

IN THE CIRCUIT COURT OF COPIAH COUNTY, MISSISSIPPI

PHILLIP M. GREGORY

PLAINTIFF

VS.

CIVIL ACTION NO. 2021-0539

ANTHONY C. CLINE AND  
NEELY TRUCKING & EXCAVATING CO., INC.

DEFENDANTS

**PLAINTIFF'S MOTION FOR A NEW TRIAL  
AND MOTION FOR ADDITUR**

COMES NOW Phillip M. Gregory, by and through counsel, and pursuant to Mississippi Rule of Civil Procedure 59 and Mississippi Code Annotated § 11-5-55 moves the Court for a new trial or in the alternative an additur and in support thereof would show as follows:

1.

As the Court may recall, when the jury returned its verdict, the verdict read as follows:

What is the amount of damages incurred by Phillip M. Gregory as a result of the wreck in question in the following categories?

|  |              |
|--|--------------|
| Past Medical Expenses  | \$29,559.35  |
| Future Medical Expenses  | \$50,000.00  |
| Past Lost Wages, if any  | \$40,440.65  |
| Past, Present and Future Loss of Household Services, if any  | \$ 0         |
| Past, Present and Future Pain and Suffering;<br>Past, Present and Future Mental Anguish; Loss<br>of Enjoyment of Life; and Permanent Impairment<br>(Permanent and/or Physical), if any | \$ 0         |
| TOTAL  | \$120,000.00 |

2.

Substantial proof was put forth by the plaintiff as to his past medical expenses, future medical expenses, past lost wages, past, present, and future pain and suffering, past, present and future mental anguish and permanent impairment which he had incurred as a result of the wreck. The

jury awarded exactly the amount of past medical expenses which were claimed by the plaintiff. The jury also awarded \$50,000 in future medical expenses and \$40,440.65 in past lost wages.

3.

The plaintiff also put forth extensive and uncontradicted evidence as to his pain and suffering with testimony from the plaintiff and other witnesses that the plaintiff suffered pain and suffering following the wreck; when he returned to his job; and that the plaintiff still suffers from pain to this day. There were also medical records and pharmacy records introduced into evidence which reflect that the plaintiff was in pain and his doctor prescribed pain medication for him. The plaintiff also put on uncontradicted evidence that he suffered mental anguish as a result of his inability to work as he had prior to the wreck due to the injuries he suffered in the wreck in question.

4.

The defendants admitted fault for this wreck. The only issue for the jury to decide was damages. Even with all of the uncontradicted proof as to the plaintiff's pain and suffering and mental anguish, the jury failed to return an amount for pain and suffering or mental anguish in its verdict. Further, the jury failed to award any amount for permanent disability in its verdict even after the defendant's physician expert testified that he had a 6% permanent disability to the body as a whole which was uncontroverted.

5.

A motion for a new trial should be granted "when upon a review of the entire record the trial judge is left with a firm and definite conviction that the verdict, if allowed to stand, would work a miscarriage of justice." *Alpha Gulf Coast, Inc. v. Jackson*, 801 So.2d 709 (Miss. 2001). There can be no question that the verdict in this case is a miscarriage of justice. It is obvious from the jury's verdict that the jury refused to follow the court's instructions and was driven by something other

than the pursuit of justice. The fact that the jury returned a verdict which did not include any amount for pain and suffering, mental anguish or permanent disability makes clear that the jury was either very confused or was driven by something other than the pursuit of justice. In either case, to permit the jury's verdict to stand would be a miscarriage of justice. For these reasons, the plaintiff is entitled to a new trial.

6.

In the alternative, the plaintiff moves the Court for an additur for the above stated reasons. As stated in *Stringer v. Crowson*, 797 So.2d 368, 370-371 ( Miss. App. 2001), "the trial judge may only usurp the jury's function in setting a damage award, when he finds, as per the statute, either: (1) that the jury's verdict is so shocking to the conscience that it evinces bias, passion, and prejudice on the part of the jury; or (2) that the verdict was contrary to the overwhelming weight of the credible evidence."

7.

The jury's verdict of no damages for past, present and future pain and suffering, past, present, and future mental anguish and permanent impairment in a case where the defendant admitted liability and the jury awarded the plaintiff's past medical expenses in their entirety and awarded \$50,000 in future medical expenses is clearly so shocking to the conscience that it evinces bias, passion, and prejudice on the part of the jury. The fact that the jury completely disregarded the Court's instructions and refused to award any amount for pain and suffering, or mental anguish leaves no doubt that the jury's verdicts were the result of bias, passion, and prejudice. Further, the jury's verdicts were clearly contrary to the overwhelming weight of the credible evidence. *Maddox v. Muirhead*, 738 So.2d 742 (Miss. 1999); See also *Moody v. RPM Pizza, Inc.*, 659 So.2d 877 (Miss. 1995) (award of all medical expenses but nothing for pain and suffering contradictory to the

evidence); *Harvey v. Wall*, 649 So.2d 184 (Miss.1995) (\$95.80 for pain and suffering insufficient to compensate plaintiff with permanent injury); *Rodgers v. Pascagoula Pub. Sch. Dist.*, 611 So.2d 942, 945 (Miss.1992) (amount of verdict equal to medical expenses required additur); *Brown v. Cuccia*, 576 So.2d 1265 (Miss.1991) (Additur required where \$3,000 verdict for disabling back injury was less than \$600 above plaintiff's actual expenses for treatment); *Pham v. Welter*, 542 So.2d 884 (Miss.1989) (damages of \$30,000 for plaintiff who proved special damages of \$28,682 were so inadequate as to shock the conscience).

WHEREFORE, PREMISES CONSIDERED, Phillip M. Gregory respectfully requests the Court grant him a new trial or in the alternative an additur.

RESPECTFULLY SUBMITTED, this the 29<sup>th</sup> day of March, 2024.

PHILLIP M. GREGORY

BY: /s/ Paul V. Ott  
OF COUNSEL

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**CERTIFICATE OF SERVICE**

I certify that I have this day served a true and correct copy of the above and foregoing document to:

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This the 29<sup>th</sup> day of March, 2024.

BY: /s/ Paul V. Ott  
OF COUNSEL