

STATE OF MICHIGAN
COURT OF APPEALS

BREANNA TOPPA,

Plaintiff-Appellee,

v

PINKY HARI LALA and SARI PALACE
CORPORATION,

Defendants-Appellants,

and

SHANTIBAI LALA, ALEXIS SOPHIA MOORE
and PHILLIP MOORE,

Defendants.

UNPUBLISHED

August 2, 2002

No. 231534

Wayne Circuit Court

LC No. 96-630881-NI

Before: Murray, P.J., and Sawyer and Zahra, JJ.

PER CURIAM.

Defendants-appellants appeal as of right from a judgment in plaintiff's favor entered after the court granted a motion for a new trial or additur. We reverse and remand for reinstatement of the original verdict. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A new trial may be granted only if the jury awards inadequate damages due to the influence of passion or prejudice or if the verdict is clearly or grossly inadequate. MCR 2.611(A)(1)(c), (d); MCL 600.6098(2)(b)(iv), (v). The court rule and statute provide the only bases on which a jury verdict may be set aside. *Kelly v Builders Square, Inc*, 465 Mich 29, 38; 632 NW2d 912 (2001). If the court, in considering a motion for a new trial, finds that the only error in the trial is the inadequacy of the verdict, it may deny a motion for a new trial on condition that the nonmoving party consent to entry of a judgment in an amount found by the court to be the lowest amount the evidence will support. MCR 2.611(E)(1); MCL 600.6098(2)(d). The proper consideration in granting additur is whether the jury award is supported by the evidence. *Wilson v General Motors Corp*, 183 Mich App 21, 38; 454 NW2d 405 (1990).

In determining whether the award is supported by the evidence, the court may consider objective factors relating to the actual conduct of the trial or the evidence adduced, such as whether the verdict was the result of improper methods, prejudice, passion, partiality, sympathy, corruption, or mistake of law or fact; whether the verdict was within the limits of what reasonable minds could consider just compensation for the injury sustained; and whether the amount awarded was comparable to awards in similar cases. *Palenkas v Beaumont Hospital*, 432 Mich 527, 532-533; 443 NW2d 354 (1989).

Additur is also appropriate where, for example, the jury ignores uncontroverted evidence. *Arnold v Darczy*, 208 Mich App 638, 640; 528 NW2d 199 (1995). The trial court's ruling is reviewed for an abuse of discretion. *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 172; 568 NW2d 365 (1997). This Court should defer to the trial court's decision because of its superior ability to view the evidence and evaluate the credibility of the witnesses. *Phillips v Deihm*, 213 Mich App 389, 404; 541 NW2d 566 (1995).

In the instant case the evidence showed that plaintiff survived a traumatic automobile accident with minor injuries that were completely healed within two months with the only residual effect being a bump on the clavicle. Plaintiff sought only noneconomic damages. Personal injury damages, particularly those for pain and suffering, are within the sound discretion of the trier of fact and there is no absolute standard for measuring such damages. *Meek v Dep't of Transportation*, 240 Mich App 105, 122; 610 NW2d 250 (2000). The jury is not required to award damages for pain and suffering, even where it finds that the plaintiff suffered an injury and incurred medical expenses. *Kelly, supra* at 39.

The trial court rejected plaintiff's claim that the jury's verdict resulted from prejudice caused by defense counsel's allegedly inappropriate remarks during closing argument. It did not find that the verdict was clearly or grossly inadequate, that it was beyond what reasonable minds could consider just compensation, or that the jury failed to consider uncontroverted evidence. Its only reason for granting the motion was that the verdict was "reasonably low." This is not a legally recognized basis for disturbing a jury verdict. Accordingly, we find that the trial court abused its discretion in granting additur.

Reversed and remanded for entry of a judgment consistent with the original jury verdict. We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Brian K. Zahra