Filed 2/8/11; pub. order 2/24/11 (see end of opn.)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

INGRID CABRERA, Plaintiff and Appellant, v. E. ROJAS PROPERTIES, INC., Defendant and Respondent.	B216445 (Los Angeles County Super. Ct. No. PC041071)

APPEAL from a judgment of the Superior Court of Los Angeles County. John P. Farrell, Judge. Affirmed.

Carpenter, Zuckerman & Rowley, John C. Carpenter and Paul S. Zuckerman for Plaintiff and Appellant.

Tharpe & Howell, Paul V. Wayne and Eric B. Kunkel for Defendant and Respondent.

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The principal issue on appeal is whether the collateral source rule bars the reduction of a plaintiff's recovery of past medical expenses from the amount billed by her medical provider to the amount paid by her private medical insurer. We follow current California law and hold that such reduction was appropriate notwithstanding the collateral source rule. We affirm the judgment, which reflects a reduced award.

FACTS

Ingrid Cabrera was injured when she fell down a staircase on property owned by E. Rojas Properties, Inc. (Rojas). She sued Rojas for personal injury. Following a jury trial, the jury found Rojas was negligent in its use or maintenance of the property, and the negligence was a substantial factor in causing Cabrera's harm. The jury awarded Cabrera $57,534.45 in past medical expenses and $135,556.45 in total damages. The jury further found that Cabrera was 10 percent negligent. Judgment was entered in the amount of $78,242.63, which reflected a reduction in damages for past medical expenses from the amount billed by Cabrera's medical provider ($57,534.45) to the amount paid by her insurer as full payment ($8,914.26). We summarize those facts relevant to the reduction in damages, the sole issue challenged on appeal.

1. Stipulated Procedure

Prior to trial, Rojas moved in limine to exclude evidence of medical bills in excess of the amounts paid by Cabrera's insurer as full payment. Cabrera initially objected to the "whole procedure" but requested that if any reduction were to take place "it should be post judgment outside the presence of the jury . . . ." Eventually, the parties resolved the procedural issue by reaching several stipulations including an agreement that the jury would not hear evidence of payment by Cabrera's insurer and that Rojas would file a "postverdict motion" to reduce the recoverable amount of plaintiff's medical bills. The parties stipulated that Cabrera did not waive the right to "object to the Court's postverdict reduction to the recoverable amount of plaintiff's medical bills" or to appeal any postverdict reduction.

2. Stipulated Facts

The parties also stipulated to the correctness of the following table:

Date(s) of Service	Medical Provider	Medical Provider's Billings	Amount Paid by Plaintiff's Health Insurance Carrier
1/22/07	Holy Cross Medical Center (Providence)	$47,461.95	$1,100.00
1/22/07	Professional Imaging Medical Group	$2,106.00	$533.94
1/22/07	California Emergency Physicians (Testing Lab)	$514.00	$56.00
2/7/07-5/16/07	Orthopedic Care of Los Angeles	$1,580.00	$1,580.00
2/2/07-5/11/07	Valley Care	$3,961.00	$3,961.00
1/22/07	Los Angeles Fire Department	$961.50	$961.50
1/22/07	Christojohn Sammuel, MD, Inc.	$300.00	$71.82
5/22/07	Isaac Regev, MD	$650.00	$650.00
Total		$57,534.45	$8,914.26

The parties further stipulated that no legal amount remained due to Cabrera's medical providers. The parties agreed that the jury would be instructed the amount of the medical providers' bills was "reasonable and necessary."[1] The parties stipulated that "the jury will not be instructed and will not consider the amount paid by plaintiff's medical insurance carrier to plaintiff's medical providers."

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[1] Dr. Harris Ronald Fisk also testified that the bills reflected reasonable charges.

3. Posttrial Motion to Reduce Past Medical Expenses

Prior to the conclusion of trial, the court indicated that, after trial, it would enter the verdict and set it over for a few weeks to give Rojas an opportunity to move to reduce the medical expenses. Cabrera did not object. After trial, the parties agreed on a briefing schedule and, as previously stipulated, Rojas filed a motion to reduce the damages for past medical expenses. In response, Cabrera argued the collateral source rule barred any reduction in damages. The trial court granted Rojas's motion. Now Cabrera challenges the reduction of damages awarded for past medical expenses.

DISCUSSION

On appeal, the principal issue is whether the trial court erred in reducing the judgment to reflect the amount Cabrera's medical providers accepted as payment in full instead of awarding the amount billed by Cabrera's medical providers. Cabrera also argues that the form of Rojas's motion was improper, that there was no evidentiary foundation for the reduction in damages, and that evidence of the amount paid was improperly admitted. We conclude the court properly reduced Cabrera's past medical expenses, notwithstanding the collateral source rule or Cabrera's other challenges.

1. The Collateral Source Rule

The collateral source rule is a doctrine requiring that "if an injured party receives some compensation for his injuries from a source wholly independent of the tortfeasor, such payment should not be deducted from the damages which the plaintiff would otherwise collect from the tortfeasor." (*Helfend v. Southern Cal. Rapid Transit Dist.* (1970) 2 Cal.3d 1, 6 (*Helfend*).) It is based on the principle that the "tortfeasor should not garner the benefits of his victim's providence." (*Id*. at p. 10.)

"The collateral source rule expresses a policy judgment in favor of encouraging citizens to purchase and maintain insurance for personal injuries and for other eventualities. Courts consider insurance a form of investment, the benefits of which become payable without respect to any other possible source of funds. If we were to permit a tortfeasor to mitigate damages with payments from plaintiff's insurance, plaintiff would be in a position inferior to that of having bought no insurance, because his

payment of premiums would have earned no benefit. Defendant should not be able to avoid payment of full compensation for the injury inflicted merely because the victim has had the foresight to provide himself with insurance." (*Helfend*, *supra*, 2 Cal.3d at p. 10.) "The collateral source rule . . . embodies the venerable concept that a person who has invested years of insurance premiums to assure his medical care should receive the benefits of his thrift. The tortfeasor should not garner the benefits of his victim's providence." (*Id*. at pp. 9-10.)

The collateral source rule is well entrenched in California law. (*Lund v. San Joaquin Valley Railroad* (2003) 31 Cal.4th 1, 9-10.) Among other benefits, the collateral source rule applies to Social Security and pension benefits, fidelity bond proceeds, gratuitously provided nursing services by a spouse, and wages paid by an employer. (*McKinney v. California Portland Cement Co.* (2002) 96 Cal.App.4th 1214, 1220; *Pacific Gas & Electric Co. v. Superior Court* (1994) 28 Cal.App.4th 174, 176-177; *Rodriguez v. McDonnell Douglas Corp.* (1978) 87 Cal.App.3d 626, 662; *Arambula v. Wells* (1999) 72 Cal.App.4th 1006, 1008.) Although in certain instances the collateral source rule may result in a "double recovery," the following salutatory effects of the rule outweigh that criticism. First, the tortfeasor should not "take advantage of the thrift and prescience of the victim" who paid an insurance premium. (*Helfend*, *supra*, 2 Cal.3d at p. 10.) Second, the rule assists with the computation of damages because medical care provides a measure for assessing general damages. (*Id.* at p. 11.) Third, the rule accounts for the fact that a plaintiff who is required to pay attorney fees may not receive a full recovery. (*Id*. at p. 13.) Finally, in insurance cases, concern over a potential "double recovery" may be illusory because insurance policies often require subrogation of the benefits. (*Id*. at pp. 10-13.)

2. The Collateral Source Rule Precludes Reducing Cabrera's Compensation in the Amount Paid by Her Insurer

It follows from the collateral source rule that an injured person is entitled to compensation from the tortfeasor for medical care even if such costs are covered by the injured person's insurance. (*Hanif v. Housing Authority* (1988) 200 Cal.App.3d 635,

639-640 (*Hanif*).) As Cabrera argues, her damages should not be reduced as a result of payments received from a third party source. Respondent does not challenge Cabrera's right to payment of those costs covered by her insurer, and the court ordered Rojas to pay those costs in the amount of $8,914.26.

3. The Collateral Source Rule Does Not Preclude Reducing Cabrera's Compensation from the Amount Billed by Her Medical Provider to the Amount Paid by Her Insurer

The crucial question is whether the collateral source rule bars reducing the amount of past medical expenses from that billed by Cabrera's medical provider to that paid by Cabrera's health insurer. Cabrera argues that the rate discounted between a health insurer and her provider should be deemed a collateral benefit and argues that Rojas "cannot take advantage of the plaintiff's insurer's thrift in negotiating medical bills." For support, she cites *Montgomery Ward & Co., Inc. v. Anderson* (1998) 976 S.W.2d 382 (*Montgomery Ward*) in which the court held that under Arkansas law, the "forgiveness of a debt for medical services is a collateral source to be sheltered" by the collateral source rule. (*Id.* at pp. 383-384.) In that case, the plaintiff had reached an agreement with her healthcare provider that it would discount its bill by 50 percent. (*Id*. at p. 383.) The court based its holding that the collateral source rule applied on the policy underlying the collateral source rule. (*Id*. at pp. 384-385.)

Notwithstanding *Montgomery Ward*, Cabrera's argument is inconsistent with current California case law as explained in *Hanif, supra*, 200 Cal.App.3d at page 640, *Nishihama v. City and County of San Francisco* (2001) 93 Cal.App.4th 298 (*Nishihama*), *Greer v. Buzgheia* (2006) 141 Cal.App.4th 1150, 1157 (*Greer*) and *People v. Bergin* (2008) 167 Cal.App.4th 1166, 1168 (*Bergin*).[2] Under current California law, "[a]n injured plaintiff in a tort action cannot recover more than the amount of medical expenses

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[2] This issue is currently pending in the Supreme Court. (*Howell v. Hamilton Meats & Provisions, Inc*. (2009) 179 Cal.App.4th 686, review granted Mar. 10, 2010, S179115; *Yanez v. SOMA Environmental Engineering, Inc.* (2010) 185 Cal.App.4th 1313, review granted Sept. 1, 2010, S184846; *King v. Willmett* (2010) 187 Cal.App.4th 313, review granted Oct. 13, 2010, S186151.)

he or she paid or incurred, even if the reasonable value of those services might be a greater sum." (*Katiuzhinsky v. Perry* (2007) 152 Cal.App.4th 1288, 1290.) Applying this rule, we decline to extend the collateral source rule to cover the benefit Cabrera's insurer obtained when her healthcare provider agreed to a reduced payment.[3]

In *Hanif, supra*, 200 Cal.App.3d at page 640, the court held that under the collateral source rule a plaintiff covered by Medi-Cal was entitled to damages for medical care even though the damages were paid by Medi-Cal. (*Hanif, supra*, 200 Cal.App.3d at pp. 639-640.) It further held that the plaintiff may not recover more than the actual amount paid for past medical care. (*Id.* at p. 640.) The court reasoned that: "'In tort actions damages are normally awarded for the purpose of compensating the plaintiff for injury suffered, i.e., restoring him as nearly as possible to his former position, or giving him some pecuniary equivalent. . . .' . . . 'The primary object of an award of damages in a civil action, and the fundamental principle on which it is based, are just compensation or indemnity for the loss or injury sustained by the complainant, and no more [citations].'" (*Id*. at p. 640, citations and italics omitted.) The *Hanif* court concluded that it was error to obligate the tortfeasor to pay for medical care and services in an amount exceeding the actual amount paid. (*Id*. at pp. 643-644.)

Although in *Hanif*, the victim's medical care was paid by Medi-Cal, courts have extended *Hanif* to apply to private insurers. For example, in *Nishihama*, the plaintiff's insurer -- Blue Cross -- had a contract with the medical center where the plaintiff received care. Under that contract, the medical center agreed to accept Blue Cross's reduced rates. (*Nishihama, supra*, 93 Cal.App.4th at p. 306.) Applying *Hanif*, the *Nishihama* court held that the plaintiff was entitled to the amount accepted by the medical center as full payment. (*Id*. at p. 309.) "*Nishihama* and *Hanif* stand for the principle that

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3 A hospital may not assert a lien to recover the difference between its customary charges and the amount received from the patient and his insurer as full payment for the hospital's services. (*Parnell v. Adventist Health System/West* (2005) 35 Cal.4th 595, 598.)

it is error for the plaintiff to *recover* medical expenses in excess of the amount paid or incurred." (*Greer, supra*, 141 Cal.App.4th at p. 1157.)

To the same effect, we held that that "'an award of damages for past medical expenses in excess of what the medical care and services actually cost constitutes overcompensation [citation].'" (*Bergin, supra*, 167 Cal.App.4th at pp. 1171-1172.) Although *Bergin* involved criminal restitution, the collateral source rule also applies in that context. (*People v. Hamilton* (2003) 114 Cal.App.4th 932, 944.) In *Bergin*, we concluded that a pedestrian injured by a defendant driving with an elevated blood alcohol level was entitled to restitution in the amount the victim's medical providers accepted as full payment from her insurer, not the amount billed by her medical provider. (*Bergin, supra,* at p. 1168.) We rejected the argument that payment by Medi-Cal was distinguishable from payment by a private insurer. (*Id*. at p. 1172, fn. 4.)

Hanif and its progeny are consistent with other California laws. Civil Code section 3333 provides that "[f]or the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not." Detriment means "a loss or harm suffered in person or property." (Civ. Code, § 3282.) Under Civil Code section 1431.2, economic damages means "objectively verifiable monetary losses including medical expenses."

Turning to this case, the trial court correctly applied *Hanif* and its progeny and properly reduced Cabrera's damages from the amount billed to the amount paid. There was no suggestion that Cabrera was at any time liable for the amounts billed by her medical providers as their usual and customary charges.[4] The reduction was not based on compensation received by Cabrera from an independent source. (Cf. *Arambula v. Wells*,

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[4] Here, there is no dispute what Cabrera's insurer paid and what was written off by the hospital. (Cf. *Olsen v. Reid* (2008) 164 Cal.App.4th 200, 203 [finding it improper to reduce damages where it was unclear what was paid].) Nor is there any evidence that Cabrera continued to remain liable for any charges. (See *ibid*. [finding reduction improper where unclear whether victim remained liable for any damages].)

supra, 72 Cal.App.4th at p. 1008 [collateral source rule applied where family owned business gratuitously paid employee his wages].) Nor does it deprive Cabrera of the benefit of her insurance as she was compensated for her medical expenses paid. Cabrera's argument that this conclusion "rejects decades of Supreme Court authority" is not persuasive because she identifies no current Supreme Court authority that extends the collateral source rule to include the benefit of a negotiated contract between a medical provider and a medical insurer.

4. Cabrera's Remaining Arguments Lack Merit

A. Form of Motion

Cabrera argues that her right to a jury trial was violated because Rojas's motion to reduce damages was not in the form of either a motion for a new trial or a motion for a judgment notwithstanding the verdict. She acknowledges that a trial court may reduce damages when a new trial motion is filed, but argues because no new trial motion was filed in this case, the trial court could not reduce Cabrera's damages.

Cabrera forfeited this contention. She stipulated that Rojas would file a posttrial motion. In return for her stipulation, Rojas agreed not to present evidence to the jury on the amount paid by Cabrera's insurer. It was Cabrera's counsel who requested that any reduction occur outside the presence of the jury. Having successfully excluded the evidence for trial and agreed that the evidence would be considered in a posttrial motion, Cabrera cannot complain on appeal that the procedure violated her rights. (*Nazari v. Ayrapetyan* (2009) 171 Cal.App.4th 690, 697 ["It is a long-standing principle of appellate law that where a party by its own conduct induces the commission of an error, it may not claim on appeal that the judgment should be reversed because of that error"].)[5]

Even if the argument were preserved, Cabrera does not show the procedure was invalid. In *Greer*, *supra*, 141 Cal.App.4th 1150, the trial court denied a motion in limine

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5 According to the stipulation, Cabrera did not waive the right to object to the postverdict reduction to the recoverable amount of plaintiff's medical bills. However, she did not preserve the right to object to the form of the motion. Additionally, when the court indicated that it would allow Rojas to file a posttrial motion prior to entering judgment, Cabrera did not object to the procedure.

to preclude the jury from hearing evidence regarding reasonable medical costs but informed the jury that it would consider a posttrial motion to reduce the recovery. The appellate court stated: "The [trial] court's ruling was correct. *Nishihama* and *Hanif* stand for the principle that it is error for the plaintiff to recover medical expenses in excess of the amount paid or incurred." (*Id.* at p. 1157, italics omitted.) It found no abuse of discretion in allowing a plaintiff to present evidence of the reasonable cost of the plaintiff's care to the jury and allowing a defendant to reserve argument on the propriety of a reduction in damages until after the jury renders a verdict. (*Ibid*.) In essence, here the court postponed ruling on defendant's motion in limine until after the verdict in order to protect Cabrera's rights under the collateral source rule.

B. Evidence

Appellant argues that "there is no admissible evidence that any of the plaintiff's medical bills were paid for by her health insurer." But, she stipulated to the amount paid by her insurers -- a total of $8,914.26 -- and she stipulated that no amount remained due on the bills. Her stipulation constitutes ample evidence of the amount paid by her insurer.

Finally, the collateral source rule includes the principle that "jurors should not be told that the plaintiff can recover compensation from a collateral source." (*Lund v. San Joaquin Valley Railroad*, *supra*, 31 Cal.4th at p. 10; *Arambula v. Wells*, *supra*, 72 Cal.App.4th at pp. 1015-1016.) No violation of this rule occurred in this case because no evidence of compensation received from her insurer was introduced to the jury.

DISPOSITION

The judgment is affirmed. The parties shall bear their own costs on appeal.

FLIER, J.

We concur:

BIGELOW, P. J. GRIMES, J.

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

INGRID CABRERA, Plaintiff and Appellant, v. E. ROJAS PROPERTIES, INC., Defendant and Respondent.	B216445 (Los Angeles County Super. Ct. No. PC041071) ORDER CERTIFYING OPINION FOR PUBLICATION NO CHANGE IN JUDGMENT

THE COURT:[*]

The opinion in the above-entitled matter filed on February 8, 2011, was not certified for publication in the Official Reports. For good cause, it now appears that the opinion should be published in the Official Reports and it is so ordered.

[*] BIGELOW, P. J. FLIER, J. GRIMES, J.