

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 interpreted the jury foreperson's statement to mean that the jury found the plaintiff to be entitled to receive only part of the damages he sought at trial, specifically, \$30,000. In other words, the Court determined that what the jury intended to say was that the defendant was the legal cause of \$30,000 of the plaintiff's claimed damages, but not the legal cause of the other claimed damages. The Court, wanting to give effect to what the court perceived to be the intent of the jury, then entered a verdict for the plaintiff in the amount of \$30,000 [Doc. 31].

In the Motion For A New Trial, the plaintiff argues that the jury's verdict is inconsistent, because the jury found that the defendant was not the legal cause of the plaintiff's injuries, but nonetheless, the plaintiff is entitled to recover \$30,000. The plaintiff, citing Rule 49(b) of the Federal Rules of Civil Procedure, argues that the verdict cannot stand, thus requiring a new trial. Rule 49(b) states, in pertinent part, as follows:

(b) General Verdict Accompanied by Answer to Interrogatories.
... When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgement may be entered pursuant to Rule 58 in accordance with the answers, notwithstanding the general verdict, or the Court may return the jury for further consideration of its answers and verdict or may order a new trial.

The defendant, in opposition to the granting of a new trial, argues that the jury's verdict does not constitute a true inconsistency. The defendant argues that the jury found that the defendant was not the legal cause of "injuries" to the plaintiff [question no.2], but that plaintiff is entitled to recover \$30,000 "in damages" [question no. 3]. In other words, according to the defendant, the jury found that the plaintiff did not suffer the injuries he alleged, but only the "damages" in the amount the jury awarded. Moreover, the defendant argues, it is the only party prejudiced by the jury's verdict, and thus is the only party with any ground to object, because based on the jury's answer to question no. 2, the Court should have entered a verdict for the defendant.