding of the term ''damages'' in § 52-225a requires that the court, at a collateral source hearing, should deduct collateral source payments for the *specific* economic damages that were, in fact, awarded by the jury.

The twofold consideration of reasonableness and causal connection is implicit within the definition of damages awarded by the fact finder. Otherwise, they could not have reasonably been awarded. I therefore would interpret the statute as requiring the fact finder to make this determination as to each item of economic damages it awards, a task that would not be difficult or inconvenient. Indeed, in this case, the plaintiff provided the jury with a one page itemized list of his claimed medical and hospital expenses, and another one page itemization of his claimed lost earnings. The defendant's counsel could have asked the jurors, through appropriate interrogatories, to determine

which, if any, of the plaintiff's specific damages claimed, they found proximately related and reasonably incurred. If this procedure had been followed, double payment could have been avoided by subtracting from the jury's award of damages only those payments already received by the plaintiff from collateral sources.

Following the suggested pathway would have avoided double payment to the plaintiff without risking an unwarranted reduction in his economic damages award, a result that may well have occurred in this case. The plaintiff sought economic damages in the aggregate amount of $40,055, broken down as $30,030 in claimed medical expenses and $10,025 in lost wages. In returning its verdict for $50,000, the jury assigned $15,000 as economic damages. The plaintiff thus paid out-of-pocket medical and hospital expenses that were substantially in excess of the total economic damages awarded by the jury.[1] Because no interrogatories were submitted to the jury, it is not possible to know whether the economic damages awarded by the jury included all or any of the plaintiff's claimed lost wages. It is clear, by simple mathematics, however, that the award did not compensate the plaintiff for all of his claimed medical expenses. Reciprocally, with respect to collateral sources, the court was informed only that collateral sources paid a total of $12,000, net of premiums, toward the plaintiff's claimed medical expenses. When, as here, a jury returns a verdict for economic damages in an amount less than that claimed by the plaintiff, it is a necessary inference that the jury found that some of the claimed damages either were not reasonably incurred or were not causally connected to the defendant's negligence. On the status of this record, however, we cannot know whether any part of the $15,000 awarded by the jury for economic damages was also paid by collateral sources, thus constituting double payments to the plaintiff.

The notion that to operate to reduce an award, collateral source payments must have been directed to specific damages awarded by the jury, finds support in an analysis of the collateral source rule itself. In *Mack* v. *LaValley*, 55 Conn. App. 150, 167, 738 A.2d 715, cert. denied, 251 Conn. 928, 742 A.2d 363 (1999), this court expressed its understanding of the common-law collateral source rule as follows: "Prior to the enactment of § 52-225a in 1985, Connecticut adhered to the common-law collateral source rule, which provides that 'a defendant is not entitled to be relieved from paying any part of the compensation due for *injuries proximately resulting from his act where payment* [*for such injuries or damages*] *comes from a collateral source,* wholly independent of him.' " (Emphasis added.) In the application of this rule, courts traditionally excluded evidence that a plaintiff had benefited from payments made by unrelated third parties for damages sought from the jury because the defendant was not entitled

to any reduction of liability due to payments for those damages made by an unrelated third party. Because tort reform was intended only to abrogate the common-law rule, it should be limited to relieve a tortfeasor of liability for damages only to the extent that those particular damages have been paid by an independent third party. Relieving a tortfeasor of liability for damages paid by third parties, but not within the jury's award, goes well beyond merely abrogating the common-law collateral source rule. ''It is a rule of statutory construction that statutes in derogation of the common law should be strictly construed so as not to extend, modify or enlarge [their] provisions beyond [their] scope by the mechanics of statutory construction.'' (Internal quotation marks omitted.) *Brennan* v. *Burger King Corp.*, 46 Conn. App. 76, 82–83, 698 A.2d 364 (1997), aff'd, 244 Conn. 204, 707 A.2d 30 (1998).

To follow the intent of tort reform faithfully without impermissibly diminishing an economic damages award to the plaintiff, the court, before making any reduction in economic damages for collateral source payments, must know specifically what economic damages were awarded by the jury. With this information, the court can then satisfy tort reform's intent by reducing the economic award only by the amount of collateral source payments for the damages actually awarded. Such a process would have been simple to adopt in this case because the jury was provided with two relevant exhibits. Exhibit five was a one page document, itemizing by care provider and amount, the total of the plaintiff's medical damages claim. Exhibit six was a one page document listing each date and the corresponding amount of lost earnings claimed by the plaintiff. It would not have been either confusing or cumbersome to ask the jury, in its deliberations concerning economic damages, to specify the medical expenses and lost earnings, if any, that constituted the components of its $15,000 economic damage award.

I believe that the defendant should have the burden of proving collateral source payments of damages awarded by the jury. While I agree that the language of the pertinent statutes is silent on the question of burden of proof, placing the burden on the defendant is consistent with the statutory purpose. Additionally, because the statute is a deviation from the common law, placing the burden on the defendant to prove the applicability of the statutory collateral source provision to the facts at hand is consistent with the traditional approach to statutes in derogation of the common law. Because I believe that the decision of the majority has the effect of enlarging the provisions of § 52-225a beyond its intended reach, I respectfully dissent.

[1] At the collateral source hearing, the court found that the plaintiff's unreimbursed medical expenses totaled $16,008.61.