



Alerts

Determining Future Lost Wages for Minor Child Speculative, But Unavoidable Task

December 17, 2020

Health Care Alert

This alert was featured in Hinshaw's Annual Guide to Illinois Medical Malpractice Decisions: 2020 Edition

Issue

Was a trial court's award of \$8.3 million to a minor child excessive?

Yong Juan Zhao v. USA, 963 F.3d 692 (7th Cir. 2020)

Case Summary

This medical malpractice lawsuit involving an alleged shoulder dystocia injury arose under the Federal Tort Claims Act. Plaintiff's expert neurologist opined that the nerves of the subject injured baby's right arm had been completely torn away from his spinal cord, stretched, and scarred, requiring several surgeries to restore a degree of function. Experts also testified that the baby would require surgery in the future, and ongoing occupational and physical therapy for the rest of his life, to deal with permanent injuries that left him unable to use his right hand in most activities of daily living. A bench trial resulted in a judgment for plaintiff in the amount of \$8.3 million, including approximately \$65,000 for past medical expenses, \$80,000 for future medical expenses, \$2.653 million in lost earnings, \$1.5 million for permanent disfigurement of his right arm, \$2 million for deprivation of a normal life, and \$2 million for pain, suffering, and emotional distress.

Defendant appealed, challenging the extent of the damages for lost earnings and non-economic damages. The appellate court characterized the lost earnings award as a difficult but unavoidable prediction involving a five-year-old's future and noted that the trial court calculated lost future earnings by taking defendant's vocational expert's salary range (\$100,000 – \$30,000) and split the difference to arrive at a future lost annual salary of \$70,000. The trial court then multiplied that amount times plaintiff's expert's estimate of the baby's estimated work-life expectancy of 37.9 years (defendant's expert did not offer an estimate of work-life expectancy). The appellate court rejected defendant's argument that despite evidence of a permanent injury that would reduce future earnings capacity, the damages award would be \$0 due to the uncertainty around future wages predictions.

With respect to non-economic damages, defendant challenged the award as out of proportion to the comparator cases considered by the trial court, as well as those not considered. The appellate court ruled that the trial court did not abuse its discretion and that its award was comparable to similar cases, and affirmed the lower court's careful findings of fact supporting each category of damage award. Defendant had argued that the baby was not disfigured, suffered no pain or emotional distress from his injury and would not need future medical care, and that he would no experience loss of a normal life because his injury occurred at birth and so he would know no alternative. The appellate court also affirmed the trial court's refusal to consider settlements as comparator cases. The trial court had followed a decision resulting in a jury verdict of \$13.298 million, but properly reduced the award amount given the relative difference in severity of injury between the two cases. Defendant failed to put forward other more relevant comparator cases to disturb the trial court's ruling.



Takeaways

Defendants seeking to challenge a trial court's evaluation of damages should consider offering up comparator decisions in which lower damages were awarded, but with awareness regarding the appellate court's deferential standard of review to a trial court's award of damages.

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