

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

JAMES BERRA, Plaintiff/Respondent,) No. ED92279
) Appeal from the Circuit Court
v.) of the City of St. Louis
) Honorable Timothy J. Wilson
CHARLES E. DANTER, Defendant/Appellant.) Date: October 27, 2009

Plaintiff filed a lawsuit against defendant to recover damages for injuries sustained and medical expenses incurred as a result of being struck by a vehicle driven by defendant as plaintiff was crossing a street. The jury returned a verdict assessing eighty-five percent fault to defendant and fifteen percent fault to plaintiff. It found the total amount of plaintiff's damages, disregarding plaintiff's fault, to be \$300,000. The trial court reduced the damages by the percentage of fault assessed against plaintiff and entered judgment in plaintiff's favor in the amount of \$255,000.

AFFIRMED.

Division One Holds:

1. By failing to object at trial, defendant failed to preserve for review his claim that the trial court erroneously allowed a voir dire question introducing defense counsel as an insurance company employee.
2. "Incurred" is not synonymous with "paid," and the trial court did not misapply section 490.715.5 RSMo (Cum. Supp. 2008) when it considered the amount reflected in plaintiff's billing statements, rather than the amount paid, in determining the reasonable value of plaintiff's medical treatment.
3. Plaintiff's failure to remember certain details and circumstances from the night he was hit by defendant did not affect the submissibility of his case. Plaintiff was not required to present expert testimony of defendant's reaction time to make a submissible case on failure to keep a careful lookout or failure to act after danger of collision became apparent because the court took judicial notice of a 3/4 second reaction time. Jury was not required to believe defendant's expert's testimony on defendant's reaction time. We disregard all evidence contrary to the prevailing party in determining whether a plaintiff made a submissible case.
4. Defendant's claim of error that was addressed to a hypothetical situation that never happened at trial and to which no objection was made is not preserved.
5. Defendant did not preserve claim of instructional error with a specific trial objection, and he was not prejudiced by the submission of that instruction to the jury.

Opinion by: Kathianne Knaup Crane, P.J.
Clifford H. Ahrens, J. and Nannette A. Baker, J., concur.

Attorneys for Respondent: Jess W. Ullom and David N. Damick

Attorneys for Appellant: Paul Hasty, Jr. and Kathryn M. O'Shea

Attorney for *Amicus Curiae*: Leland F. Dempsey

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.