

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2011-091958

08/16/2016

HON. DAVID K. UDALL

CLERK OF THE COURT

K. Tiero

Deputy

JAMES MICHAEL HUMPHREY, et al.

JOHN P LEADER

v.

STATE OF ARIZONA, et al.

KATHLEEN L WIENEKE

MARICOPA COUNTY CREDITOR

NO ADDRESS ON RECORD

CHRISTOPHER J ZACHAR

**UNDER ADVISEMENT RULING**

The Court took this matter under advisement after Oral Argument was held on August 3, 2016 on:

- Defendant State of Arizona's Amended Motion for New Trial on Damages, or, in the alternative, for Remittitur;
- Defendant State of Arizona's Motion for New Trial Concerning Expert Standard-of-Care Testimony;
- Defendant State of Arizona's Motion for a New Trial With Respect to Defendant's Duty to Warn;
- Defendant State of Arizona's Renewed Motion for Judgment as a Matter of Law;
- Defendant State of Arizona's Motion for a New Trial With Respect to A.R.S. 12-820.01.

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The Court has considered the arguments of the parties and the pleadings. The Court makes the following findings and enters the following orders.

On December 16, 2015, after a ten day jury trial, the jury rendered a forty-seven million ten thousand dollars (\$47,010,000.00) in verdicts for the wrongful deaths of Pamela Humphrey and Anne Quinn.

THE COURT FINDS that Ms. Humphrey and Ms. Quinn were killed in a cross over median accident that occurred approximately at mile post 171.4 on interstate 10. The jury awarded:

Plaintiff Mike Humphrey	<u>\$18,330,000.00</u>
Plaintiff Sean Humphrey	<u>\$9,900,000.00</u>
Plaintiff Lynn Quinn	<u>\$6,260,000.00</u>
Plaintiff Brent Quinn	<u>\$6,260,000.00</u>
Plaintiff Chase Quinn	<u>\$6,260,000.00</u>
<b>Total</b>	<b>\$47,010,000.00</b>

THE COURT FURTHER FINDS that the jury found Ms. Humphrey who was driving the vehicle to be 15% at fault for the accident. This would reduce each Plaintiff's award by 15% and reduce the total liability to the State for a total of \$39,958,500.00.

The Court will now consider the Defendant State of Arizona's Motion for a New Trial With Respect to A.R.S. 12-820.01.

In the Court's minute entry of November 18, 2015, the Court considered Defendant's Motion for Summary Judgment with respect to A.R.S. 12-820.01. At the bottom of page 2 of that minute entry and the top of page 3, the Court denied Defendant's Motion for Summary Judgment and found that the State did not have an absolute immunity claim under A.R.S. 12-820.01. The Court having previously ruled on this issue,

IT IS ORDERED denying Defendant State of Arizona's Motion for a New Trial With Respect to A.R.S. 12-820.01.

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The Court will now consider Defendant State of Arizona's Renewed Motion for Judgment as a Matter of Law.

THE COURT FINDS that Defendant's claim that Plaintiffs violated A.R.S. 12-821 by failing to give a timely notice of claim. This Court has previously ruled that the issue of whether the Plaintiffs reasonably should have known or knew they had a claim was a question for the jury. The Court further finds the jury has entered a general verdict in favor of all Plaintiffs. The Court further finds the jury was given testimony with regard to when the Plaintiffs knew or reasonably should have known they had a claim against the State and considered it in their deliberations prior to rendering the verdict.

IT IS THEREFORE ORDERED denying Defendant State of Arizona's Renewed Motion for Judgment as a Matter of Law.

The Court will now consider Defendant State of Arizona's Motion for a New Trial With Respect to Defendant's Duty to Warn. Both parties agreed to waive argument and submitted this Motion on the briefs.

THE COURT FINDS the jury was properly instructed on Defendant's duty to warn.

IT IS THEREFORE ORDERED denying Defendant State of Arizona's Motion for a New Trial With Respect to Defendant's Duty to Warn.

The Court will now consider Defendant State of Arizona's Motion for New Trial Concerning Expert Standard-of-Care Testimony. Both parties agreed to waive argument and submitted this Motion on the briefs.

THE COURT FINDS that it is the State's contention that Dr. Bleyl should not have been allowed to testify and offer his opinions that the State could have installed median barriers in this case. The Court notes that in the Court's previously minute entry of November 15, 2013, the Court found that Dr. Robert Bleyl was qualified to offer expert opinions in this case. The Court further notes that in the Court's November 18, 2015 minute entry, the Court considered the Defendant's Motion *In Limine* to preclude the testimony of Dr. Robert Bleyl which was denied. On the previous two occasions, the Court has found that Dr. Bleyl to be a competent expert.

IT IS THEREFORE ORDERED denying Defendant State of Arizona's current Motion for New Trial Concerning Expert Standard-of-Care Testimony.

The Court will now consider Defendant State of Arizona's Amended Motion for New Trial on Damages, or, in the alternative, for Remittitur.

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The State requests the Court to grant a new trial or remit the amount of the jury verdict, pursuant to Rules 58 and 59 of the Arizona Rules of Civil Procedure. The State contends that the jury award was not supported by the evidence and was excessive to the point that it shocked the conscience and became punitive in nature. The State also contends that the Court was in error with respect to issues pertaining to the law, admissions of evidence, and in jury instructions.

THE COURT FINDS the Defendant requested the jury enter a verdict in a range of zero (0) dollars to fifty (50) million dollars. The Court further finds the current jury verdict fell within that range. The Court further finds that there was adequate evidence to support the finding of damages by the jury. The Court does not find that the jury award is punitive in nature and the Court does not find that there were sufficient errors, with respect to the law, admission of evidence, or jury instructions to necessitate a new trial.

The Court will now consider the Defendant's request for Remittitur of the verdict.

The Court has considered Plaintiffs' Notice of Supplemental Authority and the Defendant's Response to Plaintiffs' Notice of Supplemental Authority.

THE COURT FINDS the Arizona Court of Appeals Division One issued an opinion on July 12, 2016 in *Ahmad vs. State*, 1CA-CV 14-0664, 2016 WL 3773547. The Court of Appeals in Ahmad quoted *Larriva vs. Widmer*, 101 Ariz. 1,7 (1966)

“The law is well settled in Arizona that the amount of an award of damages is a question peculiarly within the province of the jury, and such award will not be overturned or tampered with unless the verdict was the result of passion or prejudice.”

The Ahmad Court further went on to quote, *Hutcherson vs. City of Phoenix*, 192 Ariz. 51, 57, 36 (1998) “Verdict size alone does not signal passion or prejudice.”

Under A.R.S. 12-613 (the wrongful death statute) reads, a jury “shall give damages as it deems fair and just” for “the injury resulting from the death to the surviving parties.”

THE COURT FURTHER FINDS that the Court of Appeals in the Ahmad case found that canvassing jury verdicts in similar cases was unpersuasive in reducing a jury award. The Ahmad Court stated:

“We agree with *Wry* (*Wry vs. Dial*, 18 Ariz. App. 503, 514-515 (1972)) that each jury is required to give each litigant individual consideration based on the

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evidence in the individual case. Each jury is also entitled to great deference -- especially when its statutory mission is to enter a verdict that is simply “just” and “fair”.

THE COURT FURTHER FINDS the Court of Appeals in Ahmad found that since there was no “*concrete defect*” in a jury award, the Remittitur was reversed and sent back to the trial Court.

The Court will now consider Defendant’s reasons for the Remittitur.

Defendant first argued the Remittitur is necessary because the Plaintiffs used a “send a message” in their closing arguments. The Court is not persuaded that this is concrete grounds to remit the verdict.

Defendant then wishes the Court to consider that there is limited evidence on the emotional damage by the Quinn Claimants and by Mike and Sean Humphrey. The Court is not persuaded that this is concrete grounds to remit the verdict. There was ample testimony from the Quinns and Humphreys as to their emotional damages.

Defendant then asked the Court to reduce the verdict because Plaintiffs’ counsel argued that the damages should go for 60 years rather than 30 years of the Plaintiffs’ life expectancy, and 30 years of their marriage prior to the accident. The Court is not persuaded that this is concrete grounds to remit the verdict. The jury heard the testimony of the Plaintiffs’ life expectancy and her relationship with the parties.

The State then asked the Court to remit the verdict by canvassing other verdicts in wrongful death cases. As previously stated, the Court of Appeals in Ahmad frowns on this as a basis for Remittitur. However, the State argues that in *Glazer vs. State of Arizona*, 237 Ariz. 160, 162-63 (2015), a jury in Maricopa County awarded approximately \$7.8 million dollars to the surviving parties in a wrongful death case. The State argues that it occurred on the same highway, same area, and under the same legal theories as the Humphrey/Quinn case.

The Court does note that prior to trial, the Defendant moved to exclude any testimony or evidence regarding the Glazer case, or testimony of Diane Glazer in the Humphrey/Quinn trial. In the Court’s November 18, 2015 minute entry, the Court found that any reference to the Glazer litigation would be irrelevant and any probative value would be outweighed by any unfair prejudices. The Court did grant Defendant’s Motion to Exclude any reference of the Glazer case and testimony of Diane Glazer, unless there was a stipulation by the parties.

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THE COURT FINDS it is inconsistent that the State prior to trial would ask the Court to preclude any reference to the Glazer case; and then after trial when the jury has rendered a verdict, use the Glazer case as the main basis to remit the verdict. The Court finds by canvassing other wrongful death verdicts, in particular the *Glazer* verdict, is not sufficient concrete grounds to remit the verdict.

IT IS THEREFORE ORDERED denying Defendant State of Arizona's Amended Motion for New Trial on Damages, or, in the alternative, for Remittitur.

No further matters remain pending in this case, therefore, this is a final Judgment entered pursuant to Rule 54(c), Ariz.R.Civ.P.

Dated this 16<sup>th</sup> day of August, 2016

/ s / HONORABLE DAVID K. UDALL

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HONORABLE DAVID K. UDALL  
JUDICIAL OFFICER OF THE SUPERIOR COURT