



A new trial will be granted on the grounds that the verdict is against the weight of the evidence where the verdict is so contrary to the evidence that it shocks one's sense of justice. Kruczkowska v. Winter, 764 A.2d 627, 629 (Pa.Super. 2000), citing Watson v. American Home Assurance Company, 454 Pa.Super. 293, 685 A.2d 194, 198 (1996), *appeal denied* 549 Pa. 704, 700 A.2d 443 (1997). However, an appellant is not entitled to a new trial where the evidence is conflicting and the finder of fact could have decided either way. Id. at 966.

In the case at bar, although it was clear that the Plaintiff, Eugene Nelson, experienced chest pain following the accident and suffered from a compression fracture, the jury could have easily concluded that ongoing complaints of low back pain and sleeplessness associated with pain, were unrelated to the accident, and caused instead by Mr. Nelson's severe degenerative arthritis which was seen in multiple diagnostic studies of the cervical, thoracic and lumbar spines. Mr. Nelson's family physician, Dr. Collier Nix, was equivocal as to the element of causation. On cross-examination, Dr. Nix admitted that it "could be possible" that other factors caused the Plaintiff's complaints, and that he couldn't "say for sure" that the Plaintiff's pain was caused by the accident. (N.T. 1/25/11, Plaintiff's Exhibit #4, Nix Depo. 1/6/11, p. 42).

Mr. Nelson testified that he never had back pain, yet he had an MRI of his low back in 2002 and complained of back and neck pain in accidents he was involved in one year prior to the motor vehicle accident at issue. Mr. Nelson testified he never had problems with sleep prior to the accident, but the records established he had problems sleeping prior to the motor vehicle accident "secondary to pain." Id. at 31. Mr. Nelson renewed a prescription for Percocet in June of 2007, several weeks before the motor vehicle accident. Id. at 33. Moreover, Mr. Nelson, continued to perform activities around his farm following the accident, such as shoveling snow and

gardening. The Court believes the record supports the jury's conclusion that this accident did not cause a serious impairment of bodily function.

Based upon a review of the record, it cannot be said that the jury's verdict was shocking. A new trial cannot be granted where the evidence was conflicting and the finder of fact could have decided either way.

**ORDER**

AND NOW, this 29<sup>th</sup> day of March, 2011, the Plaintiffs' Motion for Post-Trial Relief is DENEID.

BY THE COURT,

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Richard A. Gray, J.

cc: Michael H. Collins, Esquire  
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