

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

EDWARD KROEGER,	:	APPEAL NO. C-070790
	:	TRIAL NO. A-0508325
Plaintiff-Appellant,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
	:	
EDWARD TURNER,	:	
	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

I. Car Wreck and Trial

Edward Kroeger was driving down State Route 32. James Olman pulled out of a driveway and struck another car. That car went careening into Kroeger's vehicle. After Kroeger's car stopped moving, Edward Turner hit Kroeger's vehicle from behind. As a result of the accident, Kroeger suffered whiplash and shoulder pain. Kroeger settled his claims with Olman and an insurance company prior to the jury trial.

The trial court determined as a matter of law that Turner had been negligent. The jury was left to decide causation and damages.

Kroeger has supplied this court with a partial transcript of the trial proceedings. Kroeger's family doctor testified in his deposition that whiplash was more commonly caused by rear-impact collisions, but that side-impact collisions could also cause whiplash.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Although the jury found in favor of Kroeger, a jury interrogatory clearly showed that six of the eight jurors did not believe that Turner's negligence had caused Kroeger's injuries. A verdict form signed by the jurors is missing from the record.

II. Assignments of Error

Kroeger now appeals, asserting that (1) the trial court erred by overruling his motion for a directed verdict on damages; (2) the verdict was against the manifest weight of the evidence; and (3) the trial court erred by allowing collateral-source information to be introduced into evidence.

The trial court determined that Turner had been negligent because he had not applied his brakes before his car hit Kroeger's car. Kroeger argues on appeal that because his doctor offered uncontroverted testimony that the rear-end collision had caused the whiplash, the court should have granted Kroeger's motion for a directed verdict on damages.

But whether Turner's negligence had caused Kroeger's injuries was a question of fact for the jury.² The doctor did not say definitively that the whiplash was caused by a rear-end collision. He only said that it was more common. The trial court was correct not to grant Kroeger's motion for a directed verdict.

Kroeger contends in his second assignment of error that the jury verdict was against the manifest weight of the evidence. This court upholds a jury verdict based upon manifest-weight arguments if the verdict "is supported by some competent, credible, evidence."³ We have examined the record, read the partial transcript, and reviewed the depositions. The record indicates that the jury's verdict was based on competent, credible evidence. This assignment of error is overruled.

² *Clinger v. Duncan* (1957), 166 Ohio St. 217, 223, 141 N.E.2d 156.

³ *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, at ¶ 32.

Finally, Kroeger argues that the trial court erred by allowing Turner to introduce evidence of a stipulation between the insurance carrier and Kroeger. But the jury determined that Turner's negligence had not caused Kroeger's injuries. Thus, it could not have awarded any damages. It is unnecessary for us to determine if this was improper because the jury never reached the issue of damages.

Therefore, we affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., PAINTER and HENDON, JJ.

To the Clerk:

Enter upon the Journal of the Court on November 5, 2008
per order of the Court _____
Presiding Judge