



IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

PATRICK CLEMMONS and MELISSA CLEMMONS, h/w <i>Plaintiff</i> <p style="text-align: center;">v.</p>	COURT OF COMMON PLEAS PHILADELPHIA COUNTY JUNE TERM 2020
RANDY LEHR and ECORE INTERNATIONAL, INC., <i>Defendants</i>	NO. 0478 <div style="text-align: right;"> RECEIVED APR 09 REC'D </div>

S. HARVEY, JR.
CIVIL TRIAL DIVISION

OPINION
POST-TRIAL MOTION

G. BRIGHT, J.

This case arose from a tractor-trailer accident that occurred just a few minutes after midnight on December 3, 2019. Patrick Clemmons’s (“Plaintiff”) tractor-trailer was parked on the shoulder of the highway when Defendant Randy Lehr who was also driving a tractor-trailer lost control of and veered off the travel lane crashing into Plaintiff’s parked trailer. Plaintiff was severely injured as a result of the crash, suffering traumatic brain injury and damage to his spinal column. A jury trial was held before this Court from September 5, 2023 through September 18, 2023. The jury returned a verdict in favor of Plaintiff against Defendants Encore International, Inc. (a global commercial flooring company) and Defendant Lehr (Encore’s tractor-trailer driver) awarding Plaintiff \$1.2 million (\$300,000 in economic damages; \$200,000 in non-economic damages; and \$700,000 to Plaintiff’s wife for loss of consortium). The jury also entered an award of punitive damages of \$2,500 against Defendant Lehr and \$25,000,000 against Defendant Ecore International, Inc. On September 28, 2023, Defendants filed their Post-Trial Motion seeking judgment notwithstanding the verdict (hereinafter JNOV), a new trial on all issues, a new trial on damages, or a remittitur.

FACTUAL SUMMARY

Plaintiff was parked on the shoulder of Route 30 with his four-ways on to check his GPS for directions. N.T. 9/7/2024 @ 30.¹ When just after midnight on December 3, 2019, Defendant Lehr crashed into the rear of Plaintiff's parked trailer. Shortly before the crash Lehr had embarked on his routine route between Encore's York and Lancaster plants. The trailer was empty, the weather conditions were inclement causing wet roads, and Lehr was travelling 8 MPH over the highway's posted speed limit (30 MPH over safety manuals governing bad weather driving). Lehr, Encore's driver, who was also injured, remembers nothing about the trip, leaving his travel lane or the speed he was driving N.T. 9/5/23 @ 143-144.

DISCUSSION

I. JNOV

Defendants claim they are entitled to JNOV, and frame their issues as follows:

A. Should this Court vacate the jury's verdict and enter judgment n.o.v. in favor of Defendants because Plaintiffs failed to prove a prima facie case of negligence against Defendants?

B. In the alternative, should this Court vacate the jury's punitive damages verdict and enter judgment n.o.v. in favor of Defendants because there was insufficient evidence to support an award of punitive damages and because the punitive damages award shocks the conscience and violates Defendants' constitutional rights to due process and protections against excessive fines?

Defendants request for JNOV is denied. There is more than sufficient evidence to establish the negligence of defendants Encore and Lehr, as well as a finding for punitive damages.

¹ N.T. refers to the Notes of Testimony, followed by the date and page from trial or post trial hearings held before the Honorable Gwendolyn N. Bright (and, as to trial, a Jury).

Pa.R.C.P. 227.1 provides for post-trial relief, including at (a)(1) direct the entry of judgment in favor of any party, and (a)(4) affirm, modify, or change the decision. The standard for JNOV review is set forth in *Justice v. Lombardo*, 652 Pa. 588, 208 A.3d 1057 (2019):

A Court may enter JNOV on one of two bases. The first is where a movant is entitled to judgment as a matter of law because, upon reviewing the record and deciding all factual inferences adverse to the movant, the law nonetheless requires a verdict in his favor. *Moure*, 604 A.2d at 1007. The second is where “the evidence was such that no two reasonable minds could disagree that the outcome should have been rendered in favor of the movant.” *Id.*; see also *Birth Center*, 787 A.2d at 383. In such a case, the court reviews the evidentiary record and concludes based on the evidence that a verdict for the movant was beyond peradventure. *Moure*, 604 A.2d at 1007.

.....

Moreover, JNOV should only be entered in a clear case with any doubts resolved in favor of the verdict winner. While the court may disagree with a verdict, it may not grant a motion for JNOV simply because it would have come to a different conclusion. Indeed, the verdict must stand unless there is no legal basis for it. *Birth Center*, 787 A.2d at 383.

Applying the above-stated standard there is no legal basis for the grant of a judgment notwithstanding the verdict to the Defendants. Defendants are not entitled to JNOV relief.

Defendants claim that Plaintiff failed to prove a prima facie case of negligence against them. To establish the existence of negligence on the part of the defendant, the plaintiff must prove four elements: (1) a duty or obligation recognized by law; (2) a breach of that duty; (3) a

causal connection between the conduct and the resulting injury; and (4) actual damages. *Est. of Swift v. Ne. Hosp. of Philadelphia*, 456 Pa. Super. 330, 335, 690 A.2d 719, 722 (1997). “Duty, in any given situation, is predicated on the relationship existing between the parties at the relevant time.” *Pittsburgh Nat. Bank v. Perr*, 431 Pa. Super. 580, 584, 637 A.2d 334, 336 (1994). The mere fact that a party was injured is not enough to entitle that person to damages. *Shellenberger v. Kreider Farms*, 2023 PA Super 1, 288 A.3d 898, 906 (2023).

Defendants are not entitled to JNOV based on their assertion that Plaintiff did not meet his burden of proof as to his negligence claim because each of Plaintiff’s liability theories depended on the assertion that Defendant Lehr’s speeding caused the accident. While the parties agree that “speed” was-not the cause of the accident, it was most certainly one of the conditions under which Lehr was operating, and lost control of his trailer that fateful night. Those conditions included: driving without sleep for at least nine hours prior; operating an 8 ton empty trailer at night during inclement weather on wet roads; and, at a speed 8MPH over the posted limit (30 MPH over the inclement weather recommendations contained in the Pennsylvania CDL manual).

Much of the pertinent evidence was developed through the testimony of Lehr, and Encore’s transportation manager, Jeremy Hinze. Hinze, at the time of the accident was responsible for safety in Encore’s transportation division and was Lehr’s supervisor. Lehr testified that the collision took place in a straightway, and he had no obstructions to his ability to see Plaintiff’s parked trailer. *Id.* @ 150-154. Defendant agreed that being fatigued at night is a big problem while driving a tractor-trailer, that hazards may not be spotted as quickly at night, and that the chance of a crash is greater at night. *Id.* at 157. Further, Lehr testified that he had been up for at least nine hours before the crash. *Id.* at 159. Also, he admitted to often driving

over the speed limit; and, explaining why. *Id.* at 159-160.

According to Lehr, he was aware that routinely driving 5 to 15 miles an hour over the speed limit is a violation of the Federal Motor Carrier Safety Regulations and the PA CDL Manual; and he drove over the speed limit multiple times because he did not feel that it was dangerous. *Id.* @ 163-164. His testimony included that he was aware that it created an increased risk of crashing the tractor-trailer and an increased risk of hurting someone when the speed is 5 to 15 miles over the speed limit. *Id.* @ 165.

Lehr testified that Encore was aware that he routinely drove over the speed limit. *Id.* @ 167. His testimony as to the weather conditions was contradictory as to what he reported in the initial incident report (freezing rain or snow on the ground versus light rain). *Id.* @ 169, 176. He acknowledged that because he was driving an empty trailer on the night of the accident, it was important to drive slower because it takes longer to stop because of less traction. *Id.* @ 170. He also testified that as a tractor-trailer driver, he was required by the Federal Motor Carrier Safety Regulations to use extreme caution in adverse weather conditions. *Id.* @ 175-176. Finally, Lehr did-not recall if Encore ever sat him down to discuss his speeds and tell him to stop. If they had, he would have stopped. N.T. 9/6/23 @ 23.

Hinze, Encore's corporate designee and transportation manager responsible for safety in the transportation division testified that although everything a tractor-trailer driver needs to know on how to operate his vehicle safely is contained in the Pennsylvania CDL manual, he had never read the manual before. *Id.* @ 41-42. Further, Hinze testified that he knew Defendant Lehr had no experience with driving a tractor-trailer on the highway at the time he hired him. *Id.* @ 42. As to speed Hinze testified that although he did not remember having a talk with Lehr about his speeding, he was sure he told him not to speed. *Id.* @ 56-59. Hinze testified that he does not

allow his drivers to drive 10 to 15 miles an hour over the speed limit, but they could drive about 5 to 9 miles over because the Pennsylvania State Police would not issue a citation. *Id.* @ 60-61. It was also acknowledged by Hinze that inclement weather could affect traction and visibility: and, coupled with speed could make it hard to steer, see, react, and keep the vehicle within the lane. *Id.* @ 69-71.

Kirk Cummings, Plaintiff's Trucking Safety and Compliance expert testified during his deposition that in addition to violating Federal Motor Carrier Safety Regulations, Lehr failed to follow the posted speed limit and failed to follow the Federal Motor Career Safety Regulations. (Cummings Deposition @ 23) He also testified that hazardous weather conditions reduced the traction available to tractor-trailer driver such that it reduced their ability to stop a vehicle and that it can have an impact on the turning of the vehicle. *Id.* @ 27-28. He further testified that Defendant Lehr was responsible for adhering to the guidelines. *Id.* @ 32. Regarding Encore, Cummings testified that the company was responsible for making sure that Lehr adhered to the guidelines was familiar with the regulations and was properly trained. *Id.* @ 32-33.

Causation and Damages

Plaintiff's injuries were presented through the testimony of treating physicians, Doctor Maria Hubbard and Doctor Roderick Claybrooks According to Hubbard she was treating Plaintiff for post-concussion syndrome, which is any other symptomatology leftover after three months of an injury causing a concussion. (*Maria Hubbard's Deposition @ 20.*) She testified that Plaintiff first presented to her with complaints of headaches, cognitive symptoms, emotional symptoms, sleep disorders, pain, blurry vision, and ringing in the ears. *Id.* @ 21-23. A series of tests were ordered to aid in Plaintiff's treatment. *Id.* @ 25-31. Plaintiff was diagnosed with a concussion, post-traumatic headaches, visual disturbance, adjustment disorder, post-concussion

state, and post-concussion syndrome. *Id.* @ 23-24.

Hubbard further testified that Plaintiff's injuries were causally related to the December 3rd, 2019 crash. Regarding Plaintiff's future treatments, she testified that he's looking at a lifetime of visits to the neurologist, and psychiatrist, some additional cognitive training, additional medications, and needs to be monitored, because he is at risk of other illnesses. *Id.* @ 33-34. Lastly, she testified that Plaintiff is cognitively impaired and is unable to work as a truck driver. *Id.* @ 32.

Next, Plaintiff presented Dr. Roderick Claybrooks another one of his treating physicians. Dr. Claybrooks testified that Plaintiff's injuries were causally related to the accident on December 3, 2019. (*Roderick Claybrooks Deposition* @ 21, 37). He stated that he ordered a series of exams to aid in his treatment of Plaintiff and recommended some treatment options based on the results of those tests. *Id.* @ 26-36. Claybrooks also testified that going forward, Plaintiff may require about 12 sessions of physical therapy annually. *Id.* @36-37.

Lastly, Plaintiff presented Edmond Proyder to testify about Plaintiff's life care plan. Proyder testified that Plaintiff due to his complaints would require physical therapy, neuropsychological testing, a case manager, neurocognitive rehabilitation to help him deal with his condition, cognitive rehabilitation therapy, a psychiatrist, orthopedic and spine surgeon, an internist family practitioner, future surgical treatment, postoperative physical therapy, medications, and a low back brace that has to be replaced once every two years. *Id.* @ 23-32.

Taking all of this into account, Proyder testified that the total yearly cost of Plaintiff's life care plan is \$13,513 and the overall cost of the life care plan with a life expectancy of 29.8 more years is \$402,687. *Id.* @ 32. Regarding employability, Proyder opined that Plaintiff is unable to do his past relevant work as a tractor-trailer driver, that Plaintiff cannot transfer his skills or use

his special knowledge to perform a similar type of work due to his physical impairments, that Plaintiff is unable to perform any level of work on a full-time, sustained, regular basis. *Id.* @ 39-41.

Finally, according to Proyder, Plaintiff sustained a loss of earning capacity from \$80,000 to \$100,000 per annum over his work life due to his impairments. *Id.* @ 41. Proyder opined that Plaintiff would need to receive the treatment and therapy contained in the life care plan, that Plaintiff is not a candidate for vocational rehabilitation, and that due to Plaintiff's injuries, Plaintiff has sustained a total loss of \$1,280,000 to \$1,600,000 earnings over his lifetime. *Id.* @ 42.

It is clear from the evidence presented to the jury that Plaintiff's case did not rely on speed being the sole cause of the accident. Driving over the speed limit was simply one of the conditions at play that night along with road conditions, and difficulty of controlling an empty trailer on wet roads. Plaintiff presented evidence that the cause of the accident was Lehr losing control of his trailer and crashing into Plaintiff's parked trailer when he tried to re-enter the highway. This was testified to as well by Lehr.

Punitive Damages

Next, Defendant argues that the Court should vacate the jury's punitive damages verdict and enter JNOV in favor of Defendants. The court will not enter JNOV in favor of Defendants on punitive damages, however, the Court will grant remittitur concerning the amount awarded as punitive damages. This will be discussed further in the Opinion.

II. NEW TRIAL

The standard by which the trial court must determine whether a new trial is warranted is twofold: “a trial court must first determine if it made a mistake, and if so, whether the mistake prejudiced the moving party. See, *Steltz v. Myers*, 265 A.3d 335 (Pa. 2021). Moreover, in Pennsylvania, “a new trial is not justified simply because an irregularity occurred at trial, or a different judge would have ruled differently.” *Bey v. Sacks*, 789 A.2d 232 (Pa. Super. 2001).

Defendants raised 15 claims of errors asserting entitlement to a new trial. Those claims primarily focus on the Court’s evidentiary rulings and jury charge. This Court declines to address each one as individually and cumulatively these claims fail to persuade the grant of a new trial, legally or factually. At the heart of the defense arguments is the issue of “speed.” The defense seeks to nullify “speed” from the record entirely, which is a ludicrous proposition.

The Court’s ruling on “speed” was very specific and precise as it related to the testimony of Plaintiff’s expert, Cummings. In this regard, the Court ruled:

... but it’s the conclusion of speeding. He was above the regs say – I’m just making up numbers here – the regs say it’s 55, but he was going 65. That’s just an example. That is not the testimony. So, he can testify to all of that. But the ultimate conclusion of speeding and speeding being the cause of the accident, he cannot opine. He can say everything else that you just said in terms of he was over the speed limit, the regs require this. But in terms of the actual cause of the accident was speeding and/or it was recklessness, he cannot testify.

Id. @ 62.

Thus, Cummings was permitted to testify about violations of applicable regulations but could-not opine that speeding caused the accident. N.T. 9/5/23@10,12,18. Lehr’s speed of travel was simply one of the many conditions under which he was driving when he lost control of his trailer

and rammed into Plaintiff. The Court's evidentiary rulings were-not erroneous.

PUNITIVE DAMAGES

Defendant's motion to vacate the jury's punitive damages verdict and enter JNOV in it's favor, or grant a new trial is denied. However, the Court will grant remittitur relief reducing the punitive damage award from \$25 million to \$1 million as to Encore. The Court finds that the \$25 million is unduly excessive and out of bounds with the evidence in this case.

A fact intensive/case specific analysis is required when assessing challenges to punitive damage awards. According to the U.S. Supreme Court in *State Farms Mut.Auto.Ins.Co. v. Campbell*, 538 U.S. 408, 418 (2003) the following should be considered:

- 1; the degree of reprehensibility of the defendant's misconduct.
2. the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and
3. the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable case.

The U.S. Supreme Court and the Pennsylvania Supreme Court have each emphasized that a case sensitive analysis is required as "the guideposts and factors do not operate mechanically because the facts and circumstances of each case are determinative of a punitive damages award." *Bert Co. v. Turk*, 298 A3rd. 62 (Pa. 2023).

This case traverses a fine line between negligence and considerations of recklessness invoking the possibility of punitive damages. Ultimately, this Court correctly determined there was sufficient evidence to send to the jury for deliberations as to whether-or-not punitive damages should be awarded. The evidence herein, supports the jury finding of "recklessness." However, the punitive award of a staggering \$25 million is-not!

The jury's \$25 million award strains credulity based on the totality of the evidence in this case. This excessive award does-not hold up under the scrutiny of the three-prong test of reprehensibility, disparity and comparable cases. In the interests of justice and constitutional considerations this Court is compelled to intervene.

Reprehensibility:

There was sufficient evidence for the jury to find "recklessness" against Encore, and it's employee. However, Encore's recklessness does-not equate to reprehensibility. Encore, at the time of the crash, did have safety protocols in place, albeit, woefully lacking in content, oversight and discipline when violated. N.T. 9/6/23 @ 35-36,41-42,49,72; N.T. 9/5/23 @ 167,198,209. However, there is no evidence that Encore drivers, at least within the thirteen years prior to this accident were ever involved in a crash (except with a deer) or received traffic citations. N.T. 9/6/23 @ 35-36.

Moreover, Encore is-not a trucking company, rather a commercial flooring company with a small fleet of trucks. While an international company, no evidence could be gleaned as to the scope (when where, distance) of Encore's trucking travels. Here, the evidence is limited to travel between Encore's York and Lancaster plants (a drive of 35-40 minutes each way) at midnight with limited traffic during inclement weather.

While Plaintiff seeks to paint an almost demonic magnitude of intent centering around "speed" the evidence supports only that driving over the speed limit was one of the many circumstances in place at the time of the crash. Simply put, this case involved a series of unfortunate circumstances, including Plaintiff's fortuitously parked tractor-trailer alongside the road. This evidence does-not support a finding of reprehensibility.

Disparity/Proportionality

Here, the Court must consider the disparity between the actual or potential harm suffered by Plaintiff and the punitive damages award. The punitive award of \$25 million “is approximately 21 times the amount of the aggregate compensatory verdict, and 50 times the \$500,000 awarded to Clemons alone.” (Plaintiff’s Brief 12/12/23 @ 88). The more acceptable multiplier according to relevant case law is in the single digits. Bert, *Id.*@82. Thus, after this Court’s analysis, the reduction to a multiplier of two (2) to \$1million in punitive damages is an appropriate reduction from the grossly excessive \$25 million.

Immediately after the crash, Plaintiff was able to exit his tractor to offer aid to Lehr who was also injured, talk to police for hours, drive his vehicle to check on his demolished trailer which had been relocated, and ultimately drive to and check into a local hotel. N.T. 9/7/23@32-38. Plaintiff did-not receive medical care or go to a local hospital. *Id.*@36. Plaintiff described his condition as “confused”, with the “adrenaline flowing”, “a slight headache” and “cut on his neck.” *Id.* @ 37-38. The next day, still with “headaches and blurred vision” Plaintiff embarked on his 1,200 mile, nearly two day drive, on a broken and propped up driver seat, back to his home in Florida. *Id.* @ 39. Once home, Plaintiff still did-not immediately seek medical care; but, finally did so after experiencing difficulty in movement along with pain in his neck, back, arm and leg. *Id.* @40-41.

At trial, four years later, Plaintiff testified to continued pain in those areas along with headaches and short- term memory loss. *Id.* @ 20-45. Plaintiff described himself as having good and bad days with pain levels ranging from 3 to 8. *Id.* @ 42. Treatment has included radiofrequency ablation, PRN medication, and a recommendation for surgery which Plaintiff declined. *Id.* @ 41-48. While Plaintiff is no longer able to drive a tractor-trailer or

manage his trucking business, he is able to handle household duties, resume playing his favorite sport, golf, and play basketball with his sons. Id. @ 47-53.

The jury heard all that has been summarized above, augmented by medical and financial impact testimony of Plaintiff's experts, and awarded a total compensatory award of \$500,00 for Plaintiff. The multiplier of times 50 is clearly inappropriate on this evidence, and in light of the actual award.

Comparable Cases:

Both parties have provided a litany of cases addressing punitive damages. The Court has reviewed them. Each of those cases deals with punitive damages awards that rise or fall on the particular circumstances involved. Their holdings do-not deflect from what is fair and just given the evidence in this case. A significant reduction in the punitive award is appropriate.

DATE: 4/9/24

BY THE COURT:



GWENDOLYN N. BRIGHT, J.