

REMEDIES, LAW-806-LS1
FALL 2008
COHEN, M.

EXAM #

1 of 2 total books

Course

Semester

Instructor

GOLDEN GATE UNIVERSITY

**School of Law
Examination Book**

Exam Score

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Memo

To: Appellate Court

From: Law Clerk

Re: Review of Award of Damages

This is an action for negligence ^{gross, or recklessness} stemming from an intersection accident involving personal injury.

The defendant seeks a remittitur. This court will review the decision de novo and apply the standard of whether the amount of damages awarded at the trial court "shocks the conscience."

Compensatory Damages

The goal of this remedy is to make the plaintiff whole. It is a substitutionary remedy in personal injury cases such as this (since the damage can't

be undone, money is used to compensate the plaintiff). Here, the jury awarded Plaintiff \$321,500 in compensatory damages.

General damages

Those damages which flow from the defendant's conduct as inevitable, necessary consequences are classified as general damages. General damages must be proven but need not be pleaded. Non-economic loss (such as pain and suffering, loss of enjoyment, loss of consortium, etc.), future medical expenses and future lost earnings are all considered general damages. In this case, the jury awarded Plaintiff \$61,500 in general damages

Special damages

Past medical expenses and past loss of earnings fall under the category of special, or consequential, damages. These damages must be both pleaded and proven. The damages claimed must have been a foreseeable consequence of the defendant's wrongdoing. The jury in this case awarded Plaintiff \$260,000 in special damages.

Punitive Damages

The goal of this remedy is to punish the wrongdoer and deter future misconduct. A plaintiff is never entitled to punitive damages; rather they are awarded at the court's discretion.

To be subject to punitive damages, a defendant's conduct must have been malicious, willful, or wanton. Mere negligence is not enough, although some jurisdictions have awarded "punis" on a showing of gross negligence. An award of \$5 mil. was given in this case.

If compensatory damages are not awarded, punis will not be awarded (Garons).

Avoidable Consequences & Duty to Mitigate

Defendant argues that Plaintiff should have gone to work as a clerk rather than a manager as that would reduce the past and future wage loss.

Courts have held that plaintiffs should take reasonable steps to reduce their damages. One example would be to undergo surgery to repair a broken hip (Williams). Another way to reduce damages is to continue working (at a less physically demanding job) to mitigate lost wages.

However, in some circumstances, the above measures may not be reasonable for a particular plaintiff. In this case, Plaintiff was a manager for SBC and did attempt to return to work. Defendant's suggestion that Plaintiff should have become a clerk seems unreasonable. A clerk presumably makes much less money than

a manager, and clerks are generally expected to do heavy lifting. Even if Plaintiff had taken a different position, he could argue that he has lost the potential to continue advancing in SBC (Washington).

Plaintiff did show a willingness to mitigate damages by returning to work part-time with the aid of pain injections. Defendant's argument as to this issue must fail.

Collateral Source

Defendant also argued that the jury should have heard evidence that Plaintiff had received compensation for medical and wage losses already.

Under the collateral source rule, compensation a plaintiff receives which is wholly separate from that received directly from the defendant is not deducted from the amount of compensatory damages. This can lead to double-compensation.

However, when the defendant or defendant's insurance company has paid the plaintiff's medical bills, for example, the plaintiff cannot collect this amount again in damages.

As to the jury hearing evidence regarding this, the authorities are divided. ~~California falls~~
~~into the minority by requiring~~. The jurisdictions which do allow this evidence also allow evidence

of subrogation clauses (where plaintiff must re-pay the insurance company out of their award).

Also, because Plaintiff had been paying a portion of the premiums for his insurance, this goes against allowing the evidence. Another argument for keeping the evidence out is that Defendant shouldn't benefit from Plaintiff having insurance. And finally, Defendant committed a wrong and should pay.

Punitive Damages

Defendant claims that punitive damages were improperly awarded because he did not have

an intent to harm. However, Defendant was "quite inebriated" at the time of the collision.

So, although Defendant's conduct may not have been malicious or wilful, it was most likely wanton (reckless disregard of a high degree of risk). Thus, punitive damages were correctly awarded.

Puni sub-issue Re: Amount

This court must decide if the punitive damages award was "grossly excessive." The U.S. Supreme

Court laid out the test for this in BMW v. Gore and followed up with the State Farm case.

The three factors to consider are: ① The

reprehensibility of the defendant's conduct, ② the ratio of compensatory and punitive damages, and ③ available civil penalties (with the first factor being the most important). The court said that a ratio of 1:1 is good, but would not draw a bright-line for this issue.

Here, compensatory damages are \$321,500 and punitive damages are \$5 million. I am not a math expert, but the punis seem grossly excessive in light of the compensatory damage award. Although Defendant's conduct was reprehensible, we do not have enough information to determine whether Defendant is a shocking repeat offender (as in Mathias),

or if this was his first and only slip. So, based on the information given, the punitive damages award should be reduced to \$1 million at the

most. * Supreme court made this ruling so that the 14th Amendment's requirement of fair warning would be satisfied. ^{to defendants}

Hedonic Damages

Plaintiff seeks to enhance his award based upon a separate finding of loss of the ordinary pleasures of life. However, this factor is generally considered part of pain and suffering damages, and only a few states calculate hedonic damages separately. The trial court was correct in denying Plaintiff's post-trial motion.

Conclusion

Although the Plaintiff's handling of his case wasn't perfect (why did a rehabilitation counselor testify as to reasonable medical expenses?), the jury did find Defendant 100% liable and so, with the exception of a reduction in punitive damages, the judgment of the trial court should be affirmed.

(S.J.)

1/2/20