No. 26111 -- Wilma E. Vargo, Executrix of the Estate of Martha J. Fornari, deceased v. Sandra L. Pine and David J. Pine

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OF WEST VIRGINIA

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Starcher, J., dissenting:

The majority opinion is, in my view, a senseless exercise in hand-wringing over a perceived "tension in our law" regarding the standard to be followed in examining whether a jury verdict is inadequate. Our gut instinct tells us what the majority opinion takes pages and pages to condense: a jury's verdict will not stand when it is obvious that the jury just didn't get it, didn't understand the law or understand the evidence. I have no trouble with the rule.

The majority opinion, however, in the midst of this hand-wringing exercise, missed the whole point made by the appellants: the jury thought that a woman's entire life was worth the cost of helicopter trip to an emergency room and a casket. An elderly woman, living alone on a pension, smashed while going home from a round of bingo, was given a price tag of only $24,717.36. The woman's family actually recovered approximately half this amount, because the jury somehow credited the elderly woman with almost half the fault for the collision that caused her death -- when the elderly woman was in a crosswalk and legally had the right-of-way. The jury thought nothing of the fact that this woman brought home $1,427.00 a month in income, nor anything of the fact that she suffered pain as she was struck by the defendants' speeding car, nor anything of the anguish and loss suffered by the woman's children in the wake of her death.

The evidence in this case was quite simple: Martha Jean Fornari was walking home in Wellsburg, West Virginia. As she was crossing the street at a stop light, walking in a pedestrian cross walk, she was hit by the defendant. By law, she had the right-of-way[1] -- yet the judge sent the case to the jury with a comparative negligence instruction. (Apparently, it is now negligence for elderly women to cross the street.) It was dark and raining, and the defendant was driving at a high rate of speed. The parties agreed to the amount and reasonableness of medical expenses and funeral expenses prior to trial, but the question of future earnings by Mrs. Fornari, the losses incurred by her children, and whether Mrs. Fornari was in any way responsible for her own death were left in the hands of the jury.

The jury returned a verdict for the exact amount of the medical and funeral expenses, an exact amount already agreed to by the parties, and dumped the other damages. The jury also credited the

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[1] *W.Va. Code*, 17C-3-5 [1975] states, in pertinent part and with emphasis added:

> Whenever traffic is controlled by traffic-control signals . . . exhibiting different colored lights successively one at a time . . . the following colors only shall be used and said terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:
>
> (a) Green alone or "go":
>
> (1) Vehicular traffic facing the signal, except when prohibited under section two, article twelve of this chapter may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. *But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.*
>
> (2) Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

decedent with 49% of the fault for the collision. The jury's $24,717.36 verdict was then cut by nearly half due to the comparative negligence finding.

We have set aside identical verdicts in the past. In *Combs v. Hahn*, 205 W.Va. 102, 516 S.E.2d 506 (1999), we reversed a $16,125.00 jury verdict awarding only past medical expenses, because the verdict did not contain an award of damages for pain and suffering. In *Godfrey v. Godfrey*, 193 W.Va. 407, 456 S.E.2d 488 (1995) (*per curiam*), we held that $30,000.00 was a manifestly inadequate verdict for a little girl who had three toes chopped off by a negligently operated lawnmower, in part because the award did not fully cover future medical expenses, pain and suffering. And in *Martin v. Charleston Area Medical Ctr.*, 181 W.Va. 308, 382 S.E.2d 502 (1989), we set aside a $250,000.00 medical malpractice, wrongful death verdict because the award did not encompass the mental anguish and sense of loss suffered by the decedent's family members.

The verdict in the instant case shocks the conscience. When a jury totally fails to consider elements of damages obviously suffered by a plaintiff, then the jury has made a mistake, and the verdict should be set aside. The jury in the instant case just didn't get it, didn't understand the law and didn't understand the evidence, but that mistake was ignored by the majority opinion.

I therefore dissent.