

IN THE IOWA DISTRICT COURT FOR CERRO GORDO COUNTY

SCOTT KRAMER,

Plaintiff,

vs.

JANE ELEANOR GRUIS,

Defendant.

Case No. LACV071517

JURY INSTRUCTIONS

INSTRUCTION NO. 1

STATEMENT OF THE CASE

Members of the jury: in this case, Plaintiff, Scott Kramer, alleges that as a result of negligence by Defendant, Jane Gruis, he was injured in an auto accident between his motorcycle and the vehicle driven by Ms. Gruis.

Ms. Gruis admits that she was negligent and that her negligence caused injury to Mr. Kramer. The issues that are in dispute in this case are the nature and extent of the injuries to Mr. Kramer and the appropriate damages to be awarded to him.

Do not consider this State of the Case as proof of any claim, decide the facts from the evidence and apply the law that I now give you.

INSTRUCTION NO. 2

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.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. It is common to have hidden or implicit thoughts that help us form our opinions. You are making very important decisions in this case. You must evaluate the evidence carefully.

You must avoid decisions based on things such as generalizations, gut feelings, prejudices, fears, sympathies, stereotypes, or inward or outward biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

INSTRUCTION NO. 3

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. 4

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

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted (e.g. answers to interrogatories, matters which judicial notice was taken, and etc.).

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. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

INSTRUCTION NO. 5

During this trial, you have heard the word 'interrogatory'. An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

INSTRUCTION NO. 6

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.

INSTRUCTION NO. 7

An expert witness was asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

INSTRUCTION NO. 8

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

INSTRUCTION NO. 9

You have heard evidence claiming a witness made statements before this trial while not under oath.

If you find such a statement was made, you may regard the statement as evidence in this case the same as if the witness had made it under oath during the trial.

If you find such a statement was made and was inconsistent with the witness' testimony during the trial you may also use the statement as a basis for disregarding all or any part of the witness' testimony during the trial but you are not required to do so. You should not disregard the witness' testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

INSTRUCTION NO. 10

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

INSTRUCTION NO. 11

In assessing how much damages Mr. Kramer is entitled to recover, you shall consider the following items:

1. The reasonable cost of repair of the vehicle. The reasonable cost of storing the vehicle. The reasonable cost of the towing services.
2. The reasonable cost of necessary for hospital charges, doctor charges, prescriptions, and other medical services from the date of injury to the present time. The parties have stipulated that this amount is \$20,396.24.
3. The present value of reasonable and necessary hospital charges, doctor charges, prescriptions, or other medical services which will be incurred in the future.
4. The reasonable value of lost earnings and/or lost time from business from the date of injury to the present time.
5. The present value of loss of future earning capacity. Loss of future earning capacity is the reduction in the ability to work and earn money generally, rather than in a particular job.
6. 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.
7. The present value of future loss of function of the body.
8. 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.
9. The present value of future physical and mental pain and suffering.

The amount you assess for physical and mental pain and suffering in the past and future, future earning capacity, and loss of function of the body in the past and future 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 proved 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.

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

INSTRUCTION NO. 12

Future damages must be reduced to present value. "Present value" is a sum of money paid now in advance which, together with interest earned at a reasonable rate of return, will compensate the plaintiff for future losses.

INSTRUCTION NO. 13

Standard Mortality Tables indicate the normal life expectancy of people who are the same age as Mr. Kramer is 17.5 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Mr. Kramer's health, habits, occupation, and lifestyle, when deciding issues of future damages.

INSTRUCTION NO. 14

Defendant claims plaintiff was at fault for failing to mitigate his damages by not exercising ordinary care to reduce his storage costs.

Ordinary care is the care which a reasonably careful person would use under similar circumstances.

Plaintiff has a duty to exercise ordinary care to reduce, minimize or limit his damages. However, plaintiff has no duty to do something that is unreasonable under the circumstances, such as to undertake action which is unreasonably expensive or intrusive or to undertake action which imposes unreasonable inconvenience.

To prove defendant's claim of failure to mitigate, she must prove all of the following:

1. There was something plaintiff could do to mitigate his damages;
2. Requiring plaintiff to do so was reasonable under the circumstances;
3. Plaintiff acted unreasonably in failing to undertake the mitigating activity; and
4. Plaintiff's failure to undertake the mitigating activity caused an identifiable portion of his damages.

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

If the defendant has proved all of these numbered propositions, then defendant has proved this defense, and you shall assign a percentage of fault to the plaintiff for the time period after the failure to mitigate. This amount will be used in answering the special interrogatory in the verdict. If the defendant has failed to prove one or more of these numbered propositions, then defendant has not proved plaintiff failed to mitigate his damages.

INSTRUCTION NO. 15

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.

Likewise, in arriving at any potential percentage of fault from failure to mitigate storage costs, you cannot arrive at a figure by taking down the estimate of each juror as to a percentage of fault, and agreeing in advance that the average of those estimates shall be your percentage of fault.

INSTRUCTION NO. 16

Upon retiring you shall select a foreman or forewoman. 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. 17

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, leave the notes in the jury room and they will be destroyed.

INSTRUCTION NO. 18

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, MySpace, LinkedIn, YouTube, Twitter, email, etc.

Do not do any research or make any investigation about this case on your own. Do not visit or view any place discussed in this case, and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge. This includes using the Internet to research events or people referenced in the trial.

This case will be tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by these rules. Failure to follow these instructions may result in the case having to be retried and could result in you being held in contempt and punished.

It is important that we have your full and undivided attention during this trial.

INSTRUCTION NO. 19

I am giving you one verdict form and questions. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict and answers to questions must be signed by your foreman or forewoman.

After deliberating for six hours from _____ o'clock _____.m. excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the answers to the questions. In that case, the verdict and questions must be signed by all seven jurors who agree.

When you have agreed upon the verdict and answers to questions and appropriately signed them, tell the Court Attendant.

Gregg R. Rosenblatt
District Court Judge
3/17/2023