

FILED 2/18/2020 4:00 PM
CLERK DISTRICT COURT
SOUTH LEE COUNTY, IOWA

Original

IN THE IOWA DISTRICT COURT OF THE STATE OF IOWA
IN AND FOR LEE (SOUTH) COUNTY

SETH ANDERSON & ELIZABETH
ANDERSON, personally and as
Parents and Next Friends of G.A.
and M.A., minor children,

Cause No. LALA006472

Plaintiffs,

-VS-

INSTRUCTIONS TO THE JURY

KATHLEEN KLEPFER,

Defendants.

Members of the Jury:

This is a lawsuit brought by Plaintiffs Seth Anderson and Elizabeth Anderson on behalf of themselves and their minor children against Defendant Kathleen Klepfer. It arises out of an automobile collision that occurred on June 20, 2018, in Keokuk, Iowa. The Plaintiffs claim that the Defendant was negligent in the operation of her vehicle and that that negligence caused their damages. The Defendant admits that she was negligent, the Defendant disputes the extent of the Plaintiffs' damages.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law, which I now give you.

INSTRUCTION NO. 1

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices or emotions.

INSTRUCTION NO. 2

Whenever a party must prove something they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

INSTRUCTION NO. 3

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person.
2. Testimony by deposition.
3. Exhibits received by the Court. You may examine the exhibits closely, but be careful not to alter or destroy them.
4. Stipulations, which are agreements between the attorneys.
5. Any other matter admitted in evidence.

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Anything you saw or heard about this case outside the courtroom.
4. Any testimony I may have told you to disregard.

INSTRUCTION NO. 4

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

700.2

INSTRUCTION NO. 5

“Negligence” means failure to use ordinary care. Ordinary care is the care which a reasonably careful person would use under similar circumstances. “Negligence” is doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

700.3

INSTRUCTION NO. 6

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct.

400.1

INSTRUCTION NO. 1

In these instructions I will be using the term "fault". Fault means one or more acts or omissions toward the person of the actor or of another, which constitutes negligence.

INSTRUCTION NO. 8

The Defendant admits that Kathleen Klepfer was at fault in this accident.

In order to recover against the Defendant, the Plaintiffs must prove all of the following propositions as to each of the four individual Plaintiffs:

1. Kathleen Klepfer's negligence was a proximate cause of the Plaintiff's damage.
2. The amount of the damage.

If the Plaintiffs have failed to prove either of these propositions, the Plaintiffs are not entitled to damages.

INSTRUCTION NO. 9

If you find the Plaintiffs are entitled to recover damages, you may consider the following items:

1. The reasonable value of necessary hospital charges, doctor charges, prescriptions or other medical services from the date of injury to the present time.
2. Loss of function of the body from the date of injury to the present time. Loss of function of the body is the inability of a particular part of the body to function in a normal manner.
3. Physical and mental pain and suffering from the date of injury to the present time.

Physical pain and suffering may include, but is not limited to, bodily suffering or discomfort.

Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.

The amount you assess for physical and mental pain and suffering in the past and loss of function of the mind and body in the past cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily or out of sympathy or prejudice for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by a party as proven by the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. Similarly, damages awarded to one party shall not be included to any amount awarded to another party.

The amounts, if any, you find for each of the above items will be used to answer the special verdict.

200.38

INSTRUCTION NO. 10

In arriving at an item of damage, you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage and agreeing in advance that the average of those estimates shall be your item of damage.

INSTRUCTION NO. 11

I have not by these instructions, by any ruling made, by any act done, or by anything said during the trial intended or attempted to give any opinion as to what the facts are, what the proof is, or what your verdict should be.

INSTRUCTION NO. 12

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete.

Upon reaching a verdict, please give your notes to the court attendant.

INSTRUCTION NO. 13

Occasionally, jurors have questions during deliberations. I have prepared the Instructions after carefully conferring with the parties and their counsel. I have tried to use language which is generally understandable. Usually, questions about the Instructions can be answered by carefully re-reading them. If, however, you deem it necessary to ask the court a question, please do so in writing. After I receive a question from you, I am required to confer with the parties and their attorneys before responding. This process, of course, takes time. My response to any question will be in writing.

Please do not ask the court attendant any questions about the Instructions.

INSTRUCTION NO. 14

Upon retiring you shall select a foreperson. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but are judges -- judges of the facts. Your sole interest is to find the truth and do justice.

INSTRUCTION NO. 15

I am giving you one verdict form for each Plaintiff. They are attached to these Instructions. Each one consists of one question with a special interrogatory. You will answer those questions following the directions contained in the verdict form.

During the first 3 hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree upon the verdict, the verdict must be signed by your foreperson.

After deliberating for 3 hours from 2:40 o'clock p.m., excluding meals or recesses outside your jury room, then all but one of you need to agree upon the verdict. In that case the verdict must be signed by all jurors who agree.

When you have agreed upon the verdicts and appropriately signed the verdict forms, tell the court attendant.

Dated and signed this 18th day of February, 2020.



Mary Ann Brown
Judge, Eighth Judicial District