

13-0089

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA  
DIVISION II

EILENE R. POWNELL  
and JOHN R. POWNELL,

Plaintiffs,

v.

CASE NO.: 10-C-743  
Judge Russell M. Clawges, Jr.

LINDSEY M. ARTHURS,

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION FOR NEW TRIAL**

Presently pending before the Court is Plaintiffs' "Motion For New Trial" filed August 7, 2012. Defendant filed a response on September 4, 2012. The Court notes that these matters were discussed during a post-trial hearing held on September 11, 2012. After considering objections to the motions and hearing the arguments of counsel, as a result of its deliberations, the Court is ready to rule.

**DISCUSSION**

At the conclusion of all of the testimony and evidence presented during the trial in this matter, the jury found by a preponderance of the evidence that Plaintiff, Eilene R. Pownell, was entitled to recover damages of \$50,500.00 from the Defendant, \$38,000.00 of which was for special damages. The other \$12,500.00 was for general damages. The jury further found by a preponderance of the evidence that Plaintiff, John R. Pownell, was not entitled to recover any damages from the Defendant.

384, 83 L.Ed.2d 319 (1984).

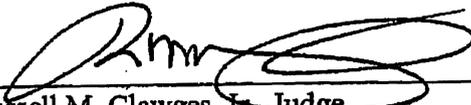
The Court notes that even if the jury considered only the first surgery to be necessary and related to the accident, the medical specials and lost wages associated only with it amount to approximately \$46,000.00—more than the \$38,000 awarded by the jury. Importantly, the Defendant did not contest the amount of the medical bills or dispute Mrs. Pownell's lost wages related to the first surgery.

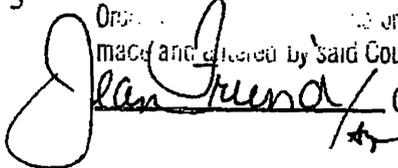
**ORDER**

ACCORDINGLY, it is ORDERED that the Plaintiff, Eilene R. Pownell's Motion For New Trial be and hereby is GRANTED on the issue of damages only.

The Court directs the Clerk of the Circuit Court of Monongalia County to distribute certified copies of this order to the parties and/or counsel of record.

Enter December 13, 2012

  
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Russell M. Clawges, Jr., Judge  
17<sup>th</sup> Judicial Circuit, Division II.

STATE OF WEST VIRGINIA SS:-----  
I, Jean Friend, Clerk of the Circuit Court and Family Court of \_\_\_\_\_ County State of West Virginia, do hereby certify that the attached Original Order is a true and correct copy of the original Order made and entered by said Court.  
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\_\_\_\_\_  
Jean Friend / Circuit Clerk