

No. 25863 - Harold James Marsch, Tammy Marsch, Joshua Marsch and Dena Marsch v. American Electric Power Company, Columbus Southern Power Company and Ohio Power Company

**FILED**

January 10, 2000  
DEBORAH L. McHENRY, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**RELEASED**

January 12, 2000  
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SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

Starcher, C. J., dissenting:

Our law is well settled on how circuit courts are supposed to deal with muddled jury verdicts. When a jury verdict does not include elements of damages that were specifically proven to exist, and exist in substantial amounts, then the verdict is inadequate and must be set aside. Syllabus Point 2, *Hall v. Groves*, 151 W.Va. 449, 153 S.E.2d 165 (1967). When a jury verdict is so confusing that it shows the jury was misled, mistaken or confused about the case, the verdict must be set aside. Syllabus Point 3, *Raines v. Faulkner*, 131 W.Va. 10, 48 S.E.2d 393 (1947).

The verdict in this case is a muddled mess. The jury awarded the plaintiff his economic damages on the basis of severe, obviously debilitating injuries. But the jury then ignored the pain and problems obviously caused by such debilitating injuries.

The defendant-appellees in this case were plainly negligent -- a hole in the floor of their electric plant was left open and unguarded, and plaintiff-appellant Marsch fell through the hole. The defendant-appellees admitted liability. The unresolved issue was the causation and extent of the injuries, if any, sustained by Mr. Marsch in the fall.

As a result of the workplace fall, Mr. Marsch claimed he sustained a minor injury, diagnosed as a right shoulder strain, and he was assigned to light duty in the tool shed

at work. Six weeks later, while Mr. Marsch was working at home he felt a severe pain in his right shoulder. He was diagnosed with having a full tear of the right rotator cuff, and missed work for 6 months. A little over 13 months later, Mr. Marsch complained of a right knee problem. A medical expert for Mr. Marsch opined that both the torn rotator cuff and the knee problem were a result of the original workplace injury.

The jury question in this case obviously boiled down to this: were the torn rotator cuff and the knee injury caused by the negligence of the defendant-appellees? If the jury answered “yes,” the plaintiff should have received his full damages, both economic and non-economic; if “no,” the plaintiff should have recovered either nothing, or only for damages for a minor right shoulder strain.

The jury’s verdict was, instead, equivocal. The jury determined that “yes,” Mr. Marsch’s torn rotator cuff *and* knee injury were the result of the defendant’s negligence, and awarded Mr. Marsch his past and future lost wages, and past and future medical expenses. But the jury did not award the plaintiff damages for past and future pain and suffering, loss of enjoyment of life, or loss of an ability to perform household services, and did not award consortium damages to the plaintiff’s family. The jury either concluded that the plaintiff didn’t have these damages, or that these damages were not proximately caused by the defendant’s negligence.

This verdict is totally in conflict with the evidence presented at trial, and more importantly, is inconsistent. How could the jury conclude that Mr. Marsch, whose job involved physical labor, was entitled to lost future wages because his injury precluded him

from working, but simultaneously conclude that the injury does not preclude him from working around the house? How could the jury possibly conclude that the torn flesh of a rotator cuff, and knee replacement surgery to fix ripped ligaments, were so inconsequential as to not cause pain for the plaintiff? So inconsequential to not affect his relations with his wife and children? The majority's focus on the fact that the plaintiff "didn't feel too banged up" after his fall and returned to work on light duty the next day is meaningless in light of the fact that 6 weeks after the fall, the plaintiff sustained an excruciating complete tear to his rotator cuff and missed work for 6 months.

The evidence in this case tells me that Mr. Marsch is a rough-and-tumble guy who gritted his teeth and went to work despite the pain. The evidence suggests that the plaintiff might have partially torn his rotator cuff in the fall through the floor. Most people would have taken a few days off work after suffering such a fall and injuring their shoulder and knee. Mr. Marsch classified the pain as feeling a bit "banged up," toughed it out for a paycheck, and went back to work light duty in the tool shed. The mere fact that the plaintiff was so injured that he could only do "light duty" tells me he was suffering pain from the fall -- and therefore, the jury should have awarded the plaintiff some damages for pain and suffering.

It frustrates me to see a person like Mr. Marsch do the right thing, to suffer through the pain with a smile and keep on working, and get penalized. The evidence all points to the fact that the plaintiff had an injury, he had pain, and that he and his family suffered as a result of the injury. When the jury's verdict awarded the plaintiff damages only

for his economic losses, and totally ignored these “non-economic” losses, the jury’s verdict was obviously the result of some confusion, mistake, misunderstanding or bizarre, illegal compromise.

I believe the verdict in this case was inadequate and was the result of confusion or mistake. Under our well-established legal principles, the verdict should have been set aside. I therefore dissent and am authorized to state that Justice McGraw joins in this dissent.