

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

THOMAS NEELY,)	
)	
Plaintiff,)	
)	
v.)	No. 3:05-CV-304
)	(Guyton)
FOX OF OAK RIDGE, INC.,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This case came before the Court on July 12, 2006 for a hearing on the Plaintiff's Motion For A New Trial [Doc. 32], and the Defendant's Response [Doc. 35] in opposition thereto. Robert English and Michael Inman were present for the plaintiff. Clint Woodfin was present for the defendant.

This is a personal injury case. The plaintiff alleges that while driving his vehicle in a safe and reasonable manner his vehicle was struck in the rear by a vehicle being operated negligently by an employee of the defendant. The plaintiff alleges several types of damages, including permanent disability and future lost wages.¹ The defendant admits that its employee was acting in the scope of employment when the collision occurred, but that the employee was not negligent. Further, the defendant disputes the amount and extent of the damage and injury claimed by plaintiff to have been caused by the accident.

In an action for negligence, the plaintiff must prove five elements: (1) a duty of care owed to the plaintiff by the defendant; (2) conduct by the defendant constituting a breach of that

¹At trial, the plaintiff asked the jury to award total damages in excess of \$400,000.

The Court read the verdict of the jury and determined that the jury's answers to questions 2 and 3 appeared to be inconsistent. The Court took a recess to consider the appropriate course of action. Counsel for the parties did not agree on the appropriate action to be taken. Plaintiff's counsel requested that the jury be discharged and the plaintiff given a new trial. Defendant's counsel requested that the Court enter a verdict for plaintiff in the amount of \$30,000. The Court then brought the jury back into the courtroom and attempted to resolve the apparent inconsistency on the verdict form by questioning the jury foreperson:

THE COURT: Bring the jury in.

THE COURT: I'm sorry to keep you all longer. But before the Court can accept the verdict form, the Court will need to make another inquiry with regard to - - and the Court understands your response to question no.1 being, "Yes."

Question No. 2: "Was the defendant Fox of Oak Ridge, Inc.'s negligence a legal cause of injuries to the plaintiff Tom Neely?"

Your answer is "No."

And is that the unanimous verdict of everyone on the jury? Please raise your right hand if it is.

All right then. All right hands were raised.

I must ask you, Madam Foreperson, given that answer to question no. 2, why did the jury proceed to answer question no. 3?

MADAM FOREPERSON: We felt like it was appropriate for some compensatory [sic] to be given to the plaintiff for what he has gone through so far, because there was negligence on the part of Fox in Oak Ridge.

THE COURT: All right. Very good. I appreciate your clarification on that response.