UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40779

BEULAH DAWSON, ET AL.,

Plaintiffs,

SUSAN DAWSON KILCREASE,

Plaintiff-Appellee,

versus

GENERAL MOTORS CORPORATION,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
(2:91-CV-152)

August 18, 1995

Before POLITZ, Chief Judge, JONES, and PARKER, Circuit Judges.

PER CURIAM:*

Appellee Susan Dawson Kilcrease and her mother Beulah Dawson filed suit against General Motors in a products liability case involving allegations of defective safety belt shoulder harnesses. Kilcrease and Dawson were injured when, while traveling in Kilcrease's 1988 Chevrolet Cavalier convertible, they were

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

involved in a two-car collision south of Jasper, Texas in 1989. From a jury verdict rendered for Kilcrease, General Motors appeals, raising three issues. We reverse and remand for a new trial.

General Motors first asserts that there is insufficient evidence to support the verdict based on a theory of failure to warn the plaintiff of the need to take up slack in her shoulder belt safety harness after leaning forward in her vehicle. Having carefully reviewed the briefs and arguments of counsel and the pertinent evidence, we find no merit to this contention in a hard-fought case. General Motors also seeks a new trial on the basis that plaintiffs' expert George Greene's testimony was not timely and properly disclosed by the plaintiffs. We need not rule on that issue, however, in view of the consequence of an irreconcilable jury verdict.

General Motors' third contention, on which relief must be granted, is that judgement was improperly entered on interrogatory answers that at one point found Kilcrease was not causally negligent (Interragatory #6), while they later (Interrogatory #8) found that she was 5% causally responsible for her injuries. General Motors is correct that in this circuit, in a Rule 49(a) special verdict case, a party need not object to the return of the jury's verdict or request resubmission of the case to the jury in order later to complain of inconsistent findings. Mercer v. Long Manufacturing N.C., Inc., 671 F.2d 946, 947-48 n.1 (5th Cir. 1982). It was sufficient, albeit not the preferred practice, for General Motors to seek relief by objecting to the entry of judgment on the

verdict. Mercer, supra at 947. Further, the trial court had no authority to ignore the jury's finding of Kilcrease's 5% causal contribution to the accident. Like the Tenth Circuit in Bonin v. Tour West, Inc., 896 F.2d 1260 (10th Cir. 1990), we are simply unable to reconcile the jury's findings here. A new trial is necessary. Bonin, 896 F.2d at 1263.

The judgment of the trial court is REVERSED and the case REMANDED for further proceedings consistent herewith.