Kansas Supreme Court Overturns Statutory Cap On “Pain and Suffering” And Other Noneconomic Damages In Personal Injury Cases

By Chris Tillery

On Friday, June 14, 2019, the Kansas Supreme Court ruled that Kansas’s statutory cap on damages for noneconomic injuries – such as “pain and suffering” – unconstitutional in personal injury lawsuits, holding:

“Section 5 of the Kansas Constitution Bill of Rights declares, “The right of trial by jury shall be inviolate”…. The noneconomic damages cap under K.S.A. 60-19a02 violates the right protected by section 5, because it intrudes upon the jury’s determination of the compensation owed personal injury plaintiffs to redress their injuries.”

Noneconomic Injuries and Damage Caps

Monetary awards in personal injury lawsuits are typically separated into three categories:

- Economic, or “specific” damages, reimburse plaintiffs for past and future out-of-pocket losses resulting from the injury, such as medical bills, lost wages, or property losses.
- Non-economic, also known as “general” damages, compensate plaintiffs for past and future non-monetary losses, such as disability and/or disfigurement, so-called “pain and suffering,” or loss of companionship/consortium, reputation, or “enjoyment of life.”
- Punitive, or “exemplary” damages, focus on the conduct of the defendant(s), and are meant to punish the wrongdoer for particularly egregious actions and deter others from engaging in the same type of conduct.

Unlike economic damages, noneconomic damages can vary widely due to the highly subjective nature of “pain and suffering,” disfigurement, etc. experienced by the plaintiff and difficulty in placing a monetary value on such injuries. And like punitive damages, noneconomic damages often prove fertile ground for high jury awards in cases involving particularly horrendous injuries and/or sympathetic plaintiffs. During the “tort reform” era of the 1980’s and early 1990’s, Kansas and other states responded to fears that such runaway jury awards would cause insurance premiums for the medical profession and other businesses to skyrocket and hurt the economy by passing statutory limitations on noneconomic and punitive damages.

The Kansas statute, K.S.A. 60-19a02(a), states in pertinent part that “in any personal injury action, the total amount recoverable by each party from all defendants for all claims for noneconomic loss shall not exceed a sum total of $250,000.” The cap has been revised upward over the years and now stands at $325,000. It was scheduled to increase to $350,000 in 2022. However, pursuant to the Kansas Supreme Court’s recent decision, the statutory cap is unconstitutional and can no longer be applied to limit noneconomic damage awards in personal injury cases in Kansas.

The Decision

The Kansas Supreme Court overturned the statute in *Hilburn v. Enerpipe, Ltd*., a truck accident case in which the plaintiff, Diana Hilburn, was injured in 2010 when a car she was riding in was rear-ended by a semi-trailer owned by defendant, Enerpipe. Hilburn alleged that the truck driver’s negligence caused the accident, and that Enerpipe was vicariously liable for its driver’s actions. Enerpipe admitted both the driver’s negligence and vicarious liability for his actions at trial. The jury awarded Hilburn $33,490 for medical expenses and $301,509 for noneconomic losses. However, pursuant to K.S.A. 60-19a02(a), the trial judge reduced her noneconomic award to $250,000, which was the statutory limit at the time. Hilburn appealed arguing that the cap violated her right to jury trial under the Kansas Constitution. The Kansas Court of Appeals rejected Hilburn’s argument relying on the Kansas Supreme Court’s earlier opinion in a medical malpractice case that had upheld the cap, *Miller v. Johnson*, 295 Kan. 636, 289 P.3d 1098 (2012). Hilburn then sought review by the Kansas Supreme Court.

In a 4-2 decision reversing both the trial court and Court of Appeals, the Kansas Supreme Court rejected its previous reasoning in *Miller* that the right to a jury trial could be modified by statute. Instead, Justice Carol Beier wrote for the majority:

[W]e simply cannot square a right specially designated by the people as ‘inviolate’ with the practical effect of the damages cap: substituting juries’ factual determinations of actual damages with an across-the-board legislative determination of the maximum conceivable amount of actual damages…. Although, as a purely technical, theoretical matter, we agree that the mere application of an existing damages cap to reduce a jury’s award is a matter of law, this statement begs the question at the heart of this case: To whom have the people of Kansas assigned the determination of the amount of the award? Unless an injured party has decided to waive his or her right under section 5, the answer is “the jury.”

…The jury’s traditional role in determining the amount of a pecuniary award necessary to make a party whole includes an assessment of noneconomic damages. Regardless of whether an existing damages cap is technically or theoretically applied as a matter of law, the cap’s effect is to disturb the jury’s finding of fact on the amount of the award. Allowing this substitutes the Legislature’s nonspecific judgment for the jury’s specific judgment. The people deprived the Legislature of that power when they made the right to trial by jury inviolate. Thus we hold that the cap on damages imposed by K.S.A. 60-19a02 is facially unconstitutional because it violates section 5 of the Kansas Constitution Bill of Rights.

Effect on Pending and Future Lawsuits

The Court’s decision will have an immediate effect on all pending and future personal injury actions in Kansas, including medical malpractice, motor vehicle, and premises liability cases. In all such cases, the jury will be permitted to determine and decide the amount of past and future noneconomic damages recoverable by the plaintiff without any subsequent application of the cap to limit their award.

However, it should be noted that this decision does *not* affect the separate statutory damage caps in Kansas for wrongful-death actions (K.S.A. 60-1903) or punitive damages (K.S.A. 60-3701). As the Kansas Supreme Court noted in its opinion, “Section 5 preserves the jury trial right as it historically existed at common law when our state’s constitution came into existence.” Since neither wrongful death

actions nor punitive damages were available at common-law when the Kansas Constitution was written, there is no constitutional right to have a jury determine the amount of damages under either remedy.

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