

Judgment rendered November 7, 2007.  
Application for rehearing may be filed  
within the delay allowed by Art. 2166,  
La. C.C.P.

NO. 42,460-CA

COURT OF APPEAL  
SECOND CIRCUIT  
STATE OF LOUISIANA

\* \* \* \* \*

J. D. GILLIARD

Plaintiff-Appellee

Versus

TONIYA D. COLLINS and  
SAFEWAY INSURANCE  
COMPANY OF LOUISIANA

Defendant-Appellant

\* \* \* \* \*

Appealed from the  
Shreveport City Court  
Parish of Caddo, Louisiana  
Trial Court No. 2005R07459

Honorable Ron C. Stamps, Judge

\* \* \* \* \*

TRACY L. OAKLEY  
ANTHONY B. INZINA

Counsel for  
Appellant

CARL H. FRANKLIN

Counsel for  
Appellee

\* \* \* \* \*

Before BROWN, WILLIAMS and GASKINS, JJ.

WILLIAMS, J.

The defendants, Toniya Collins and Safeway Insurance Company of Louisiana (“Safeway”), appeal a judgment awarding \$10,000 in total damages to the plaintiff, J. D. Gilliard. For the following reasons, we affirm.

### **FACTS**

At approximately 10:00 a.m. on March 10, 2005, the vehicle driven by Toniya Collins collided with J. D. Gilliard’s vehicle at the intersection of Fairfield Avenue and Kings Highway in Shreveport, Louisiana. Safeway insured Collins’ automobile under an insurance policy that provided bodily injury liability limits of \$10,000 per person and \$20,000 per accident.

On March 11, 2005, the day following the accident, Gilliard sought treatment at Doctors’ Hospital complaining of left shoulder pain. The emergency room physician advised plaintiff to apply heat to his shoulder and prescribed pain medication. Dr. Joseph Sarpy, Jr., a family medicine physician, began treating plaintiff on March 16, 2005 and found strain and spasm of the muscle and ligaments of the neck, upper and lower back, left shoulder girdle and left upper arm. On the date of plaintiff’s final visit, April 19, 2005, Dr. Sarpy found no evidence of permanent injury.

The plaintiff, Gilliard, filed a petition for damages against the defendants, Safeway and Collins, in Shreveport City Court. Safeway stipulated to the liability of Collins in causing the accident. Thus, quantum was the sole issue at trial.

Subsequently, the trial court rendered judgment awarding the plaintiff damages of \$10,000, the insurance policy limits, plus interest and costs.

Safeway appeals the judgment.

## DISCUSSION

The defendant contends the trial court erred in awarding excessive damages. Defendant argues that the trial court abused its discretion in awarding general damages of \$6,801.80 for soft tissue injuries requiring one month of medical treatment.

General damages involve mental or physical pain and suffering, inconvenience and loss of intellectual or physical enjoyment. *George v. Allstate Insurance Co.*, 32,899 (La. App. 2d Cir. 4/5/00), 758 So.2d 373. The trial court has much discretion in the assessment of damages, so that an appellate court should rarely disturb an award of general damages. LSA-C.C. art. 2324.1; *Moody v. Blanchard Place Apartments*, 34,587 (La. App. 2d Cir. 6/20/01), 793 So.2d 281, *writ denied*, 01-2582 (La. 12/14/01), 804 So.2d 647. Reasonable persons frequently disagree about the measure of general damages in a particular case. It is only when an award is beyond that which a reasonable trier of fact could assess for the effects of the particular injury to the individual plaintiff under the particular circumstances that the appellate court should increase or reduce the award. *George, supra*; *Morris v. United Services Automobile Association*, 32,528 (La. App. 2d Cir. 2/18/00), 756 So.2d 549. An abusively low award is raised to the lowest amount, and an abusively high award is reduced to the highest amount, the trier of fact could have reasonably awarded. *Moody, supra*.

Whether an award is excessive depends upon a determination of

whether the amount can be supported under the interpretation of the evidence most favorable to the plaintiff which reasonably could have been made by the factfinder. *Moody, supra; Morris, supra*. A victim is entitled to compensation for an aggravation of a pre-existing condition or injury. *Morris, supra*.

In the present case, the plaintiff went to the Doctors' Hospital emergency room on March 11, 2005, the day after the accident, complaining of pain in his left shoulder, neck and upper back. The physical examination showed that plaintiff experienced left-shoulder pain upon raising his left arm and there was tenderness of the left trapezius muscle and the left cervical paraspinous muscle. Plaintiff was diagnosed with cervical strain and muscle spasm. He was instructed to rest and apply heat to his shoulder and neck. The emergency room physician gave plaintiff prescriptions for Flexeril, Naproxen and Lorcet to relieve pain and inflammation.

On March 16, 2005, the plaintiff visited Dr. Joseph Sarpy, Jr., with complaints of injuries from the auto accident on March 10, 2005. At trial, Dr. Sarpy testified that he had prepared a written report summarizing the plaintiff's treatment. Dr. Sarpy reported that plaintiff's physical examination showed tenderness, strain and spasm of the posterior neck and trapezius muscle. Dr. Sarpy noted that plaintiff felt increased pain in turning his head from side to side and that there was tenderness, strain and spasm of the lumbar spinal musculature and of the muscles in the left shoulder girdle and left upper arm. Dr. Sarpy diagnosed plaintiff with strain and spasm of the muscles in the cervical, thoracic and lumbar spine, the left

shoulder and left upper arm.

Dr. Sarpy treated plaintiff with therapy that consisted of applying hot packs to the areas of muscle pain and ultrasound massage three times per week. Dr. Sarpy reported that he gave plaintiff a prescription for a muscle relaxer and that plaintiff's last treatment was on April 15, 2005. Dr. Sarpy testified that considering the plaintiff's age he made steady progress and that when plaintiff was discharged on April 19, 2005, there was no evidence of permanent injury. The total charge for the medical treatment provided by Dr. Sarpy was \$2,315.

The plaintiff testified that he did not seek medical treatment immediately following the March 2005 accident. Plaintiff stated that the next morning he felt pain in his left shoulder when trying to lift his left arm and he went to the emergency room at Doctors' Hospital. Plaintiff testified that the emergency room physician prescribed pain medication and instructed him to rest and apply heat to his shoulder. Plaintiff stated that during the next week, he continued to feel pain in his left shoulder, which became stiff overnight, and that he needed help from his wife to put on his shirt in the mornings.

In addition, plaintiff testified that on March 16, 2005, he visited Dr. Sarpy, who provided treatment that helped relieve the pain and muscle soreness in his left shoulder and arm. Plaintiff stated that he was 75 years old and had retired from a manufacturing job, but was then self-employed in a part-time lawn care business. He testified that at the time of trial, he still felt intermittent pain in his left shoulder as a result of the accident. The

plaintiff stated that he had been hospitalized in 2003 for pain in his left hand and arm due to carpal tunnel syndrome, but surgery had cured that pain.

Gloria Gilliard, the plaintiff's wife, testified that he complained of pain in his left shoulder after the accident and that she helped him to get dressed for some time afterward. Although at one point, Mrs. Gilliard stated that she was not sure which shoulder plaintiff had injured in the accident, she said that plaintiff continued to complain of pain in his left shoulder at the time of trial.

In their appellate brief, the defendants argue that the accident merely aggravated plaintiff's pre-existing shoulder pain and that the evidence did not support the trial court's finding that plaintiff sustained a new onset of pain as a result of the accident. The medical records introduced into evidence demonstrated that plaintiff experienced muscle spasms in his left shoulder and neck after the accident. In his report, Dr. Sarpy noted that on April 8, 2005, plaintiff continued to have muscle spasms in his left shoulder muscles, but was improving. In his testimony, Dr. Sarpy opined that plaintiff's muscle strain and pain were caused by the auto accident and that the medical care provided to plaintiff was reasonably necessary to treat those injuries. Contrary to defendants' assertion in their brief, Dr. Sarpy did not testify that plaintiff was asymptomatic on his final visit in April 2005. Although Dr. Sarpy reported that he did not find evidence of permanent injury, he did not state that plaintiff was free of pain symptoms at that time.

The trial court heard the testimony and weighed the credibility of the witnesses. Considering the medical evidence and witness testimony

presented, we cannot say the trial court was clearly wrong in finding that plaintiff sustained an injury to his left shoulder in the auto accident and that plaintiff was still experiencing intermittent left-shoulder pain at the time of trial. After reviewing the record, we conclude that the trial court did not abuse its broad discretion in the award of general damages for the particular injuries to this plaintiff. Thus, the assignment of error lacks merit.

### **CONCLUSION**

For the foregoing reasons, the trial court's judgment is affirmed. Costs of this appeal are assessed to the appellants, Toniya Collins and Safeway Insurance Company of Louisiana.

**AFFIRMED.**