

IN THE SUPREME COURT OF THE STATE OF NEVADA

COUNTRY MUTUAL INSURANCE
COMPANY, D/B/A COUNTRY
COMPANIES,
Appellant,
vs.
DAVID MATHIS,
Respondent.

No. 37649

FILED

MAY 15 2003

JANETTE M. GLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court granting a motion for additur, or in the alternative, a new trial.

While in the course and scope of employment, respondent David Mathis was hit by a car, causing a shoulder separation. On behalf of Mathis, SIIS paid a total of \$17,500.02 in benefits. Mathis filed an underinsured motorist claim with his insurer, appellant Country Mutual Insurance Company (CMIC), demanding the \$30,000.00 policy limit. Because CMIC only offered Mathis \$20,000.00, Mathis filed suit against CMIC and the driver who caused the accident, David Delacruz.

Prior to trial, CMIC made an offer of settlement in the amount of \$20,001.00. After a four-day trial, the jury awarded Mathis \$30,000.00 in total damages. Because of a SIIS lien in the amount of \$17,500.02, the jury award was less than CMIC's offer of settlement, making Mathis liable for CMIC's attorney fees and costs.

As a result, Mathis filed a motion for judgment notwithstanding the verdict (JNOV) and motion for additur. The district court denied the motion for JNOV, finding sufficient evidence supported

the jury's award, and granted the motion for additur, based on one or more juror's comments after the trial. CMIC appealed.

On appeal, this court reversed and remanded the matter for reconsideration. Upon remand, the district court entered a finding of fact that the total undisputed damages at trial were \$62,208.81. The district court now granted the motion for additur or new trial, finding the damages awarded at trial were clearly inadequate and shocking to the court's conscience. The district court indicated a new trial limited to damages would be held unless CMIC consented to the additur.

CMIC first argues the district court abused its discretion in determining that the jury award was clearly inadequate in light of its earlier ruling on the motion for JNOV where it found substantial evidence supported the jury's verdict. We disagree.

A district court is given great discretion in deciding a motion for additur, and such a decision will not be disturbed absent an abuse of discretion.¹ If "damages are clearly inadequate or 'shocking' to the court's conscience," additur is a proper form of relief.²

Upon remand, the district court entered a finding of fact that the total undisputed damages proven by Mathis at trial were \$62,208.81. Given the district court's finding on damages, we conclude the district

¹See Donaldson v. Anderson, 109 Nev. 1039, 1041, 862 P.2d 1204, 1206 (1993) (granting additur was appropriate to increase the jury's award of zero damages for loss of consortium in a wrongful death case).

²Id. at 1042, 862 P.2d at 1206; see also Arnold v Mt. Wheeler Power, 101 Nev. 612, 614, 707 P.2d 1137, 1139 (1985) (granting additur on appeal where the jury's award did not include pain and suffering or loss of earning attributable to a loss of limb).

court did not abuse its discretion by concluding that the \$30,000.00 award was clearly inadequate and shocking to the court's conscience. We further conclude substantial evidence exists to support the district court's finding of fact.

Finally, CMIC argues the district court abused its discretion by threatening to grant a new trial, unless CMIC consented to the additur.

"It has been recognized in Nevada that our courts have the power to condition an order for a new trial on the plaintiff's acceptance of remittitur."³ This court has extended the power enabling courts to condition an order for a new trial on acceptance of an additur.⁴ In deciding a motion for additur, a district court must determine whether the damages are clearly inadequate, and if so, whether a new trial limited to damages is warranted.⁵ If both conditions exist, then the district court may order a new trial unless the defendant consents to an additur set by the court.⁶

In this case, the district court granted the motion for additur and granted the motion for new trial limited to damages, unless CMIC consented to the additur. We conclude the district court did not abuse its discretion because it followed the proper procedure. Accordingly, we

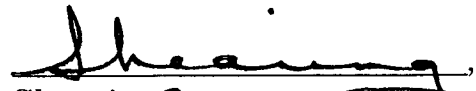
³Drummond v. Mid-West Growers, 91 Nev. 698, 708, 542 P.2d 198, 205 (1975).

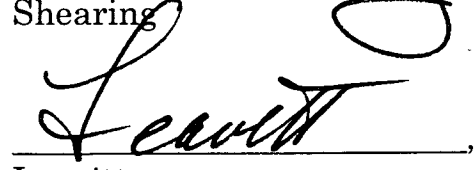
⁴See id.

⁵See id. at 712, 542 P.2d at 208.

⁶Id.

ORDER the judgment of the district court AFFIRMED.


_____, J.
Shearing


_____, J.
Leavitt

cc: Hon. Gene T. Porter, District Judge
Law Offices of Richard I. Dreitzer, Chtd.
Glen J. Lerner & Associates
Clark County Clerk

BECKER, J., concurring in part and dissenting in part:

I concur with the majority analysis on the issue of the procedure for granting a new trial. I dissent, however, as to the majority's conclusion that the district court did not abuse its discretion in granting additur. After the district court found sufficient evidence supporting the jury's verdict, a finding we affirmed in the first appeal, it then found the same award of damages was clearly inadequate without any new evidence or testimony. I submit, therefore, that there is a lack of substantial evidence to support the district court's findings regarding damages. Accordingly, I would reverse.

Becker _____, J.
Becker