

LYNCH v. EAST ARKANSAS BUILDERS' SUPPLY COMPANY.

4-4617

Opinion delivered April 19, 1937.

1. TRIAL—WITNESS—JURY QUESTION.—The testimony of a party interested in the suit is not to be considered as undisputed, but the question must be submitted to the jury that it may pass upon the credibility of the witness and the weight to be given his testimony.
2. APPEAL AND ERROR—DAMAGES—VERDICT.—In an action for damages sustained in an automobile collision for \$473 and a verdict for \$439 was rendered, the Supreme Court will not, on appeal by plaintiff, reverse the judgment rendered thereon, since substantial damages were awarded.
3. APPEAL AND ERROR—COMPROMISE VERDICT.—The Supreme Court cannot set aside a verdict or reverse the judgment for the reason that the verdict is the result of a compromise.

Appeal from Mississippi Circuit Court, Chickasawba District; *Neil Killough*, Judge; affirmed.

James G. Coston and *J. T. Coston*, for appellant.

Reid & Evrard, for appellee.

MEHAFFY, J. This action was instituted by appellant against the appellee for personal injuries and damage to his car. A trial was had, resulting in a verdict for appellant for \$439. The case is here on appeal.

Appellant alleged that the damage to his car was \$382. He claimed that his doctor's bill was \$40 and medical bill \$15, and wages paid extra driver \$36, making a total of \$473, whereas his judgment was for only \$439.

It is contended by the appellant that the doctor's bill, \$40, the medical bill, \$15, and the extra driver, \$36, were undisputed. Appellant states that the rule in Arkansas is that where the jury has obviously disregarded the evidence, the verdict, whether too small or too large, will be set aside. It is then contended that the verdict of the jury was \$44 less than the undisputed items of damage amounted to.

As we have said there is no dispute as to the amount of damage to the car, and the jury found that the appellee was liable, and that settles the question of liability.

promise verdict. The court in that case reviewed the authorities and stated that, where the damages were substantial, and the judgment was for nominal damages only, the judgment would be reversed to correct this error, but the court added: "This is true, however, because a judgment for nominal damages is, in effect, a refusal to assess damages." The court also said: "It is true that the verdict is not consistent, but this is not ground for us to reverse the judgment, as it is supported by very substantial and sufficient testimony." The court, also, called attention to the case of *Washa v. Harris*, 167 Ark. 186, 266 S. W. 944, where it was said: "It must be conceded that the verdict does not appear to be consistent with either theory of the case, but we cannot say that it is unsupported by the testimony."

If the verdict had been for a considerably larger amount, this court would not have reversed it, because there would be evidence to sustain the verdict. No one testifies about the medical bill except the appellant, and no one testifies to any facts with reference to his hiring a driver, except the appellant and W. P. Smead. Smead simply states that Mr. Lynch did not have to go to bed as a result of the accident, and the doctor did not have to treat him at his home, and stated that Lynch had to employ a boy to drive him around. Of course Mr. Smead could not know this except from the appellant. He might or might not have been in such condition that he had to hire a driver, but this was a question for the jury.

This court has said, in speaking of the testimony of a party: "But this testimony cannot be regarded as undisputed, because she is an interested party, the plaintiff in the case, and the testimony does not support her statement that she assessed and paid taxes in her own name." *Campbell v. Carlisle*, 190 Ark. 1103, 83 S. W. (2d) 536.

This court has held many times that the testimony of a party interested in the suit is not to be considered as undisputed, but the question must be submitted to the jury. Submitted to the jury for what purpose? Manifestly for the purpose of the jury passing upon the cred-

