

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-3042
(Summary Calendar)

MICHAEL VANSICKLE,
Plaintiff-Appellant,

VERSUS

COMPASS MARINE INVESTMENTS, INC.,
Defendant-Appellee;

Appeal from the United States District Court
For the Eastern District of Louisiana

CA 91 812 L 1

(July 1, 1993)

Before, REYNALDO G. GARZA, DUHE and EMILIO M. GARZA, Circuit
Judges.

PER CURIAM:*

Plaintiff, Vansickle, sued the defendant under the Jones Act and general maritime law for injuries suffered aboard the M/V Goldstar while working for Compass Marine Investments, Inc. ("Compass"). The jury awarded the plaintiff damages for loss of past and future medical expenses and loss of past and future wages, but declined to award any pain and suffering damages. The

*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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

plaintiff appeals only on the ground that the jury rendered an inconsistent verdict by awarding medical expenses and lost wages without awarding any pain and suffering damages. We find that the jury did render an inconsistent verdict. Therefore the jury verdict is REVERSED and REMANDED for a new trial on damages only.

FACTS

Vansickle worked as a deck hand aboard the M/V Goldstar for his employer Compass. On September 13, 1990, Vansickle was injured while attempting to tie several grain barges into a fleet. Vansickle was standing on one of the rain soaked barges and aiding the captain with hand signals. The captain apparently made a misjudgment that resulted in a collision between the barge that Vansickle was standing on and another. The impact of the collision sent Vansickle flying and he landed on another barge injuring his elbow and his left leg.

Vansickle brought claims under both the Jones Act and general maritime law. The case was tried before a jury. The jury returned answers to interrogatories finding that the defendant Compass was negligent, and that Compass' negligence proximately caused plaintiff's injuries. Further, the jury found that the M/V Goldstar was not unseaworthy. The jury awarded damages as follows:

(i)	Past and future physical and mental pain and suffering	\$ 0.00
(ii)	Loss of past medical expenses	\$20,500.00
(iii)	Loss of future medical expenses	\$ 500.00
(iv)	Lost of past wages	\$ 9,287.50

(v)	Loss of future earnings	<u>\$40,200.00</u>
	Total	\$70,487.50

On February 27, 1992, Vansickle filed a motion for new trial on damages contending that the jury reached an inconsistent verdict. The trial court denied Vansickle's motion. Vansickle now appeals.

DISCUSSION

Neither party has appealed the jury's underlying finding of negligence. Hence, the sole issue to be decided on appeal is whether or not Vansickle is entitled to a new trial on damages because the jury reached an inconsistent verdict. It is clear that a jury cannot award damages for medical expenses and lost wages without also awarding damages for pain and suffering. Therefore, the case is REVERSED and REMANDED for a new trial on damages.

In Davis v. Becker & Assocs., 608 F.2d 621, 622 (5th Cir. 1979), the plaintiff brought suit under general maritime law and the Jones Act. The jury awarded damages for lost wages and found the defendant negligent; however, the jury awarded "\$0" for pain and suffering. The Davis panel plainly held that a jury verdict finding the defendant negligent and awarding 100% of lost wages, but declining to award any pain and suffering constituted an inconsistent jury verdict. See id. at 623. Therefore, we reversed the verdict as inconsistent and remanded for a new trial on damages alone. Davis is indistinguishable from the case at bar and compels our result.

Further, the result we reach is buttressed by our recent holding in Pagan v. Shoney's, Inc., 931 F.2d 334 (5th Cir. 1991), we held:

To award special damages for medical expenses and lost wages, but not for general damages--personal injury, pain and suffering, etc.--is, as a matter of Louisiana law, to err. Marcel v. Allstate Ins. Co., 536 So.2d 632, 635 (La. App. 1st Cir. 1988), cert. denied, 539 So.2d 631 (La. 1989). Failure or refusal to grant general damages to a plaintiff with objective injuries does not fall within the "much discretion" range which article 2324.1 of the Louisiana Civil Code allows the jury. Robinson v. General Motors Corp., 328 So.2d 751, 752 (La.App. 4th Cir. 1976). . . . In a verdict upon interrogatories, a jury's "award of 'none' as damages for pain and suffering is not an exercise of discretion as to amount but [is] a refusal of an award." Id. at 752.

Pagan, 931 F.2d at 337.

We note that in Pagan the jury did not write any amount for damages. However, we find that entry of \$0.00 is indistinguishable from entry of nothing at all. See Robinson, 328 So. 2d at 752. Although Pagan may not control our result we find it strongly persuasive.

CONCLUSION

The jury's award of "\$0.00" damages for pain and suffering cannot be reconciled with its awards for lost wages and medical expenses.

REVERSED and REMANDED for a new trial on damages only.