

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 final issue is whether the plaintiff, who has received a \$30,000 verdict, has “standing” to object to the verdict. The defendant, in effect, argues that the plaintiff won the case, because the inconsistent verdict was resolved in his favor. Case law is of no guidance to the Court on this point for one obvious reason: rarely will a plaintiff be awarded damages by the same jury which finds no legal causation by the defendant, and rarer still would be the plaintiff in such a case who appeals the verdict. Nonetheless, such is the situation now before the Court.

The Court finds that the overriding issue is the integrity of the process itself. The Court doubts that the plaintiff would be asking for a new trial if the jury’s “inconsistent verdict” had awarded the plaintiff \$300,000 rather than \$30,000. The Court also doubts, if such were the case, that the defendant would be content to have the Court “give effect to the intent of the jury.” This simply underscores the fact that the dispositive consideration is the inconsistency presented by the verdict. Rule 49(b) states that a new trial may be ordered, and the Court finds that it must be so ordered in this case.

Accordingly, the plaintiff’s Motion For A New Trial [Doc. 32] is **GRANTED**, and the Judgment [Doc. 31] is hereby **VACATED**.

IT IS SO ORDERED.

ENTER:

s/ H. Bruce Guyton
United States Magistrate Judge