

Audish v. Macias
(2024) 102 Cal.App.5th 740

Defense is permitted to questions about future eligibility for Medicare and the anticipated costs of medical treatments under Medicare. *Audish* (2024) 102 Cal.App.5th 740, 740.

FACTS/PROCEDURE

Plaintiff David Audish appeals a civil judgment entered after the rendition of a jury verdict in an automobile collision case. The jury found Plaintiff and Defendant David Macias both operated their vehicles negligently and each party's negligence was a substantial factor in causing harm to Plaintiff.

On the fifth day of the six-day trial, Brook Feerick, a nurse and life-care planner, testified as a witness on Plaintiff's behalf. She prepared a life-care plan for Plaintiff, which compiled and summarized the types and costs of the medical treatments Plaintiff's medical professionals recommended for him due to the automobile accident.

On cross-examination, Feerick stated that she based her cost estimates on the average amounts medical providers *charged* patients for their medical treatments, not the negotiated (and often discounted) amounts insurers *actually* pay providers for the treatments. Thereafter, defense counsel asked Feerick whether Plaintiff would be eligible for Medicare at age 65 and, over a relevance objection that the trial court overruled, she replied, "I assume so." Then, after another overruled relevance objection, Feerick agreed with defense counsel that her estimates did not account for "what Medicare would pay" She also admitted insurers sometimes pay less for medical treatments than the amounts health care providers bill for them. *Id.*, 746-747.

Ultimately, the jury found Plaintiff suffered \$65,699.50 in damages, including \$29,288.94 for past medical expenses, \$3,620 for past noneconomic losses, and \$32,790.56 for future medical expenses, and it assigned each party 50 percent of the responsibility for these losses.

On appeal, Plaintiff contends the trial court abused its discretion by admitting evidence that he would have Medicare medical insurance at the age of 65. He also argues the jury returned an impermissible compromise verdict and erred by failing to award him damages for future noneconomic losses.

HOLDING/DISCUSSION

The trial court judgment was affirmed. The Court of Appeals held that the trial court did not abuse its discretion by admitting the limited evidence at issue about Plaintiff's future eligibility for Medicare and the expected amounts Medicare might pay for Plaintiff's recommended future medical services. Multiple courts have concluded, under similar circumstances, that it is permissible—or even necessary—for a trial court to admit evidence concerning a tort plaintiff's future eligibility for health insurance and the anticipated amounts the

insurer would be expected to pay for the patient's future medical needs, evidence that is relevant to the reasonable value of future medical care. *Audish* 102 Cal. App.5th at 749.

The court looked at various cases including *Stokes v. Muschinske* (2019) 34 Cal.App.5th 45. In *Stokes*, the trial court allowed the defendant-tortfeasor to make various references to the plaintiff's past medical insurer (Kaiser) and his future eligibility for Medicare and Social Security, including during the cross-examination of the plaintiff's life-care planner. (*Id.* at pp. 55, 57.) The Stokes court correctly determined that most of the references to Kaiser and Medicare “were helpful and even necessary to the jury's understanding” of the plaintiff's past treatment and the calculation of future reasonable medical expenses. (*Id.* at p. 58.) Thus, it concluded the trial court did not “abuse[] its discretion in admitting these references to assist the jury's understanding of the facts.” *Audish v. Macias* (2024) 102 Cal.App.5th 740, 750.

In *Corenbaum v. Lampkin* (2013) 215 Cal.App.4th 1308, the Court of Appeal considered the issue of whether the full amount billed by a medical provider for past medical services is relevant to the calculation of a tort plaintiff's *future* medical expenses. The *Corenbaum* court concluded the full amount charged by a medical provider for past medical services “is not an accurate measure of the value of medical services,” and it is therefore irrelevant to the reasonable value of either past *or* future medical services. (*Corenbaum*, at pp. 1330, 1328–1331.) Further, the court ruled that, “[b]ecause the full amount billed for past medical services provided to plaintiffs is not relevant to the value of those services, ... the full amount billed for those past medical services can provide no reasonable basis for an expert opinion on the value of future medical services.” (*Id.* at p. 1331.) *Audish v. Macias* (2024) 102 Cal.App.5th 740, 749.