

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Ambrosio Longoria v. Hunter Express, Limited, et al.

Ambrosio Longoria v. Hunter Express, Limited, et al., 932 F.3d 360 (5th Cir. 2019) · No. No. 17-41042 ·

Decided August 1, 2019

SUMMARY

In this diversity personal injury appeal, the Fifth Circuit clarified that state law governs the threshold excessiveness determination, while the federal maximum recovery rule guides the amount of remittitur. The court vacated a \$140,000 future mental anguish award for insufficient evidence under Texas law, which requires a "substantial disruption" in daily routine, and vacated a \$1 million future pain award as excessive, remanding for remittitur. The court also held that a challenge to damages as excessive is distinct from a sufficiency challenge, and failing to raise the excessiveness argument in a new trial motion forfeits it on appeal.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	GREGG COSTA; WIENER; SOUTHWICK; COSTA
JURISDICTION	Federal
DECIDED	August 1, 2019
DOCKET	No. 17-41042
DISPOSITION	affirmed in part, vacated in part, remanded in part
PROCEDURAL POSTURE	Appeal from the United States District Court for the Southern District of Texas, after a jury trial and denial of motion for new trial
STANDARD OF REVIEW	The district court's denial of a motion for new trial is reviewed for abuse of discretion. The determination of whether a challenge to damages is preserved is a legal question; if not preserved, appellate review is unavailable.
PRECEDENTIAL VALUE	Published
PARTIES	Hunter Express, Limited; Sarbjit Singh Basatia v. Ambrosio Longoria

TOPICS

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QUESTIONS PRESENTED

1. Do the defendants face forfeiture of challenges to the past mental anguish and future physical impairment awards because they did not raise them in the district court?
2. Whether the \$1 million award for future physical pain is excessive?
3. Whether the \$140,000 award for future mental anguish is supported by evidence?

HOLDINGS

1. Defendants forfeited these challenges because they did not argue excessiveness of those awards in their motion for new trial.
2. The award is excessive under both Texas law and the federal maximum recovery rule, and it is vacated and remanded for remittitur.
3. The award is not supported by evidence and is vacated in full.

FACTUAL BACKGROUND

Ambrosio Longoria and Sarbjit Singh Basatia were commercial truck drivers involved in an accident in Laredo, Texas. Basatia went straight in a turn-only lane while Longoria was making a left turn. The trucks collided. Longoria walked away but later experienced back pain. He underwent physical therapy, an MRI revealed bulging and herniated discs, and he eventually had back surgery. The surgery alleviated some but not all pain. Longoria continues to have back pain that wakes him at night, requires daily stretching, and sometimes ibuprofen. He is on a permanent 50-pound lifting restriction.

PROCEDURAL HISTORY

Longoria filed a negligence action in the Southern District of Texas against Basatia and Hunter Express. After a three-day trial, the jury returned a verdict of over \$2.8 million. Defendants moved for a new trial, arguing that certain damage awards were unsupported or excessive. The district court denied the motion. Defendants appealed.

DISPOSITION

affirmed in part, vacated in part, remanded in part

REMAND INSTRUCTIONS

The district court is to determine a remittitur for the future physical pain award consistent with the maximum recovery rule.

CASES CITED

- *Bueno v. City of Donna*, 714 F.2d 484 (5th Cir. 1983)
- *Vargas v. Lee*, 317 F.3d 498 (5th Cir. 2003)
- *Pounds Photographic Labs, Inc. v. Noritsu Am. Corp.*, 818 F.2d 1219 (5th Cir. 1987)
- *Baker v. Dillon*, 389 F.2d 57 (5th Cir. 1968)
- *C.M. Asfahl Agency v. Tensor, Inc.*, 135 S.W.3d 768 (Tex. App.—Houston [1st Dist.] 2004, no pet.)
- *Gasperini v. Ctr. for Humanities, Inc.*, 518 U.S. 415 (1996)
- *Fair v. Allen*, 669 F.3d 601 (5th Cir. 2012)
- *Glazer v. Glazer*, 278 F. Supp. 476 (E.D. La. 1968)
- *Gorsalitz v. Olin Mathieson Chem. Corp.*, 429 F.2d 1033 (5th Cir. 1970)
- *Lebron v. United States*, 279 F.3d 321 (5th Cir. 2002)
- *Puga v. RCX Solutions, Inc.*, 922 F.3d 285 (5th Cir. 2019)
- *Thomas v. Tex. Dep’t of Crim. Justice*, 297 F.3d 361 (5th Cir. 2002)
- *Moore v. M.V. Angela*, 353 F.3d 376 (5th Cir. 2003)
- *Giles v. Gen. Elec. Co.*, 245 F.3d 474 (5th Cir. 2001)
- *Denton v. Morgan*, 136 F.3d 1038 (5th Cir. 1998)
- *Pope v. Moore*, 711 S.W.2d 622 (Tex. 1986)
- *Waste Mgmt. of Tex., Inc. v. Tex. Disposal Systems Landfill, Inc.*, 434 S.W.3d 142 (Tex. 2014)
- *Pool v. Ford Motor Co.*, 715 S.W.2d 629 (Tex. 1986)
- *SunBridge Healthcare Corp. v. Penny*, 160 S.W.3d 230 (Tex. App.—Texarkana 2005, no pet.)
- *Learmonth v. Sears, Roebuck & Co.*, 631 F.3d 724 (5th Cir. 2011)
- *Foradori v. Harris*, 523 F.3d 477 (5th Cir. 2008)
- *Vogler v. Blackmore*, 352 F.3d 150 (5th Cir. 2003)
- *Rangolan v. Cty. of Nassau*, 370 F.3d 239 (2d Cir. 2004)
- *Wright v. Byron Fin., LLC*, 877 F.3d 369 (8th Cir. 2017)
- *Jabat, Inc. v. Smith*, 201 F.3d 852 (7th Cir. 2000)
- *Koster v. Trans World Airlines, Inc.*, 181 F.3d 24 (1st Cir. 1999)
- *Cresthaven Nursing Residence v. Freeman*, 134 S.W.3d 214 (Tex. App.—Amarillo 2003, no pet.)
- *Saenz v. Fid. & Guar. Ins. Underwriters*, 925 S.W.2d 607 (Tex. 1996)
- *Pilgrim’s Pride Corp. v. Smoak*, 134 S.W.3d 880 (Tex. App.—Texarkana 2004, pet. denied)
- *Roberts v. Tatum*, 575 S.W.2d 138 (Tex. App.—Corpus Christi 1978, write ref’d n.r.e.)
- *Primoris Energy Servs. Corp. v. Myers*, 569 S.W.3d 745 (Tex. App.—Houston [1st Dist.] 2018, no pet.)
- *Maritime Overseas Corp. v. Ellis*, 971 S.W.2d 402 (Tex. 1998)
- *Universe Life Ins. Co. v. Giles*, 950 S.W.2d 48 (Tex. 1997)
- *Parkway Co. v Woodruff*, 901 S.W.2d 434 (Tex. 1995)
- *Katy Springs & Mfg., Inc. v. Favalora*, 476 S.W.3d 579 (Tex. App.—Houston [14th Dist.] 2015, pet. denied)

CITED IN

- *Ambrosio Longoria v. Hunter Express, Limited, et al., Longoria v. Hunter Express, Ltd.*, 932 F.3d 360, 365-67 (5th Cir. 2019)

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