

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3753

Summary Calendar

PAUL MILLER,

Plaintiff-Appellant,

versus

WAL-MART STORES, INC.,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana
(CA-90-1034 "A")

(February 5, 1993)

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

Plaintiff appeals the amount of damages awarded by the jury.
We affirm.

I.

On May 23, 1989, Paul Miller went to a Wal-Mart store in Baton Rouge, La. After finishing his shopping, Miller slipped and fell in some Formula 409 while walking through the checkout aisle. He

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

then filed this suit against Wal-Mart Stores, Inc. and Corporate Services, Inc. in Louisiana state court to recover for personal injuries resulting from the accident. The defendants removed the case to federal court on grounds of diversity.

Miller has a history of medical problems, including two back surgeries before the accident at Wal-Mart. He first injured his back, requiring surgery, during his professional football career with the Los Angeles Rams. Miller's second back surgery resulted from an industrial accident in 1969. In January 1989, four months before his injury at Wal-Mart, Miller hurt his back again when he slipped and fell at work. He had not yet returned to work when he fell at Wal-Mart. Before trial, Miller underwent his third back surgery to correct a ruptured disk.

The jury found Wal-Mart 100% at fault. It awarded Miller \$15,000 for past medical expenses and \$5,000 as general damages. The jury did not award Miller any damages for future medical expenses. Miller appeals, urging that the jury abused its discretion. Specifically, Miller argues that he was entitled to 100% of his past medical expenses in view of the jury's determination that Wal-Mart was 100% at fault, that the evidence required an award of more than \$5,000 in general damages, and that the jury should have awarded damages for future medical expenses.

II.

We will overturn a jury's assessment of damages only if clearly erroneous in light of the evidence at trial. Herbert v. Wal-Mart Stores, Inc., 911 F.2d 1044, 1049 (5th Cir. 1990); see

also Lee v. Walmart Stores, Inc., 943 F.2d 554, 558 (5th Cir. 1991) ("we rarely overturn a properly instructed jury verdict").

The jury awarded \$15,000 for past medical expenses, approximately 75% of the expenses Miller introduced at trial. Miller contends that he is entitled to 100% of these expenses or \$20,000, because the jury found Wal-Mart to be 100% at fault. We disagree. A tortfeasor is only liable for injuries attributable to the wrongful act. E.g. Howell v. Gould, Inc., 800 F.2d 482, 487 (5th Cir. 1986); Sanders v. Collins, 551 So. 2d 644, 651 (La. App. 1st Cir. 1989).¹ Wal-Mart's 100% fault does not mean it also caused 100% of Miller's injuries, and apparently that is what the jury concluded. This finding is well supported by the evidence. Miller injured his back in a fall at work just four months before he slipped in Wal-Mart. Neither party's expert witnesses could say which of the two falls actually caused Miller to need his third back surgery. Miller's chiropractor, who treated Miller before and after the Wal-Mart accident, testified that there was no change in Miller's condition after the Wal-Mart fall. It was certainly reasonable for the jury to conclude that Miller's medical expenses were caused in part by his prior work-related injury.

¹Interrogatory #6 asked:

If you have found that the defendant was at fault, in whole or in part, what sum of money do you find to be the total amount of damages sustained by the plaintiff as a result of the accident?

(emphasis added).

The jury was also justified in awarding \$5,000 for general damages (past and future pain and suffering, mental anguish, and loss of capacity for the enjoyment of life). Miller himself testified that just before his fall in Wal-Mart he was still feeling pain from hurting his back at work four months earlier. Additionally, the doctor who performed Miller's most recent surgery testified on behalf of Miller and stated that "he has a 24% whole person impairment and that takes into account three previous surgeries for his back from which he's still experiencing pain." (emphasis added).

As to the failure to compensate Miller for future medical expenses, Miller admits that the need for future surgery was disputed. Although there was testimony that Miller would require physical therapy costing \$50 to \$100 per session for a maximum of six weeks, we can not say that the jury clearly erred in failing to specifically compensate Miller for these possible expenses.

AFFIRMED.