

HENRY D. MURPHY and
CONNIE MURPHY,

§

§

§

§

§

§

§

§

S

§

 \mathcal{S}

ss

§

§

Decided: June 13, 2002

ORDER

1) In 1994, Henry D. Murphy suffered personal injuries in a tractor trailer accident. Murphy sued the driver of the other tractor trailer, Robert W. Thomas, as well as Thomas's employer, American Tank Transport, Inc. After the first trial, in 1999, the jury returned a verdict of \$500,218.14 in favor of Murphy and \$150,000 in favor of his wife, Connie Murphy. The trial court found those verdicts

shockingly high and granted defendants' motion for a new trial or remittitur. Because Mr. and Mrs. Murphy did not agree to have their verdicts reduced to \$225,000 and \$75,000, respectively, the court ordered a new trial for damages only.

2) After the second trial, in 2000, the jury returned a verdict of \$31,000 in favor of Murphy and \$2,750 in favor of his wife. This time the Murphys moved for a new trial or additur. The trial court found the verdicts grossly inadequate and ordered them increased to \$75,000 and \$15,000. Defendants agreed to the additur, and the Murphys now appeal from both the remittitur and additur decisions.

3) We review the trial court's decisions for abuse of discretion.¹ The jury's verdict must be given "enormous deference," and will be "set aside only in the unusual case where it is 'clear that the award is so grossly out of proportion to the injuries suffered as to shock the Court's conscience and sense of justice.'"² Faced with a motion for remittitur or additur, the trial court must evaluate the evidence and decide whether the jury award falls within a supportable range.³ In doing so, the court still defers to the jury and reduces the jury's award to the absolute maximum

¹*Chavin v. Cope*, 243 A.2d 694 (Del. 1968).

²*Young v. Frase*, 702 A.2d 1234, 1236-37 (Del. 1997)(quoting *Mills v. Telenczak*, 345 A.2d 424,426 (Del. 1975).

³ *Id.* at 1237.

amount that the record can support (in the case of remittitur) and increases the award to the absolute minimum amount that the record requires (in the case of additur).⁴

4) The Murphys argue that the record supported the first jury's award and that remittitur, therefore, was not warranted. The trial court identified numerous factors that led to its conclusion that the verdicts were excessive: 1) the Murphys' economist used "significantly magnified numbers" in opining about lost earnings, which opinion "bordered on the speculative" since Mr. Murphy had no pre-accident earnings record; 2) the Murphys' counsel "used closing argument to try to inflame the jury;" 3) the jury was not given an instruction on mitigation of damages "in a case where magnification was a significant issue;" and 4) "[t]here was no good probative evidence on the Workers' Compensation benefit issue." The trial court found that the verdict shocked its conscience and it reduced the awards to the "maximum verdicts justified under the evidence."⁵ Based on our review of the record, we find that the trial court acted within its discretion in evaluating the evidence and concluding that remittitur was appropriate.

5) The Murphys also contend that the trial abused its discretion after the second trial, when it granted a total of \$90,000 in its additur awards. They argue

⁴*Carney v. Preston*, 683 A.2d 47, 56 (Del. Super. 1996).

⁵*Murphy v. Thomas*, 1999 WL 742892 (Del. Super.) at *1.

that the trial court should have awarded, as additur, an amount consistent with the \$300,000 it set in granting remittitur after the first trial. In advancing this argument, the Murphys overlook the fact that additur and remittitur are methods by which the jury's award is modified to the least extent possible, given the evidence. Thus, an excessive verdict is reduced to the highest amount that could be supported by the record, and an inadequate verdict is increased to the lowest supportable amount. In this case, that range was from \$90,000 to \$300,000.

6) Notwithstanding the Murphys' arguments to the contrary, we are satisfied from our review of the record that the trial court acted within its discretion and adequately stated the reasons for its additur decision. The court noted that: 1) "Mr. Murphy had no solid earnings evidence and was a terrible damage witness;" 2) Mrs. Murphy's story about walking the children in the mall was "unfortunate;" and 3) the Murphys' lack of credibility led the jury to discredit their doctors' medical testimony. ⁶ These observations support the trial court's conclusion that the verdict was grossly inadequate and should be increased. The court properly set the amount of the additur in light of Murphy's medical expenses, the fact that he suffered pain from his injuries, and the fact that Mrs. Murphy suffered loss of consortium.

⁶*Murphy v. Thomas*, 2000 WL 1211199 (Del. Super.) at *1-2.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

By the Court:

/s/ Carolyn Berger
Justice