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LAVINE, J., dissenting. After listening to the evidence in this case and assessing the testimony of the plaintiff, Deborah A. Lombardi, the jury decided to award \$3293.16 in economic damages, the entire amount of medical expenses and lost wages claimed. The jury also decided to award no noneconomic damages for pain and suffering. The trial court granted the plaintiff's motion to set aside the verdict and for additur, concluding that the jury's failure to award noneconomic damages for the plaintiff's pain and suffering must have been "governed by mistake, ignorance, prejudice, corruption or partiality" and that the verdict "shock[ed] the conscience of the court . . . ." The majority, upholding the trial court's judgment, concluded that "[b]ecause the plaintiff's medical expenses and lost wages related to her treatment for back and shoulder pain, the jury necessarily found that she had experienced pain, and it therefore should have awarded her noneconomic damages." I disagree with these conclusions for the following reasons.

First, I believe that in ruling as it did, the trial court ran afoul of *Turner v. Pascarelli*, 88 Conn. App. 720, 871 A.2d 1044 (2005), which requires the court to "identify the facts of record that justify the extraordinary relief of additur"; *id.*, 723–24; and requires this court "to inquire whether the facts so identified justify the trial court's exercise of its discretion to set a jury verdict aside because of its perceived inadequacy." *Id.*, 724. I believe that the trial court's conclusory statement that the jury's verdict must have been "governed by mistake, ignorance, prejudice, corruption or partiality" fails to identify sufficient facts to justify this ruling.

On the basis of my review of the evidence presented at trial, the jury reasonably could have found that the plaintiff was a licensed practical nurse at Sava Senior Center (center) in Mystic, where she managed the sub-acute care unit by coordinating physician direct plans. As she was driving to the center on the morning in question, her automobile was unable to gain traction and stopped while going up a hill. As she was about to exit her vehicle, she saw a black pickup truck pass her vehicle on the left and move to the right in front of her. She neither felt nor heard an impact on her automobile. The pickup truck, however, had "clipped the corner" of the plaintiff's vehicle, according to the defendant operator, Calvin G. Cobb, who was traveling at thirty miles per hour. He testified that "[i]t was my right front quarter panel and her left rear." According to the investigating state police trooper, the damage to both vehicles was minor.

The plaintiff told the state trooper that she was not injured. Although she declined an offer from emergency

medical personnel to take her to a hospital, the plaintiff saw her primary care physician later that day and was given a prescription for Motrin. The plaintiff did not work for three days. The plaintiff next saw her primary care physician on March 27, 2003, and complained of stiffness and pain in her upper arm and shoulders. She was given a prescription for Skelaxin and referred to Mohammad Pasha, a physician specializing in physical medicine and rehabilitation. Pasha ordered physical therapy and a nerve conduction study of the plaintiff's right arm. The results of the nerve conduction study were within normal limits. The plaintiff was released from Pasha's care at the end of June, 2003, but saw him again in February, 2004, at which time she was assessed for a disability rating for this action.

In light of all the evidence, including its evaluation of the plaintiff's credibility, the jury reasonably could have found that the plaintiff failed to prove that she had in fact suffered compensable pain and suffering. "Whether [a witness'] testimony [is] believable [is] a question solely for the jury. It is . . . the absolute right and responsibility of the jury to weigh conflicting evidence and to determine the credibility of the witnesses." (Internal quotation marks omitted.) *State v. Smith*, 99 Conn. App. 116, 136, 912 A.2d 1080 (2007).

Second, I disagree with the majority's conclusion that the jury's verdict was necessarily inconsistent. The jury instruction nowhere specified that the jury was required to award noneconomic damages merely because it awarded all of the economic damages that the plaintiff sought. The plaintiff did not perceive the impact, and her injuries were not substantial. The jury, in its commonsense assessment of the case and evaluation of the plaintiff's credibility, might well have believed that she either sought medical treatment as an appropriate precautionary measure or in anticipation of possible litigation but that she failed to prove that she had actually suffered compensable pain. The flaw in the majority's logic is in assuming that because a plaintiff has obtained *treatment* to address pain and suffering, the plaintiff has of necessity *experienced* pain and suffering.

Finally, while one might disagree with the jury's decision not to award noneconomic damages, it is hyperbole to say that the jury's decision "shocks the conscience . . . ." Given all of the facts, although another jury might have returned a different verdict, the jury's decision to award no noneconomic damages seems quite reasonable to me. I believe the trial court, with the best of intentions, improperly substituted its judgment for that of the jury.

For these reasons, I respectfully dissent and would reverse the judgment and remand the case with direction to reinstate the jury's verdict.

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