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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0778-21**

DONNA M. ESPINOSA,

Plaintiff-Respondent,

v.

RAJVIR KAUR,

Defendant-Appellant.

Submitted October 6, 2022 – Decided March 15, 2023

Before Judges Haas and DeAlmeida.

On appeal from the Superior Court of New Jersey, Law
Division, Ocean County, Docket No. L-2669-18.

Garvey Ballou, PA, attorneys for appellant (Robert A.
Ballou, Jr., on the brief).

Polloway & Polloway, LLP, attorneys for respondent
(Merric J. Polloway, on the brief).

PER CURIAM

Defendant Rajvir Kaur appeals from the October 22, 2021 order of the
Law Division denying her motion for a new trial following a jury verdict

awarding damages to plaintiff Donna M. Espinosa for injuries she sustained in a car accident. We affirm.

I.

In 2018, Espinosa filed a complaint in the Law Division alleging the vehicle she was operating on a Toms River road was struck in the rear by a vehicle operated by Kaur. Espinosa alleged the accident was the result of Kaur's negligence and that she suffered serious physical injuries in the crash.

The matter was tried over two days in September 2021. Because Kaur conceded liability, the only issues before the jury were whether Espinosa suffered permanent injuries in the accident and, if so, the amount of damages, if any, to which she was entitled.

Because of protocols relating to the COVID-19 pandemic, the trial took place virtually. The court, attorneys, jurors, and witnesses appeared through a computer application. Three witnesses testified: Espinosa, her expert, and Kaur's expert. Each expert testified via the playing of a video recording of their de bene esse deposition. The recording of the deposition of Espinosa's expert, who opined that she suffered permanent injuries in the accident, was played for the jury without difficulty.

During the playing of the recording of the direct deposition testimony of Kaur's expert, who opined that Espinosa did not suffer permanent injuries in the accident, juror number six was disconnected from the virtual proceedings. The court clerk noticed the juror's absence several minutes after he was disconnected and notified the judge, who stopped the video. Once the juror was reconnected, the court asked him when his connection was dropped. After the juror reported that he had been disconnected for five to eight minutes, the court reversed the recording approximately five minutes. When the video began to play, the juror informed the court that it was necessary to go back further in the recording. The court then reversed the recording a few more minutes. Again, when the video began to play, the juror informed the court that it was necessary to go back further in the recording. The court then reversed the video to a point before the juror's connection dropped. The court replayed between eight and ten minutes of the recording for the entire jury. During the replayed portion of the video the expert described the medical records he examined and explained his opinion that Espinosa did not suffer a permanent injury in the accident.

Approximately one minute prior to the end of expert's direct testimony, juror number five disconnected from the virtual proceedings. The clerk immediately notified the judge. Because it was the time that the parties had

previously agreed to end the proceedings for the day, the court did not immediately playback the video. The following morning, the court reversed the video approximately one minute and replayed that portion for the jury, followed by the recording of the cross-examination of the expert. In the replayed portion of the video, the expert reiterated his opinion that Espinosa did not suffer a permanent injury in the accident.

With the consent of the parties, the matter was to be submitted to seven jurors for deliberations. Juror number four, however, was unable to enter the virtual jury room on his court-issued tablet. The court decided that the six remaining jurors would deliberate and juror number four would be the alternate. He was placed in a virtual waiting room during deliberations.

The jury subsequently asked a question of the court regarding whether health insurance would cover Espinosa's future medical expenses. The court held a virtual sidebar conference with counsel prior to answering the question.

The jury subsequently delivered its verdict, finding Espinosa suffered permanent injuries in the accident and awarding her \$500,000 in damages.

Immediately after delivery of the verdict, the court notified counsel that because of technical difficulties one or more jurors may have heard a portion of

the sidebar conference with counsel regarding the jury's question. The court polled each juror, asking if they had heard any part of the sidebar conference.

The jury foreperson told the court he heard either the judge or Kaur's counsel say "what you ended up saying anyway." Three jurors said they heard the same thing reported by the foreperson. Another juror said that he heard "a brief partial portion of a sentence" said by Kaur's counsel and that he "didn't even understand what was being discussed." Two jurors reported that they did not hear any portion of the sidebar conference. The court took no steps in response to the jurors' reports.

On September 23, 2021, the court entered a judgment awarding Espinosa \$500,000 in damages and \$43,539.72 in pre-judgment interest.

Kaur thereafter moved pursuant to R. 4:49-1 for a new trial. She argued that the technical issues experienced at trial deprived her of a fair trial because: (1) the replay of the expert's testimony "unfairly and prejudicially affected the presentation of [her] case" because the jurors who were not disconnected "were required to sit through the extended playback" and "were caused to lose interest by this interruption in the flow and consistency of this key testimony"; (2) a juror was made an alternate because he could not enter the virtual jury room;

and (3) a number of jurors heard a portion of the sidebar conference discussion about the jury's question.

The judge who tried the case issued an oral opinion denying the motion. The judge noted that he was viewing the jurors while the recording of the expert's deposition was being replayed and he saw no indication that the jurors had lost interest, were not paying attention, or had left the room they were in. To the contrary, the judge concluded that the jury was "very well engaged throughout the course of the trial" The court observed that counsel did not object to replaying the testimony and concluded the procedure was not manifestly unfair to Kaur.

The court noted that Kaur also did not object to designating the seventh juror as an alternate and found that a full complement of six jurors deliberated and reached a unanimous verdict. See R. 1:8-2(b) ("A deliberating jury in a civil action shall consist of six persons" with exceptions not applicable here). Thus, the court concluded, Kaur was not denied a fair trial.

Finally, the court found that the jurors who inadvertently heard a portion of the sidebar conference with counsel "basically heard [the court] tell the attorneys . . . the instruction I was going to give them with regard to the question that they posed to the [c]ourt." The court continued,

[s]o while, yes, there was a problem with the technology, yes, and there was a problem with potentially some of the jurors being in that side – that virtual sidebar conference, I don't think it affected the decision . . . of the jury at all, had no impact on their verdict.

Thus, the court concluded, Kaur did not clearly and convincingly establish she suffered a miscarriage of justice during the trial. An October 22, 2021 order memorializes the court's decision.

This appeal followed. Kaur repeats the arguments she made before the trial court and argues it was error to deny her a new trial.

II.

A trial court "shall grant" a motion for a new trial "if, having given due regard to the opportunity of the jury to pass upon the credibility of the witnesses, it clearly and convincingly appears that there was a miscarriage of justice under the law." R. 4:49-1(a). A new trial may be ordered if the trial court concludes that its erroneous rulings during trial resulted in prejudice to a party leading to an unjust verdict. Craw v. Campo, 136 N.J. 494, 510-11 (1994). "The standard of review on appeal from decisions on motions for a new trial is the same as that governing the trial judge – whether there was a miscarriage of justice under the law." Risko v. Thompson Muller Auto. Grp., 206 N.J. 506, 522 (2011).

We have carefully reviewed the record and find no basis on which to reverse the trial court's decision. While it is undisputed that technical difficulties required approximately ten minutes of recorded deposition testimony to be replayed to the jury, we fail to see how Kaur was harmed, let alone subjected to a miscarriage of justice, by having the jury twice hear the testimony of her expert. If anything, six of the jurors had two opportunities to absorb the expert's detailed explanation of his medical opinion that plaintiff did not suffer a permanent injury in the accident. As did the trial court, we see nothing in the record suggesting the jurors were not engaged during the replay of the testimony or that the "flow" of Kaur's expert's testimony was disrupted to her detriment.

We also agree with the trial court's conclusion that Kaur cannot establish she was denied a fair trial by having the standard number of jurors deliberate or as a result of a few of the jurors hearing a fleeting remark during a sidebar conference that all agreed comported with an instruction from the trial court a moment later.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION