

IN PERSONAL INJURY CASE, EVIDENCE OF IMPAIRMENT RATING ADMISSIBLE; SCHEDULE OF WORKER'S COMPENSATION BENEFITS IS NOT

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On June 6, 2011, the Indiana Court of Appeals handled an interesting evidentiary issue in *Estate of Carter v. Szymczak*, ___ N.E.2d ___ (Ind. Ct. App. 2011), Cause No. 71A04-1008-CT-472. The case was a personal injury case arising from an automobile accident. The plaintiff tried to introduce evidence of an impairment rating. The defendant responded by trying to introduce the statutory schedule of worker's compensation benefits. The trial court admitted the plaintiff's evidence, but refused to permit the defendant to introduce its evidence and the Court of Appeals affirmed.

In this case, the plaintiff was stopped at a stoplight when he was rear-ended by the defendant. The plaintiff filed a negligence claim and, at his trial, introduced evidence predicated upon the American Medical Association "Guides to the Assessment of Permanent Impairment." The plaintiff's physician had determined that, due to her cervical spine impairment, she had sustained a whole body impairment rating of 6%. The plaintiff then used this impairment rating to argue the amount of damages that she had sustained. The trial court refused to allow the defendant to introduce evidence of the statutory schedule of worker's compensation benefits corresponding to a particular impairment rating.

On appeal, the Court held that an impairment rating was relevant to determining the amount that the plaintiff was injured and, therefore, was admissible.

Although it is clear that PPI evidence is specifically permitted in worker's compensation claims, its inclusion within a worker's compensation statutory scheme does not preclude such evidence in a personal injury action. When a legislature creates compensatory statutes, it acts within its prerogative to identify what type of evidence is admissible to further the goals of the public policy embodied within the legislation. However, outside a statutory scheme, admissibility is governed by the general rules of evidence.

The questions before the jury in this case included whether Carter was negligent, whether her negligence caused Szymczak injury, and, if so, what amount of compensation for such injury should be awarded. The PPI rating evidence aided the jury in determining whether and to what extent Szymczak was permanently injured. The challenged evidence is therefore relevant. Moreover, the Estate has not shown that its probative value is substantially outweighed by the danger of unfair prejudice. While Szymczak's attorney arbitrarily assigned a one million dollar value to human life at full function, the Estate's attorney was free to challenge that valuation. Ultimately, the jury was to assign value – neither statutes nor attorney argument was decisive.

Although evidence of an impairment rating was relevant and admissible, the trial court did not err by excluding evidence of the worker's compensation benefit schedule.

The benefits to be awarded represent the result of the compromise nature of worker's compensation, which contemplates limited compensation in exchange for a certain recovery. ... To restrict the jury to an award for impairment consistent with worker's compensation benefits would invade the province of the jury.

The Court's ultimate conclusion is a bit ambiguous. The Court clearly held that evidence of a plaintiff's impairment rating is admissible. However, it did not say that the worker's compensation benefit schedule is not admissible - it just said that the trial court did not abuse its discretion by refusing to admit the schedule as evidence. Therefore, there is still room for attorneys to argue that this schedule should be admitted in personal injury cases. However, the Court's rationale seems clear: evidence of the schedule is irrelevant and would be prejudicial to the plaintiff.

Lessons:

1. Evidence of an impairment rating is admissible in a personal injury case.
2. Evidence of the worker's compensation benefits schedule is inadmissible in a personal injury case.