

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAULA and JAMES LONGO, h/w : CIVIL ACTION
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F.W. WOOLWORTH CO. : No. 96-3754

O R D E R

AND NOW, this 14th day of October, 1997, the motion of plaintiffs Paula and James Longo for a new trial on damages is denied. Fed. R. Civ. P. 59(a).¹

M E M O R A N D U M

This personal injury action proceeded on the theory of strict liability. The facts were that in May, 1994, a stool purchased from defendant by plaintiff Paula Longo collapsed while she was sitting on it in her home. As a result, she fell and struck her head on the floor. Because the amount in controversy was not certified to be more than \$100,000, the case was first referred to compulsory arbitration. E.D. Pa. Local R. 53.2. On April 15, 1997, upon trial de novo, the jury deadlocked on liability.² In July, at the second trial, a jury returned a liability verdict in favor of plaintiffs and, thereafter, awarded

1. Under Fed. R. Civ. P. 59(a), "a new trial may be granted . . . for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States." Insofar as this is a diversity action, Pennsylvania law controls.

2. The parties agreed to bifurcate liability from damages.

\$19,000 to plaintiff Paula Longo as compensatory damages and \$3,000 to her husband for loss of consortium.³

The parties' evidence as to damages presented two remarkably divergent pictures. Plaintiffs' evidence portrayed a vital, productive, 45-year old person who was reduced to a pain-wracked, barely functioning level following her head trauma and injuries. She, her husband, their two daughters, and a friend so testified. A neuropsychologist and a neurologist provided expert opinion that attributed her suffering and disability to the accident and characterized her neurological deficits as permanent. Excepting as to necessity, it was stipulated that she had medical expenses of \$25,766, which included future expense of \$3,000.

Having been held responsible for the collapse of the stool, defendant Woolworth did not dispute that Mrs. Longo sustained a head injury. However, it contended that she made a full recovery within a matter of several months and that the balance of her claim should be ascribed to "malingering." Two physicians, a psychiatrist and a neurologist, testified to that effect. There was evidence in Mrs. Longo's medical records that she had experienced pre-accident symptoms, such as forgetfulness and depression, and had been involved in prior accidents. Both of defendant's experts said they found no objective data that supported her claim of long-lasting disability.

3. At the second trial, the parties agreed to accept a verdict of seven out of eight jurors as to both liability and damages.

The issue of the nature, extent and duration of Mrs. Longo's injuries and her resulting impairment was submitted to the jury. The \$19,000 verdict unmistakably reflects the jury's determination that, under the evidence, her injury and disability lasted for a limited time period and the majority of her complaints were not causally related to the accident. In short, the jury simply was not persuaded by plaintiffs' evidence on the issue of causation – an issue traditionally referred to the fact-finder.

As the jury was instructed, its function was to find the facts in the case based on the evidence; and it was the sole finder of the facts. While plaintiffs produced considerable evidence to support their version of damages, there was also ample evidence to support defendant's version. The amounts of the awards to Mr. and Mrs. Longo can not be said to be disproportionate to a finding of disablement of relatively short duration – a finding consistent with defendant's evidence in the case.

For these reasons, plaintiffs' post-verdict contention that the award to Mrs. Longo was "shocking and unacceptable" must be rejected. Pl.'s Mot. for New Tr. at 5. While her claim for medical expenses exceeded the amount awarded to her, the precise issue decided by the jury was that the major portion of that expense was not necessitated by the injuries she sustained in the accident. Defendant, therefore, was liable only for the expenses incurred for medical care and treatment rendered during the months immediately following the collapse of the stool – an amount much less than her claim for such expenses.

So viewed, there is no basis on which plaintiffs' motion for a new trial as to damages may be granted. In order to reach its verdicts as to the amounts of damages, the jury was not required to accept the opinions of defendant's medical witnesses to the effect that Mrs. Longo was a malingerer. At trial, she appeared to be long-suffering and distressed by her persistent complaints of pain and disability, and her witnesses depicted her as a person who had undergone drastic changes in health and lifestyle since the accident. The jury, however, as shown by its verdicts, was unconvinced that most of her claim was proven to have been caused by the trauma of her fall from the stool. That finding, given the evidence in the case, was completely within the jury's province.

Edmund V. Ludwig, S.J.