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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

JOLANDA B. DOTSON, Personal Representative of the Estate of Kurt M. Dotson,	*	4-98-CV-80573
Plaintiff,	*	
v.	*	
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,	*	INSTRUCTIONS TO THE JURY
Defendant.	*	

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INSTRUCTION NO. 1

Members of the jury, before the lawyers make their opening statements, I will take a few moments to give you some initial instructions to help you better understand this case and your duties as jurors. At the end of the trial I will give you further instructions. I may also give you instructions during the trial. Unless I specifically tell you otherwise, all such instructions - both those I give you now and those I give you later - are equally binding on you and must be followed. Attach no importance to the order in which the instructions are given.

INSTRUCTION NO. 2

This civil case arises out of an accident on May 16, 1997, in which Kurt Dotson was killed when a semi-truck collided with his car. The driver of the truck was negligent and his negligence was a proximate cause of Mr. Dotson's death. The Plaintiff Jolanda Dotson, as personal representative of Kurt Dotson's Estate, has settled with the driver, his employer, and their liability insurer. The Plaintiff, as personal representative of Kurt Dotson's Estate, now seeks damages from the Defendant, State Farm Mutual Automobile Insurance Company, for underinsurance coverage in an automobile policy that Mr. Dotson owned at the time of his death. Underinsurance coverage compensates the policyholder when the insurance coverage of the driver responsible for the accident is insufficient to cover damages. The Plaintiff claims that damages exceed the amount received in the settlement with the other driver. The Defendant denies that Plaintiff is entitled to further damages.

Your job is to determine the amount of Plaintiff's damages.

Do not consider this summary of the case as proof of any claim.

INSTRUCTION NO. 3

You have been chosen and sworn as jurors in this case to decide the questions of fact presented by the parties. You are to perform this duty without sympathy or prejudice toward any party. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

You will decide what the facts are from the evidence presented to you. You are entitled to consider that evidence in the light of your own observations and life experiences. You will hear the evidence, decide what the facts are, and then apply those facts to the law which I give you in these and in my other instructions. You will then deliberate and reach your verdict. You are the sole judges of the facts; but you must follow the law as stated in my instructions, whether you agree with it or not.

This case should be considered by you as an action between parties of equal standing in the community. All parties are equal before the law, and both parties are entitled to the same fair consideration and should be treated as equals in a court of law.

Neither in these instructions nor in any ruling, action, or remark that I make during the course of this trial do I intend to give any opinion or suggestion as to what I think of the evidence or what I think your verdict should be.

INSTRUCTION NO. 4

I have mentioned the word "evidence." "Evidence" includes:

1. Testimony of witnesses, whether given in person or given previously in a deposition;
2. Documents and other things received as exhibits by the Court; and
3. Any facts that have been stipulated - that is, formally agreed to by the parties.

Certain things are not evidence. I will list those things for you now:

1. Statements, arguments, questions, and comments by lawyers are not evidence.
2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustain an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
3. Testimony that I strike from the record, or tell you to disregard, is not evidence and must not be considered.
4. Anything you see or hear about this case outside the courtroom is not evidence, unless I specifically tell you otherwise during the trial.

Some of you may have heard the terms "direct evidence" and "circumstantial evidence." You are instructed that you should not be concerned with those terms, since the law makes no distinction between the weight to be given to direct and circumstantial evidence.

INSTRUCTION NO. 5

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, you may consider the witness' intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness' memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You should consider whether a contradiction is an innocent misrecollection or lapse of memory, or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

You may hear testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion. Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

INSTRUCTION NO. 6

During this trial, certain testimony may be read into evidence from a deposition. A deposition is testimony taken under oath before trial and preserved in writing. It consists of questions asked to the witness and the witness's answers. You should consider that testimony as if it had been given in court.

During this trial, you may hear the word "interrogatory." An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if questions had been asked and answered here in Court.

INSTRUCTION NO. 7

The trial will proceed in the following order:

After I finish these preliminary instructions, the Plaintiff's attorney may make an opening statement outlining the Plaintiff's case. Next, the Defendant's attorney may make an opening statement outlining its case. An opening statement is not evidence, but is simply a summary of what the attorney expects the evidence to show.

The Plaintiff will then present evidence, and the Defendant's attorney may cross-examine. Following the Plaintiff's case, the Defendant may present evidence and Plaintiff's attorney may cross-examine.

After presentation of evidence is completed, the attorneys will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence.

I will then instruct you further on the law. After that, you will retire to the jury room to deliberate on your verdict.

INSTRUCTION NO. 8

Your verdict depends on whether you find certain facts have been proved. The burden of proving a fact is upon the party whose claim depends upon that fact. The party who has the burden of proving a fact must prove it by the greater weight of the evidence. To prove something by the greater weight of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable. If, on any issue in the case, the evidence is equally balanced, you cannot find that issue has been proved.

The greater weight of the evidence is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

You may have heard of the term "proof beyond a reasonable doubt." That is a stricter standard which applies in criminal cases. It does not apply in civil cases such as this. You should, therefore, put it out of your minds.

The parties have stipulated—that is, they have agreed—to certain facts. You should treat these stipulated facts as having been proved.

INSTRUCTION NO. 9

During the trial it may be necessary for me to talk with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated, and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

INSTRUCTION NO. 10

At the end of the trial you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult, and it may not be practical for the court reporter to read back lengthy testimony. You must pay close attention to the testimony as it is given.

If you wish, however, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors begin deliberations at the end of the case. Do not let note-taking distract you so that you do not hear other answers by the witness. Also, avoid the tendency to place undue influence on your or others' notes. They are not evidence.

When you leave at night, leave your notebooks on your chair in the courtroom. They will be secured and not read by anyone.

In addition, as you may have noticed, the attorneys and I and my staff have water available to us. For your comfort, you too are allowed to drink water during the trial. You may therefore bring with you into the courtroom a small plastic bottle filled with water. No other food or drink is permitted. .

INSTRUCTION NO. 11

Finally, to insure fairness, you as jurors must obey the following rules:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it until the trial has ended and your verdict has been accepted by me. If someone should try to talk to you about the case during the trial, please report it to me.

Fourth, during the trial you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case - you should not even pass the time of day with any of them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the lawsuit sees you talking to a person from the other side - even if it is simply to pass the time of day - an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party, or witness does not speak to you when you pass in the hall, ride the elevator or the like, remember it is because she or he is not supposed to talk or visit with you either.

Fifth, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it.

Sixth, do not do any research or make any investigation about the case on your own.

Seventh, do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

I will not read this admonition each time we recess. But every time we recess you should remember this admonition, whether I specifically remind you or not.

INSTRUCTION NO. 12

Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of trial are not repeated here.

The instructions I am about to give you now, as well as those I gave you earlier, are in writing and will be available to you in the jury room.

INSTRUCTION NO. 13

It is your duty to determine the amount of damages, if any, that Jolanda Dotson, as personal representative of the Estate, is entitled to recover. In doing so you shall consider the following items in determining an amount which will fully compensate the Estate of Kurt Dotson for the damages incurred:

1. the present value of the additional amounts Kurt Dotson would reasonably be expected to have accumulated as a result of his own effort if he had lived out the term of his natural life (see Instruction No. 16);

2. the interest on the reasonable burial expenses of Kurt Dotson from the time of death until the time when those expenses would have been paid (see Instruction No. 17);

3. the present value of the amount of financial support which Kurt Dotson would have contributed to his spouse, Jolanda Dotson, but for his death (see Instruction No.18);

4. the present value of the amount of financial support which Kurt Dotson would have contributed to his children, Kurtisha Marie Dotson and Yolanda Chariece Dotson, but for his death (see Instruction No. 19);

5. the present value of the services which Kurt Dotson would have performed for his spouse, Jolanda Dotson, but for his death. This is also known as loss of spousal consortium (see Instruction No. 20); and

6. the present value of the services which Kurt Dotson would have performed for his children, but for his death. This is also known as parental consortium (see Instruction No. 21).

In determining the amount of any damages, you shall not consider the fact of Plaintiff's settlement with the driver responsible for the accident and his insurance company. You should not speculate as to the amount of that settlement.

In determining the amount of any damages, you must use your sound judgment based on an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed any amount proved by the evidence.

The amounts, if any, you find for each of the above items will be used to answer the special verdict.

INSTRUCTION NO. 14

Future damages must be reduced to present value. "Present value" is a sum of money paid now, which, together with interest earned at a reasonable rate of return, will compensate the plaintiff for future losses.

INSTRUCTION NO. 15

A party cannot recover duplicate damages. Do not allow amounts awarded under one of the six items of damage in Instruction No. 13 to be included in the amounts awarded under any of the other six items of damage.

INSTRUCTION NO. 16

In determining the present value of the amount Kurt Dotson would have accumulated, you may consider:

1. His life expectancy, health, physical condition, age, and occupation at the time of death;

2. His ability to earn money and any amount from income which would have been used for support of his spouse and family;

3. The amount of taxes, both federal and state, which would be payable out of earnings;

4. His habits as to industry, thrift, and economy;

5. The uncertainties of life such as ill health or employment, increase or decrease of earning capacity as age advances; and

6. All other facts and circumstances bearing on the amount he would have accumulated.

INSTRUCTION NO. 17

The amount of interest on the reasonable burial expenses cannot exceed the reasonable cost of the burial.

INSTRUCTION NO. 18

In determining the present value of financial support Kurt Dotson would have provided to his spouse, Jolanda Dotson, you may consider:

1. Kurt Dotson's age at the time of death;
2. His health, strength, character, skills, and training;
3. His life expectancy and the life expectancy of Jolanda Dotson;
4. His previous employment and earnings;
5. His expectancy for earnings in the future;
6. Jolanda Dotson's age, and her present and future need for support;
7. The amount of money out of his income which would have been available for the support of Jolanda Dotson after payment of federal and state taxes; and
8. All other facts and circumstances bearing on the present value of financial support.

Damages for financial support of Jolanda Dotson are limited in time to the shorter of Jolanda Dotson's or Kurt Dotson's normal life expectancy.

INSTRUCTION NO. 19

In determining the present value of financial support decedent would have provided to his children, Kurtisha Marie Dotson and Yolanda Chariece Dotson, you may consider:

1. Kurt Dotson's age at the time of death;
2. His health, strength, character, skills, and training;
3. His life expectancy;
4. His previous employment and earnings;
5. His expectancy for earnings in the future;
6. Each child's age, and her present and future need for support;
7. The amount of money out of his income which would have been available for the support of the children after payment of federal and state taxes; and
8. All other facts and circumstances bearing on the present value of financial support.

Damages for financial support for each child are limited to the time when that child reaches age eighteen unless you find that the child will have a need for support beyond age eighteen.

INSTRUCTION NO. 20

"Spousal consortium" is the fellowship of a husband and wife and the right of each to the benefits of company, cooperation, affection, and aid of the other in every marital relationship, general usefulness, industry, and attention within the home and family. It does not include loss of financial support from the injured spouse, nor mental anguish caused by the spouse's death.

Damages for spousal consortium are limited in time to the shorter of the spouse's or decedent's normal life expectancy.

INSTRUCTION NO. 21

"Parental consortium" is the relationship between parent and child and the right of the child to the benefits of companionship, comfort, guidance, affection and aid of the parent in every parental relationship, general usefulness, industry, and attention within the family. It does not include the loss of financial support from the injured parent, nor mental anguish caused by the parent's death.

A child is not entitled to damages for loss of parental consortium unless the parent's death has caused a significant disruption or diminution of the parent-child relationship.

INSTRUCTION NO. 22

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Kurt Dotson was when he died is 75 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence of Kurt Dotson's prior health, habits, occupation, and life style when deciding issues of future damages.

INSTRUCTION NO. 23

In arriving at an item of damage, you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage and agreeing in advance that the average of those estimates shall be your amount of damage for that item.

INSTRUCTION NO. 24

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court. The person elected is responsible for the orderly, respectful, and free discussion of the issues by any juror who wishes to express his or her views. She or he will supervise the balloting, sign the verdict form that is in accord with your decision, and sign any written inquiries addressed to the Court. Questions to the Court regarding instructions are not encouraged, however. Experience teaches that issues raised are normally fully covered in the instructions, and the jury is encouraged to examine them carefully.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors. Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Try to reach agreement if you can do so without harm to any individual's judgment, because a verdict must be unanimous.

The attitude of jurors at the outset of deliberations is important. It is seldom helpful for a juror, upon entering the jury room, to announce an emphatic opinion about the outcome of the case. When that happens, individual pride may become involved and the juror may hesitate in changing from the announced position, even when he or she thinks it is no longer right. Remember at all times that you are not partisans.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone - including me - how your votes stand numerically.

Fourth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict must be unanimous. Nothing I have said or done is

intended to suggest what your verdict should be - that is entirely for you to decide.

Fifth, the verdict form is simply the written notice of the decision that you reach in this case. You will each be given a copy of the jury instructions to take to the jury room, but there will be only one copy of the verdict form provided. You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the Court Security Officer that you have reached a verdict and are ready to return to the courtroom.

Sixth, the exhibits that have been admitted into evidence will be brought to the jury room. They are to be considered along with all the other evidence to assist you in reaching a verdict. The exhibits should be treated carefully and returned in the same condition as they were received by you.

Finally, remember that you are judges - judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Dated this 28th day of June, 2000.

Robert W. Pratt

ROBERT W. PRATT
UNITED STATES DISTRICT JUDGE