

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 CA 0605

JESSIE ANDERSON AND TERRI ANDERSON

VERSUS

THE STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF  
TRANSPORTATION AND DEVELOPMENT

*EW*  
*EW*  
**DATE OF JUDGMENT: DEC 23 2014**

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT  
NUMBER 507,443, SECTION 23, PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA

HONORABLE WILLIAM A. MORVANT, JUDGE

\* \* \* \* \*

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Timberman Self-Insured Fund

\* \* \* \* \*

BEFORE: KUHN, PETTIGREW, AND WELCH, JJ.

**Disposition: REVERSED AND RENDERED.**

KUHN, J.

Plaintiffs-appellants, Terri Anderson and Jessica Anderson, appeal a trial court judgment dismissing their suit for damages against defendant-appellee, the State of Louisiana, through the Department of Transportation and Development (DOTD), complaining that the trial court erred in allowing introduction of, and testimony concerning, an exhibit produced by DOTD for the first time at trial. For the following reasons, we reverse the judgment of the trial court and, based on our *de novo* review, render judgment in favor of plaintiffs.

### **FACTS AND PROCEDURAL BACKGROUND**

During the course of his employment with J&J Merrick Enterprises on March 29, 2003, Jessie Anderson was operating a large, company-owned truck on La. Hwy. 64, a highway designed, constructed, maintained, and owned by DOTD. As Mr. Anderson was driving over a bridge located in Livingston Parish and was nearing its end, for unknown reasons, the truck drifted over the white line on the right edge of the travel lane toward the bridge guardrail located less than one foot away. As a result, the wheel lugs on the truck's right front tire made contact with and were pulled against the steel guardrail.

Less than one second later, as the truck continued to move forward, the wheel lugs encountered a section of the guardrail that was lapped backward over another section of guardrail (*i.e.*, the overlapping, top section of guardrail faced against the flow of traffic in the adjacent travel lane, rather than in the direction of that oncoming travel). At that point, the wheel lugs went underneath a portion of the overlapping guardrail and pulled it back; creating a sharp blade-like protrusion that cut the truck's right front tire. Due to the immediate, explosive decompression of the high-pressure tire, Mr. Anderson lost control of the truck, which continued to move forward off of the bridge and down an embankment on the right side of

the road, ultimately striking a tree. During the crash, Mr. Anderson's seat belt broke and he was ejected through the truck's windshield.

As a result of the accident, Mr. Anderson sustained severe injuries. He was hospitalized for almost two weeks before being transferred to a rehabilitation unit where he remained for several additional weeks. Upon his discharge, Mr. Anderson required a walker to ambulate. After receiving physical and occupational therapy at home, he eventually was able to walk several miles. Mr. Anderson became withdrawn and suffered from anxiety and depression. Approximately seven months after the accident, he disappeared from his home without explanation, and his wife filed a missing person report with the police. Over four years later, a utility crew discovered human remains that later were identified as Mr. Anderson. The coroner was unable to establish either a date or cause of death.

In May of 2003, Mr. Anderson and his wife, Terri, had filed a personal injury suit against DOTD. Following the discovery of Mr. Anderson's remains, his wife and daughter from a prior marriage, Jessica Anderson, were substituted as party plaintiffs.

Trial of this matter was held before a jury on January 21-23, 2014. At trial, the parties did not dispute how the accident occurred or the nature of Mr. Anderson's injuries. Rather, their disagreement centered on whether DOTD was at fault in causing Mr. Anderson's accident, *i.e.*, whether it had breached its duty of care. The jury returned a unanimous jury verdict finding that DOTD was not at fault. In accordance with that verdict, the trial court signed a written judgment dismissing plaintiffs' suit, with prejudice, at their costs. Plaintiffs now appeal.

#### **ASSIGNMENTS OF ERROR**

1. The trial court erred in allowing the introduction of and testimony concerning a DOTD document that, despite outstanding discovery requests, was not produced to plaintiffs until after plaintiffs rested and plaintiffs'

expert had departed, and this abuse of discretion interdicted the verdict of the jury.

2. The jury erred in finding that DOTD was not at fault in causing the crash at issue and in not awarding plaintiffs damages.

## ANALYSIS

### Evidentiary Ruling By Trial Court

Plaintiffs contend the trial court erred in admitting and allowing testimony concerning a documentary exhibit presented by DOTD pertaining to a crucial issue, despite the fact that DOTD failed to produce the exhibit in response to plaintiffs' discovery requests, producing it for the first time only after plaintiffs rested their case and their out-of-state expert had departed. Plaintiffs assert that the admission of this exhibit was so prejudicial as to interdict the jury's verdict because it went to the core of this case, which is the duty of care applicable to DOTD, as well as undermining the credibility and authority of plaintiffs' expert's testimony.

In opposition, DOTD argues that the admission of the defense exhibit (D-3) was not prejudicial to plaintiffs because it was introduced for the limited purpose of showing that one of the exhibits introduced by plaintiffs (P-11) was only one of nine pages of generic DOTD guardrail drawings, and that the full set of DOTD drawings also contained information indicating it was appropriate to lap guardrails backward against the flow of traffic in certain situations. DOTD maintains that the exhibit at issue was not crucial to this case one way or the other, and that the trial court did not abuse its broad discretion in allowing its admission.

The exhibit in question consists of a nine-page set of DOTD drawings pertaining to highway guardrails – one page of which indicated that *at the end of bridges* guardrails should be lapped backward against the flow of the traffic in the adjacent lane. Contrary to DOTD's arguments, this information goes to the core of plaintiffs' case, which is their contention that the backward lapping of the guardrail

against traffic was a breach of the applicable standard of care and created an unreasonable risk of harm. Moreover, DOTD previously had provided plaintiffs with only a single page from the full set of guardrail drawings, which was introduced by plaintiffs during their case-in-chief as P-11. Significantly, the drawings on P-11 indicated that the guardrail lapping should be in the direction of traffic, which supported plaintiffs' claims. Based on P-11, which were the only guardrail drawings provided by DOTD during discovery, plaintiffs' expert, Dr. John Glennon, testified that the backward lapping of the guardrail on the bridge where the accident occurred not only was inconsistent with national standards in the industry, but also was inconsistent with DOTD's own standards.

Even after plaintiffs presented this testimony by Dr. Glennon, DOTD did not refer to or attempt to produce the full set of DOTD drawings. Only after plaintiffs rested their case and Dr. Glennon departed for the airport did DOTD call Kurt Brauner, a DOTD employee, as their expert in bridge design. During direct examination of Brauner, DOTD brought up for the first time the existence of the full, multi-page set of DOTD drawings pertaining to guardrails. Counsel for plaintiffs immediately objected that it was prejudicial to do so, since DOTD had not produced the full set of drawings during discovery and did so at trial only after plaintiffs' expert had been released.

The trial court recognized the problem created by the late production of the drawings, stating, "If they've [plaintiffs] never seen this and the expert's never seen it and it's coming up now, that's a problem." Plaintiff's counsel indicated he was willing to stipulate that the drawings existed, but wanted it made clear to the jury that plaintiffs had not been provided with it previously, as he was concerned that the jury might infer that plaintiffs were trying to hide evidence. Thereafter, the trial court allowed DOTD to question its expert about the drawings and

ultimately allowed them to be introduced into evidence as D-3, all subject to plaintiffs' continuing objection.

Although the general rule is that all relevant evidence is admissible, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. See La. C.E. arts. 402 & 403. A district court is accorded broad discretion in deciding whether to admit or exclude evidence, and that decision may not be reversed on appeal in the absence of an abuse of discretion. In reviewing evidentiary rulings, the appellate court must consider whether the particular ruling complained of was erroneous and, if so, whether the error prejudiced the appellant's case. *Maddox v. Bailey*, 13-0564 (La. App. 1st Cir. 5/19/14), 146 So.3d 590, 594.

The determination to be made by the reviewing court is whether the error, when compared to the record in its totality, had a substantial effect on the outcome of the case. Legal errors are prejudicial when they materially affect the outcome of the trial and deprive a party of substantial rights. *Evans v. Lungrin*, 97-0541 (La. 2/6/98), 708 So.2d 731, 735; *Maddox*, 146 So.3d at 594. When a legal error regarding the admission or exclusion of evidence interdicts the fact-finding process and taints the jury's verdict, the manifest error standard is no longer applicable. In such cases, if the record is otherwise complete, the appellate court should conduct a *de novo* review. *Maddox*, 146 So.3d at 594; *Riverside Recycling, LLC v. BWI Companies Inc. of Texas*, 12-0588 (La. App. 1st Cir. 12/28/12), 112 So.3d 869, 874.

In this case, it is undisputed that prior to trial the only guardrail drawings produced by DOTD were on the one-page document that plaintiffs introduced at trial as P-11. Accordingly, plaintiffs' expert, Dr. Glennon, reviewed and reasonably based his testimony regarding DOTD's guardrails standards on that one page. DOTD never produced the full set of its guardrail drawings, which

contained additional information on the installation of guardrails, even though plaintiffs' contention that the bridge guardrails were improperly installed due to the backward lapping was well known to the parties. In fact, this contention was specifically listed among plaintiffs' claims in the pretrial order signed by the parties approximately eighteen months before trial. Further, in the same pretrial order, DOTD indicated that its exhibits would include schematics showing AASHTO<sup>1</sup> rail standards and documentation from DOTD showing proper installation of railings. Nevertheless, DOTD failed to produce the full set of DOTD guardrail drawings in response to plaintiffs' discovery requests.

One of the goals of Louisiana's discovery and pretrial procedures is to protect parties from *unfair* surprise at trial. See *Walker v. Smith*, 10-0721 (La. App. 1st Cir. 10/29/10) (unpublished). Discovery procedures exist for the purpose of affording all parties a fair opportunity to obtain pertinent facts, to discover true facts, and to compel disclosure of such facts. *Babineaux v. State ex rel. Dept. of Transp. and Development*, 04-2649 (La. App. 1st Cir. 12/22/05), 927 So.2d 1121, 1125. By producing only one page of DOTD drawings, which indicated that guardrails should be lapped in the direction of traffic, rather than producing the full set of DOTD's drawings and plans, DOTD misled plaintiffs concerning the pertinent facts. This omission led plaintiffs and their expert reasonably to conclude that DOTD's own standards did not allow backward lapping of guardrails under any circumstances. Moreover, Dr. Glennon testified to that effect before the jury.

DOTD's subsequent production for the first time of additional DOTD drawings demonstrating that DOTD permitted backward lapping of guardrails at the end of bridges was substantially prejudicial to plaintiffs' case. Further, the trial court allowed DOTD not only to introduce this exhibit, but also to question its

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<sup>1</sup> AASHTO is an acronym for the American Association of State Highway and Transportation Officials, which is a coalition of states and federal agencies that sets standards for transportation, including particularly the design of highways and bridges.

expert witness, Mr. Brauner, regarding the drawings in that exhibit. Mr. Brauner testified that the backward lapping of the guardrail on the bridge involved in this case was consistent with DOTD's standards, as outlined in the exhibit. This testimony directly contradicted the earlier testimony given by Dr. Glennon, which was based on his review of the only drawings that DOTD had produced before trial.

Based on our review, we conclude the trial court erred in admitting the full set of DOTD guardrail drawings as D-3 and in allowing testimony concerning that exhibit. Plaintiffs were taken completely by surprise and had no opportunity either to rebut Mr. Brauner's testimony regarding the exhibit or to prepare their case taking into account the new information it contained. Moreover, that new evidence substantially undermined both the credibility and the weight of Dr. Glennon's testimony. Even though the jury was informed that plaintiffs were unaware of the existence of the additional DOTD drawings until trial, the production of the evidence by DOTD contradicting Dr. Glennon's definitive testimony made it appear, at best, that he was poorly informed and/or that his opinions were based on incomplete information. That impression gave an unfair advantage to the testimony of DOTD's expert.

Furthermore, the timing of the exhibit's production exacerbated the prejudice to plaintiffs. DOTD waited until the middle of trial to produce the exhibit, after plaintiffs had rested and Dr. Glennon had departed for the airport. Since Dr. Glennon was unavailable to be recalled at that time, plaintiffs were deprived of any opportunity for him to rebut or otherwise address the new information contained in the exhibit.

Moreover, the trial court improperly allowed defense counsel to address the jury directly and comment on the exhibit during his questioning of DOTD's expert. Defense counsel not only purported to explain the intended purpose of the



evidence, but also the reason for the objection of plaintiffs' counsel, which was not properly a matter for the jury's consideration. It was an abuse of the trial court's discretion to allow such comments by defense counsel and it was also prejudicial.

We find no merit in DOTD's argument that the admission of, and testimony concerning, the exhibit was not prejudicial to plaintiffs because the purpose of the exhibit's introduction was limited and did not relate to a crucial issue. As noted previously, the set of DOTD guardrail drawings went to the heart of plaintiffs' claim that the guardrail on the bridge was installed improperly. Given the circumstances, the trial court abused its broad discretion in allowing the admission of and testimony concerning D-3. The admission of this evidence violated the objectives of Louisiana's discovery and pretrial procedures and amounted to a trial by ambush. Such unfair proceedings are not permissible. Further, as previously noted, the erroneous admission of this evidence substantially prejudiced plaintiffs by materially affecting the outcome of the trial and depriving them of substantial rights. Since the trial court's legal error interdicted the jury's fact-finding process and the record is otherwise complete, we must conduct a *de novo* review of the record, omitting any consideration of the erroneously admitted evidence. See Maddox, 146 So.3d at 601.

#### DOTD's Liability

There is no dispute in this case as to how the accident at issue occurred or its cause. Mr. Anderson lost control of the truck he was driving when the wheel lugs on the right front tire came into contact with the bridge guardrail and was cut, resulting in its explosive decompression. The only disputed element of plaintiffs' claim is whether the bridge guardrails were improperly installed so as to create an unreasonable risk of harm.<sup>2</sup> As posed in DOTD's appellate brief, the "simple

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<sup>2</sup> In a tort action against DOTD, whether based on strict liability or negligence, the plaintiff must show: (1) the property that caused the damage was in the custody of the DOTD; (2) the property was defective because it had a condition that created an unreasonable risk of harm; (3) DOTD

question to be answered” is whether the “back splicing [of the guardrail was] unreasonable, unwarranted, or not in keeping with industry standards.”

DOTD is not a guarantor of the safety of all the motoring public under every circumstance. However, DOTD has a duty to maintain public highways and bridges in a condition that is reasonably safe and does not present an unreasonable risk of harm to the motoring public exercising ordinary care and reasonable prudence. See La. R.S. 48:21(A); *Brooks v. State ex rel. Department of Transportation and Development*, 10-1908 (La. 7/1/11), 74 So.3d 187, 189-90; *Robin v. Mississippi Fast Freight Company, Inc.* 97-2556 (La. App. 1st Cir. 12/28/98), 744 So.2d 42, 45, writ denied, 99-0688 (La. 4/30/99), 741 So.2d 16. This duty also extends to the shoulders of highway, and it encompasses the foreseeable risk that for any number of reasons, including simple inadvertence, a motorist might find himself traveling off of the roadway and on, or partially on, the shoulder. Thus, DOTD’s duty extends not only to prudent and attentive drivers, but also to motorists who are slightly exceeding the speed limit or momentarily inattentive. *Brooks*, 74 So.3d at 189; *Cormier v. Comeaux*, 98-2378 (La. 7/7/99) 748 So.2d 1123, 1127.

Further, under La. R.S. 48:35A(1), DOTD is required to adopt minimum safety standards conforming with the standards set forth by AASHTO with respect to highway design, construction, and maintenance, whenever possible. *Thornhill v. State Department of Transportation and Development*, 95-1946 (La. App. 1st Cir. 6/28/96), 676 So.2d 799, 804 writs denied, 96-2014, 96-2021 (La. 11/8/96), 683 So.2d 272. While failure to adhere to AASHTO standards may not in itself attach liability, whether DOTD has conformed to the applicable AASHTO standards is a relevant factor in determining the ultimate issue of whether the

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had actual or constructive notice of the risk; and (4) the defect in the property was a cause-in-fact of the plaintiff’s injuries. The analysis is the same under either theory. *Toston v. Pardon*, 03-1747 (La. 4/23/04), 874 So.2d 791, 798-99.

highway is unreasonably dangerous. Although design standards may be relevant factors in deciding whether a roadway presents an unreasonable risk of harm, standards alone are not determinative. *Harris v. State ex rel. Department of Transportation and Development*, 07-1566 (La. App. 1st Cir. 11/10/08), 997 So.2d 849, 865, writ denied, 999 So.2d 785, 08-2886 (La. 2/6/09).

The evidence in this case established that although DOTD generally installed guardrails in the direction of traffic in the adjacent lane, it was DOTD's policy to install guardrails on the last splice nearest to the end of a bridge backwards against the traffic in the adjacent lane. DOTD's expert, Mr. Brauner, explained that this policy was a consequence of the fact that the curved guardrail at the end of a bridge is not designed to protect traffic in the lane adjacent to it, but rather to protect motorists approaching the bridge in the opposite lane of traffic who might cross the centerline and strike the concrete abutment at the end of the bridge. Mr. Brauner testified that this policy conformed to AASHTO's standards.

On the other hand, plaintiffs' expert was unequivocal in his testimony that DOTD's policy was inconsistent with AASHTO's standards, which he indicated provided for lapping of guardrails in the direction of traffic. He further stated that it had been the practice in the industry for decades that guardrails be lapped in this manner. According to Dr. Glennon, it is well-known that lapping guardrails against the flow of traffic creates extra hazards in two ways: (1) the danger of the guardrail snagging vehicles; and (2) the danger of a vehicle tearing the guardrail loose.

It was Dr. Glennon's expert opinion that the backward lapping at the specific point where Mr. Anderson's vehicle came into contact with the guardrail was contrary to AASHTO and industry standards. He opined that the backward lapping of the guardrail struck by Mr. Anderson was improper and violated the duty of care owed by DOTD. Dr. Glennon acknowledged that backward lapping may be

permissible on the curved portion of the guardrail at the end of a bridge because the greater concern there is not motorists in the adjacent lane since the guardrail is curved away from them, but to protect motorists approaching in the opposite lane of travel who might cross the centerline and hit the bridge's concrete abutment. However, Dr. Glennon testified emphatically that backward lapping was *never* permissible on the portion of the bridge where the guardrail was parallel to the centerline. In that situation, the vehicle most likely to hit the guardrail is the vehicle in the adjacent lane, which in this case was less than one foot from the guardrail, rather than a vehicle in the opposing lane of travel approximately twelve feet away. He indicated that when the guardrail is lapped in the direction of traffic in the adjacent lane, the potential for the vehicle snagging on the guardrail is reduced, increasing the likelihood of the guardrail redirecting the vehicle back into its lane of traffic.

Additionally, plaintiffs' expert in mechanical engineering, Andrew McPhate, testified emphatically that, in his opinion, the accident would not have occurred if the lapping of the bridge guardrail had been with, instead of against, the traffic in the adjacent lane. He explained that if the guardrail had been lapped in the direction of traffic in the adjacent lane, the wheel lugs would not have gone under the lip of the spliced section and peeled it back into a sharp protrusion that cut the truck's tire.

Based on our review of the admissible evidence, we conclude that DOTD's installation of the guardrail against traffic in this case was not in compliance with either AASHTO standards or the generally accepted practices in the industry. Although the evidence indicated that backward lapping may be permissible on the curved portion of the guardrail at the end of a bridge, that is not where this accident occurred. DOTD's own expert, Mr. Brauner, admitted that the guardrail was not curved away from the centerline at the point where it was struck. Although the

truck made contact with the guardrail near the end of the bridge, it was still on the portion of the bridge where the guardrail was parallel to the centerline, in which case Dr. Glennon testified that the guardrail should always be lapped in the direction of traffic. The backward lapping of the guardrail on that section of the bridge violated DOTD's duty of care and created an unreasonable risk of harm to motorists because the greatest danger at the point where the truck struck the guardrail was to vehicles traveling in the adjacent lane of traffic. While DOTD claimed that backward lapping on the curved guardrail at the end of the bridge was necessary to protect vehicles approaching from the opposite direction that might cross the centerline and strike the concrete abutment, those vehicles had already passed the bridge's concrete abutment at the point on the bridge where Mr. Anderson hit the guardrail. Accordingly, there being no dispute as to the remaining elements of plaintiffs' claim, DOTD is liable for the injuries caused by Mr. Anderson's accident.

Although DOTD was at fault in causing Mr. Anderson's accident, he also was guilty of some comparative fault in allowing his truck to drift over the edge of the traffic lane and strike the guardrail. The reason he did so could not be established at trial, since Mr. Anderson was deceased by that time and apparently disappeared before being deposed in this matter. In allocating fault pursuant to La. C.C. art. 2323, the factfinder must consider both the nature of the conduct of each party at fault and the extent of the causal relation between the conduct and the damages claimed. Factors influencing the degree of fault assigned include: (1) whether the conduct resulted from inadvertence or involved an awareness of the danger; (2) how great a risk was created by the conduct; (3) the significance of what was sought by the conduct; (4) the capacities of the actor, whether superior or inferior; and (5) any extenuating circumstances which might require the actor to proceed in haste, without proper thought. *Watson v. State Farm Fire and*

*Casualty Insurance Company*, 469 So.2d 967, 974 (La. 1985); *Smegal v. Gettys*, 10-0648 (La. App. 1st Cir. 10/29/10), 48 So.3d 431, 439. Based on our careful consideration of these factors, we find that DOTD is culpable of a far greater degree of fault creating a substantial risk to the motoring public than Mr. Anderson. We apportion ninety percent fault to DOTD and ten percent to Mr. Anderson.

#### Damages

Since plaintiffs were not awarded damages below, we must now determine an appropriate award for general and special damages. General damages cannot be measured definitively in terms of money and involve mental or physical pain or suffering, inconvenience, loss of gratification or intellectual or physical enjoyment, or other losses of lifestyle. The factors to be considered in assessing quantum of damages for pain and suffering are severity and duration. *Pena v. Delchamps, Inc.*, 06-0364 (La. App. 1st Cir. 3/28/07), 960 So.2d 988, 994), writ denied, 07-0875 (La. 6/22/07), 959 So.2d 498. Special damages are those that have a “ready market value,” such that the amount of damages theoretically may be determined with relative certainty, including medical expenses and lost wages. *Guillory v. Lee*, 09-0075 (La. 6/26/09), 16 So.3d 1104, 1117.

In this case, Mr. Anderson was ejected from his truck during the accident and sustained serious, multiple injuries, including a closed head injury with scalp lacerations, anemia secondary to blood loss, a rib fracture, a sprained finger, bilateral lower extremity paresis (leg weakness), left ankle foot drop (inability to flex ankle), cardiac, pulmonary, and spinal cord contusions, and multiple bruises, strains, and lacerations. He was hospitalized for almost two weeks, five days of which were in intensive care, before being transferred to a rehabilitation unit where he remained for approximately three more weeks. During his hospitalization and

rehabilitation, Mr. Anderson experienced pain throughout his body, particularly in his shoulders, back, and left ankle.

Upon his discharge, Mr. Anderson continued to receive physical and occupational therapy at home. In the six months that he was at home prior to his disappearance, Mr. Anderson continued to complain of aches and pains throughout his body for which he continued to require pain medication. According to Mrs. Anderson, the accident changed the way they lived as a couple. She testified that Mr. Anderson became depressed and withdrawn, stopped going to church, and mostly just sat inside the house watching television. Previously, he had been very active and even worked multiple jobs at a given time. On occasion, when Mrs. Anderson returned to the house, she found Mr. Anderson already lying in bed in the dark. She testified further that Mr. Anderson only drove a little after the accident and that she believed he was afraid to drive. Following the accident, the Andersons no longer had physical relations.

Considering the numerous traumatic and painful injuries suffered by Mr. Anderson, as well as his extensive hospitalization and rehabilitation, we find that an award of \$180,000.00 is appropriate for his general damages. Additionally, Mrs. Anderson is entitled to an award of \$10,000.00 for loss of consortium.

With respect to special damages, DOTD does not contest the \$78,803.72 figure presented by plaintiffs as the amount of Mr. Anderson's medical expenses. Accordingly, a medical expenses award will be made to plaintiffs in that amount. Finally, the parties stipulated that Mr. Anderson's average weekly wages were \$624.00. Multiplying that amount by the thirty weeks (minus one day) between

the accident and Mr. Anderson's disappearance, we calculate his lost wages to be \$18,630.86.<sup>3</sup>

### CONCLUSION

For the reasons assigned, we reverse the trial court judgment dismissing the claims of plaintiffs-appellants, Terri Anderson and Jessica Anderson, and casting them with costs. Judgment is hereby rendered in favor of plaintiffs-appellants, Terri Anderson and Jessica Anderson, individually and on behalf of the estate of Jessie Anderson, and against defendant-appellee, DOTD, assessing damages in the amount of \$180,000.00 for general damages, \$78,803.72 for medical expenses, and \$18,630.86 for lost wages and, after reducing these amounts by ten percent as a result of Mr. Anderson's comparative fault, we hereby award plaintiffs the amount of \$249,691.12. Additionally, based on our determination that Terri Anderson's damages for loss of consortium amount to \$10,000.00, subject to a ten-percent reduction for Mr. Anderson's comparative fault, we hereby render judgment in favor of plaintiff-appellant, Terri Anderson, individually, and against defendant-appellee, DOTD, in the amount of \$9,000.00. DOTD is to pay all costs of this appeal, in the amount of \$1,815.00.

**REVERSED AND RENDERED.**

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<sup>3</sup> Since there was testimony that Mr. Anderson worked seven days a week, we calculated his average daily wage to be \$89.14. Therefore, since the period for which we calculated lost wages was one day short of thirty weeks, we multiplied \$624.00 by thirty and then subtracted \$89.14 ( $624.00 \times 30 - 89.14 = 18,630.86$ ).