

**WHAT TO MAKE OF PROVING AND
CHALLENGING NONECONOMIC DAMAGE
RECOVERIES
AFTER *GREGORY V. CHOHAN***

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A pair of scales of justice is shown against a blue background. The scales are tilted, with the right pan higher than the left. The text "MORE QUESTIONS THAN ANSWERS?" is overlaid in white, bold, sans-serif font on the right side of the image.

**MORE QUESTIONS
THAN ANSWERS?**

***Gregory v. Chohan*, 670 S.W.3d 546 (Tex. 2023)**

- Fatal accident on icy highway near Amarillo involving six eighteen-wheelers and two other vehicles.
- Chohan was decedent Deol's wife and Gregory was driving the first truck that jackknifed and initiated the chain of accidents.
- Total verdict \$38.8 million. \$16.8 million for decedent Deol's family w/ \$15 million in noneconomic damages. Deol was driver of one of the trucks.

***Gregory v. Chohan*, 670 S.W.3d 546 (Tex. 2023)**

- Plurality opinion with only six justices sitting
 - Authored by Justice Blacklock
 - Joined by Chief Justice Hecht and Justice Busby
- Justices Devine and Boyd, concurring in judgment
- Justice Bland, concurring in judgment and opinion in part

***Gregory v. Chohan*, 670 S.W.3d 546 (Tex. 2023)**

- Issues Presented: (1) whether there was any evidence to support the noneconomic damages finding; (2) proper standard for reviewing jury's noneconomic damages finding; (3) whether the trial court erred in denying the submission of a responsible third party.

***Gregory v. Chohan*, 670 S.W.3d 546 (Tex. 2023)**

- Held: (1) There was legally sufficient evidence of the existence of noneconomic damages; (2) No evidence supported the amounts the jury found for noneconomic damages; (3) trial court erred in refusing to submit a responsible third party for consideration by the jury; (4) remanded for new trial.

***Gregory v. Chohan*: Plurality proposed standards (not holdings)**

- “[a]ssigning a dollar value to non-financial, emotional injuries such as mental anguish or loss of companionship will never be matter of mathematical precision”
- A plaintiff in a wrongful death case must demonstrate a rational connection, grounded in evidence, between the injuries suffered and the amounts awarded
- “Some rational basis for the size of the judgment is a minimal requirement on which the law must insist”

Concurrence: J. Divine, joined by J. Boyd

- Sea change in the law without any reasonably defined parameters on how to apply rational connection rule
- Plurality's standard is impossible to satisfy
- Defer to jury in quantifying the unquantifiable
- Burden wrongly placed on appellee
- Agreed with plurality that "improper jury argument could have influenced the damages award"

Concurrence: J. Bland

- Reversal appropriate for improper counsel argument to the jury to employ mental anguish measurements based on standards that depart from the evidence.
- Agreed w/plurality that these improper arguments “render the verdict legally infirm”
- Future cases without improper argument will allow the Court to further develop the law

Where does
this all leave
us?



Gregory v. Chohan: Binding portions

- Unsubstantiated anchoring improper:
 - \$186 million Rothko painting; \$71 million F-18 fighter jet
 - 2 cents for each of 3 decedents for each of the 650 million miles driven by D's drivers in year (= \$39 million)

Gregory v. Chohan: Binding portions

- Juries should consider the “nature, duration, and severity” of a claimant’s pain and anguish
- This applies to both the existence of compensable harm and the amount of damages
- The erroneous exclusion of a responsible third party requires a remand for a new trial

Gregory v. Chohan: Interesting tidbits

- Improper jury argument by co-counsel
- Preserving error in closing argument
- Ratio of economic to noneconomic damages (may have some relevance but rejected that it must be considered)
- Burden shifting to plaintiff/appellee
- The Court did not discuss standards for excessiveness

Gregory v. Chohan: Interesting tidbits

- Plurality did not “foreclose the possibility that comparison to other cases may play some role in a plaintiff’s efforts to establish that a given amount of noneconomic damages is reasonable and just compensation rationally grounded in the evidence”
- Yet, “[w]e will not endeavor here to define the permissible uses of verdict comparisons”

Gregory v. Chohan: Interesting tidbits

- Plurality: counsel may provide a “rational connection” between the injuries and the amounts awarded in closing argument, after the fact, and even on appeal
- Plurality observed that a “rational basis” in constitutional law is a low threshold and should be found “if one can be conceived” even post hoc



PRIOR SCOTX
AUTHORITY

***Parkway Co. v. Woodruff*, 901 S.W.2d 434 (Tex. 1995)**

- Property damage case
- “An award of mental anguish damages will survive a legal sufficiency challenge when the plaintiffs have introduced direct evidence of the nature, duration, and severity of their mental anguish, thus establishing a substantial disruption in the plaintiff's daily routine.”
- “Anger, frustration, or vexation” do not rise to the level of compensable mental anguish.

Saenz v. Fidelity & Guaranty Ins. Underwriters, 925 S.W.2d 607 (Tex. 1996)

- Suit for wrongful inducement to settle worker's compensation claim
- "[D]irect evidence of nature, duration, or severity of [plaintiff's] anguish, thus establishing a substantial disruption in the plaintiffs' daily routine' or other evidence of 'a high degree of mental pain and distress' that is 'more than mere worry, anxiety, vexation, embarrassment, or anger."

City of Tyler v. Likes, 962 S.W.2d 489 (Tex. 1997)

- Property damage case
- Mental anguish recoverable if there is (1) intent or malice, (2) serious bodily injury, (3) a special relationship between two parties; (4) injuries of such a shocking and disturbing nature that mental anguish is a highly foreseeable result; (5) wrongful death; (6) actions by bystanders for a close family member's serious injury

***Bentley v. Bunton*, 94 S.W.3d 561 (Tex. 2002)**


- Defamation case
- “There must be evidence that the amount found is fair and reasonable compensation, just as there must be evidence to support any other jury finding.”

***Serv. Corp. Int'l v. Guerra*, 348 S.W.3d 221 (Tex. 2011)**

- Abuse of corpse case
- “Even when an occurrence is of the type for which mental anguish damages are recoverable, [direct] evidence of the nature, duration, and severity of the mental anguish is required.”

THANK YOU

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