

SUPREME COURT OF DELAWARE

Dana Companies v. Crawford

35 A.3d 1110 (Del. 2011) · Decided December 14, 2011

SUMMARY

The Delaware Supreme Court reviewed post-trial motions arising from an asbestos-related mesothelioma case involving Dana Companies and Zoom Performance Products. The court affirmed the defendants' judgment on liability, but held that the trial court improperly evaluated separate damages awards collectively when denying additur. It reversed in part and remanded for reconsideration of the pain-and-suffering award and for determination of whether Louisiana law permits a deceased plaintiff to recover wrongful-death damages.

CASE DETAILS

COURT	Supreme Court of Delaware
WRITING FOR THE COURT	Justice Jacobs; Justice Holland; Justice Ridgely
JURISDICTION	Delaware
DECIDED	December 14, 2011
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendants appealed the Superior Court's denial of their post-trial motions for judgment as a matter of law or a new trial. The plaintiffs cross-appealed the denial of their motions for additur or a new trial on damages.
STANDARD OF REVIEW	Denial of a motion for additur is reviewed for abuse of discretion; questions of law are reviewed de novo. The Court interferes with a jury verdict only with great reluctance and will set aside or alter a jury award only when it is so grossly out of proportion to the injuries suffered as to shock the trial judge's conscience and sense of justice.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Dana Companies, Zoom Performance Products v. Henderson family plaintiffs and legal representatives

TOPICS

[damages](#) [wrongful death](#) [loss of consortium](#) [appellate procedure](#) [standard of review](#)

PRACTICE AREAS

torts

damages

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the Superior Court properly denied the plaintiffs' motion for additur or a new trial concerning the \$80,000 award for Elizabeth Henderson's pain and suffering.
2. Whether the adequacy of damages for separate claims may be evaluated by considering the awards for other claims that would benefit the same beneficiaries.
3. Whether Louisiana law permits a deceased plaintiff to receive damages for loss of consortium or other damages in a wrongful-death action when the plaintiff died before trial.
4. Whether the Superior Court properly denied the defendants' post-trial motions for judgment as a matter of law or a new trial.

HOLDINGS

1. A trial court may not evaluate the adequacy of a damages award for one claim by considering the jury's award on a separate claim. Each claim must be evaluated solely on the evidence bearing on that claim, consistently with the jury instruction requiring separate consideration of each claim.
2. The case must be remanded for the Superior Court to reconsider whether additur is warranted for Elizabeth Henderson's pain-and-suffering award, evaluating that award solely in light of the evidence supporting that claim and without reference to awards on separate claims.
3. The Superior Court was required to determine whether Louisiana law permits a deceased plaintiff to be awarded damages in a wrongful-death action and, if so, to reconsider the plaintiffs' motion for additur concerning Bruce Henderson's \$0 loss-of-consortium award.
4. The Superior Court's judgment denying Dana's and Zoom's post-trial motions was affirmed.

KEY QUOTATIONS

“On remand, the trial court shall consider the adequacy of each damages award solely in light of the evidence that bears on each claim, respectively, and without reference to the jury awards for other, separate claims.” (35 A.3d at 1113)

“It is error for a trial court to uphold a jury verdict that is contrary to the jury instructions.” (35 A.3d at 1113)

FACTUAL BACKGROUND

Elizabeth and Bruce Henderson owned and operated a Louisiana automobile repair business for approximately four decades and were exposed to asbestos through car parts and environmental releases from a nearby carbon plant. Elizabeth died of mesothelioma in 2008, and Bruce was diagnosed with mesothelioma less than a year later and died in early 2010. Their family members sued numerous defendants for asbestos-related injuries and wrongful death; all claims except those against Dana and Zoom were settled or dismissed before trial. The jury awarded \$80,000 for Elizabeth's pain and suffering, \$1.16 million for Bruce's pain and suffering, \$500,000 to

four family members for loss of consortium arising from Elizabeth's death, and \$0 to Bruce for that loss of consortium.

PROCEDURAL HISTORY

A Superior Court jury found Dana and Zoom partially liable for asbestos-related mesothelioma and awarded damages on several survival, wrongful-death, and loss-of-consortium claims. The Superior Court denied the parties' post-trial motions, reasoning in part that the damages awards should be considered together because the same beneficiaries would receive them. The Supreme Court affirmed the judgment on the defendants' appeal, but reversed in part and remanded the plaintiffs' cross-appeal concerning the \$80,000 pain-and-suffering award and Bruce Henderson's \$0 loss-of-consortium award.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Superior Court shall reconsider whether additur is warranted for Elizabeth Henderson's pain-and-suffering award, considering that award solely in light of the evidence bearing on that claim and without reference to jury awards for separate claims. The Superior Court shall also determine whether Louisiana law permits a deceased plaintiff to be awarded damages in a wrongful-death action and, if so, reconsider the plaintiffs' motion for additur concerning Bruce Henderson's \$0 loss-of-consortium award. Jurisdiction is not retained.

CASES CITED

- Young v. Frase, 702 A.2d 1234, 1236-37 (Del. 1997)
- Burns v. Delaware Coca-Cola Bottling Co., 224 A.2d 255, 256 (Del. Super. Ct. 1966)
- Duphily v. Delaware Electric Co-op., Inc., 662 A.2d 821, 834 (Del. 1995)
- Cheatham v. City of New Orleans, 378 So. 2d 369, 376-78 (La. 1979)

OPINION

JACOBS, J.

JACOBS, Justice: Defendants below Dana Companies (“Dana”) and Zoom Performance Products (“Zoom”) appeal from a Superior Court order denying their post-trial motions for judgment as a matter of law or, alternatively, for a new trial. A Superior Court jury found those defendants partially liable for asbestos-related mesothelioma suffered by the decedents, Bruce Henderson (“Bruce”) and his mother, Elizabeth Henderson (“Elizabeth”) (collectively, the “Hendersons”).

The trial court denied the defendants’ motions on the ground that the jury verdict was supported by sufficient evidence. The jury awarded \$80,000 to Elizabeth’s heirs for her pain and suffering, and \$0 to Bruce Henderson for loss of consortium resulting from his mother’s wrongful death.

The plaintiffs below, who are the Hendersons' legal representatives and surviving Henderson family members ("plaintiffs"), cross appeal from the trial court's denial of their separate motions for additur or, alternatively, a new trial on damages.

On the principal appeal by appellants Dana and Zoom, we affirm the trial court's judgment on the basis of its well-reasoned opinion. On the cross appeal by the plaintiffs below, appellees, we find that the trial court committed legal error in ruling on the plaintiffs' additur motion, and also that the court erroneously failed to address a potentially determinative issue of Louisiana law.

Therefore, we reverse in part the trial court's additur ruling, and remand the case for proceedings consistent with this Opinion. *1112 FACTUAL AND PROCEDURAL BACKGROUND Because on the principal appeal by defendants Dana and Zoon, we affirm the trial court's judgment on the basis of the trial court's opinion, the facts set forth below relate solely to the plaintiffs' cross appeal of the lower court's denial of addi-tur or, alternatively, a new trial on damages.

The Hendersons owned and operated a car repair business in Louisiana for four decades. Both Elizabeth and Bruce were found to have been exposed to asbestos while operating the business during that period. That exposure allegedly resulted from their handling of certain car parts used in the shop, and also to the Hendersons' proximity to a nearby carbon plant where scrap asbestos was released into the environment.

Bruce was diagnosed with mesothelioma less than a year after Elizabeth died of that disease in 2008. Bruce died in early 2010. Family members of the Hendersons brought suit against numerous defendants, both repre-sentatively and individually, claiming that Bruce and Elizabeth suffered tortious exposure to asbestos and resulting wrongful death.

Before trial, the plaintiffs' claims against all defendants except for Zoom and Dana were either settled or dismissed. The claims against Dana and Zoom proceeded to trial and were submitted to a jury. The trial court instructed the jury as follows: The plaintiffs in this case have alleged a number of claims against defendants....

Although these claims have been tried together, each is separate, and you are to separately consider each claim. Therefore, in your deliberations, you should consider the evidence as it relates to each claim separately, as you would have if each claim had been tried before you separately.

The court also instructed the jurors that "[y]our verdict must be based solely on the evidence in this case" and that "[y]our award should be just and reasonable in light of the evidence and reasonably sufficient to compensate each individual plaintiff for whom you determine compensatory damages are appropriate." The jury found Zoom and Dana partially liable for both Hendersons' fatal disease, and awarded a total of \$500,000 to four of the plaintiff family members for loss of consortium resulting from the wrongful death of Elizabeth.

Bruce, however, was awarded \$0 for his mother's wrongful death. Elizabeth's estate was awarded \$80,000 in damages for her pain and suffering, and Bruce's estate was awarded \$1.16 million for his pain and suffering. After trial, the plaintiffs moved for additur or for a new trial on damages. Plaintiffs claimed that the awards of \$0 to Bruce for the wrongful death of his mother and of \$80,000 for Elizabeth's pain and suffering were legally inadequate, given the far greater amounts awarded in similar cases.

In denying relief with respect to the pain and suffering award, the trial judge explained that: [T]he \$80,000 award for Elizabeth's pain and suffering cannot be parsed or evaluated in isolation without consideration of the additional \$500,000 that the jury awarded on the wrongful death claim. While these awards are made on distinct conceptual grounds, the jury was obviously cognizant that the combined total of both awards were to be shared by the same four beneficiaries.

As for the \$0 award for Bruce's loss of consortium resulting from Elizabeth's death, the trial court noted that "there is some question under Louisiana law as to whether the jury could legally award damages to Bruce since he was not a 'survivor' son of Elizabeth at the time of trial." The court did not reach that legal issue, however. Instead, it upheld the \$0 award on the basis that "the jury's verdict reflects... attention to the fact that awarding wrongful death damages to a deceased son without a surviving spouse or children would have made little sense." "[T]he jury was obviously well aware" (the court added) that "the total amount they were awarding — no matter how the sums were labeled — would be shared by the same four beneficiaries." ANALYSIS We review the denial of a motion for additur for abuse of discretion.¹ Questions of law are reviewed de novo. "[T]his Court interferes with the verdict of the jury only with great reluctance."² A court should set aside or alter a jury award only if "it is 'clear that the award is so grossly out of proportion to the injuries suffered as to shock the [trial judge's] conscience and sense of justice.'"³ What considerations may permissibly be taken into account by a jury in determining a damages award, is a question of law.

It is error for a trial court to uphold a jury verdict that is contrary to the jury instructions.⁴ Moreover, "in deciding whether or not to grant additur or a new trial as to damages, a court may consider only the facts that were placed into evidence" to prove the claim.⁵ 1.

The \$80,000 Pain and Suffering Award The trial court upheld the verdict awarding Elizabeth's heirs \$80,000 for her pain and suffering. That verdict, however, was contrary to the court's instructions to the jury. In denying additur, the trial court stated that "the jury was obviously cognizant that the combined total of both awards were to be shared by the same four beneficiaries." That statement cannot be reconciled with the court's instruction to the jury to "consider the evidence as it relates to each claim separately, as... if each claim had been tried before you separately." The instruction was correct.⁶ The inconsistent statement in the court's opinion was erroneous.

We therefore remand the case to the trial court to reconsider whether additur is warranted. On remand, the trial court shall consider the adequacy of each damages award solely in light of the evidence that bears on each claim, respectively, and without reference to the jury awards for other, separate claims. 2. Bruce Henderson's \$0 Award In considering the adequacy of Bruce's \$0 award for loss of consortium due to his mother's death, the trial court identified a potentially dispositive question — whether Louisiana law would preclude any award because Bruce was deceased at the time of the trial.

The Superior Court did not resolve that question. Instead, the court concluded that it did not need to reach that issue, because awarding “damages to a deceased son without a surviving spouse or children would have made little sense.” Yet, the court upheld the jury award of \$1.16 million for Bruce's pain and suffering, even though he was deceased and had no surviving spouse or children at the time of trial.⁷ Bruce was alive when his mother died in 2008, and he remained alive until 2010.

It therefore is arguable that Bruce suffered a loss of consortium attributable to his mother's wrongful death during the same time that he experienced the pain and suffering for which the jury awarded him damages. The trial court did not explain why a jury would decide that a wrongful death award for Bruce Henderson “would have made little sense,” but that an award for pain and suffering (apparently) would make sense.⁸ The Superior Court essentially relied on the same erroneous rationale when upholding the \$80,000 award for Elizabeth's pain and suffering, namely, that “the jury was obviously well aware that the total amount they were awarding — no matter how the sums were labeled — would be shared by the same four beneficiaries.” Therefore, on remand the trial court shall determine whether Louisiana law permits a deceased plaintiff to be awarded damages in a wrongful death action and, if so, to reconsider the plaintiffs' motion for additur for Bruce's \$0 award for loss of consortium.

CONCLUSION For the reasons set forth above, we affirm in part, reverse in part, and remand for proceedings in accordance with this Opinion. Jurisdiction is not retained.. *Young v. Frase*, 702 A.2d 1234, 1236 (Del.1997).. *Burns v. Del. Coca-Cola Bottl. Co.*, 224 A.2d 255, 256 (Del.Super.1966).. *Young*, 702 A.2d at 1237 (citation omitted).. *Duphily v. Delaware Elec.*

Co-op., Inc., 662 A.2d 821, 834 (Del.1995).. *Young*, 702 A.2d at 1237 (emphasis added).. Louisiana courts analyze the adequacy of damages awards for these claims separately, based on different considerations and without reference to each other. See, e.g., *Cheatham v. City of New Orleans*, 378 So.2d 369, 376-78 (La.1979) (analyzing survival claim adequacy based on evidence of suffering by deceased prior to death, and wrongful death award based on evidence of relative's closeness with deceased).

A separate analysis applies even if the damages will, as a practical matter, end up in the same hands. *Id.* at 377 (dividing survival claim between surviving two-year-old son and wife after lower

court only assigned damages to wife)..

In ruling on defendants' motions for judgment as a matter of law or a new trial, the trial court held that the "jury's verdicts were both reasonable and adequately supported by the evidence" (emphasis added). The trial court also appeared to incorporate the \$1.16 million award in its consideration of plaintiffs' additur motion, stating that the "verdicts here, when considered as a whole, do not shock the Court's conscience and are not out of proportion to the Plaintiffs' losses" (emphasis added)..

Nor did the Superior Court cite to any legal authority to support this statement.