

Pa. Supreme Court takes up appeal of injury verdict reduced from \$14 million to \$500,000 due to damages cap

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The state's highest court has agreed to take up the appeal of a Bucks

County student who was originally awarded \$14 million by a jury after she lost her leg in a school bus accident, an award that was later reduced to \$500,000 because of a damages cap against localities.

In a Jan. 16 per curiam order, the Pennsylvania Supreme Court granted a portion of the petition for allowance of appeal that had been filed by lawyers representing Ashley Zauflik, whose left leg was amputated after she was run over by a Pennsbury School District bus back in 2007.

The case, which garnered big headlines in the Philadelphia region, was controversial because of the large disparity between the jury award and the reduced figure that came after an appeals court ruling.

In early July of last year, a Commonwealth Court panel affirmed a Bucks County Common Pleas Court order that molded the plaintiff's verdict from \$14,036,263.39 to \$500,000 because of a damages cap against school districts and municipalities under the Pennsylvania Political Subdivision Tort Claims Act.

The Commonwealth Court panel had acknowledged the tragic circumstances of the case in its decision, but nevertheless determined that the jury award far exceeded the state law cap of damages in such personal injury cases.

"We are constrained by the precedential case law that has previously upheld the constitutionality of the statutory cap of the Tort Claims Act multiple times," the appeals panel had written this summer. "It is the role of the General Assembly, not this Court, to make the difficult policy decisions and enact them into law if such decisions receive the support of the necessary majority."

In its per curiam order issued on Jan. 16, the Supreme Court stated that while it would hear the plaintiff's appeal, it would limit the number of issues to come before the court.

One issue the high court will address is whether the state's Political Subdivision Tort Claims Act violates equal protection principles in this case, where the statutory cap reduced the jury's verdict by more than 96 percent because Zauflik was injured by a local agency that operated the school bus that ran her over.

The plaintiff's attorney, **Tom Kline**, has raised this issue in arguments, saying that the cap wouldn't have been an issue, and his client would likely have received the full multi-million dollar award, if the bus had been operated by a private transportation company instead of the school district itself.

Another plaintiff's argument on appeal is that the liability cap violates equal protection principles in this case since the Pennsburg School District had purchased \$11 million in taxpayer-funded insurance, money that could have been used to pay the jury award.

Other issues to come before the Supreme Court are whether the liability cap violates Zauflik's right to a jury trial, whether the cap infringes on judicial power, whether it violates the "open courts" provision in Article I, Section 11 of the Pennsylvania Constitution by forcing a more than 96 percent remittitur of the jury's verdict and therefore denies a full redress of Zauflik's injuries, and whether the cap violates the guarantee against liability limitations set forth in Article III, Section 18 of the state constitution, where this is not a workers' compensation matter, according to the court order.

It was unclear when exactly the appeal would appear on the high court's calendar.

This summer, Commonwealth Court Senior Judge Rochelle S. Friedman broke with the majority; writing in a dissent that she believes the statutory cap is unconstitutional because it violates Zauflik's right to receive the jury's full award.

"While there is no statutory prohibition against Pennsburg's conduct, had transportation been provided by a private transportation company, Zauflik would have been entitled to receive the full benefit of the jury's award of over \$14,000,000," Friedman wrote at the time. "Surely the legislature can devise legislation that more fairly and adequately addresses this gross disparity."

Kline, Zauflik's attorney, previously went on record calling the statutory cap a "manifest injustice."