

SUPREME COURT OF LOUISIANA

No. 96-C-1084

STEVEN GUILLORY

Versus

INSURANCE COMPANY OF NORTH AMERICA ET AL

LEMMON, J., Concurring

I write separately to point out that the review of awards of general damages (a review not involved in this case) is different in significant aspects from a review of awards of special damages.

The manifest error standard was established in Canter v. Koerhing Co., 283 So. 2d 716 (La. 1973), to require deference to the fact findings of the trial court, whether judge or jury.¹ This standard is applicable generally to liability determinations in personal injury cases.²

In review of quantum determinations, awards of general damages, at least as to the amount awarded for injuries proved to have been caused by the tort, cannot be calculated with mathematical certainty. Viator v. Gilbert, 216 So. 2d 821 (1968). Such awards therefore are reviewed under the "much discretion" standard of La. Civ. Code art. 1999.³ See Andrus v. State Farm, 95-0801 (La. 3/22/96); 670 So. 2d 1206. Unlike

¹The majority states that this standard is based on the trier-of-fact's better opportunity to observe witnesses and make subjective perceptions. However, an equally important reason for the manifest error standard is the proper allocation of functions between the trial and appellate courts. Canter, supra at 724.

²Thus the manifest error standard was properly applied in this case to the jury's allocation of percentages of fault.

³The "much discretion" standard applies to the amount of the award of general damages. But there are often factual issues in a review of an award of general damages, such as whether a certain condition was caused by the tort. Of course, most issues decided by courts are mixed fact-law questions, and the fact determinations are reviewed under the manifest error standard.

the manifest error standard in which the reviewing court accords no deference to the fact findings of the trier-of-fact once manifest error is determined, an appellate court that determines an abuse of discretion in a trier-of-fact's award of general damages accords some deference to that award. Such an award of general damages is reduced only to the highest reasonable amount or raised to the lowest reasonable amount within the range of discretion. Coco v. Winston Indust., 341 So. 2d 332 (La. 1976).

Awards of special damages are more susceptible of mathematical calculation, depending on the jury's or judge's acceptance of the factual evidence supporting the sums claimed for medical expenses, lost wages and the like. Such awards are subject to the manifest error standard of review. Because the quantum issues in this case involved special damages only, I agree that the manifest error standard was applicable to those factual findings.