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A health care provider hit with a large verdict in a non-medical malpractice case should not be able to seek remittitur protection under MCARE, a Superior Court panel has unanimously ruled in an apparent case of first impression.

The appeal in McManamon v. Washko follows a January 2004 Luzerne County jury's $19 million award in favor of a Hazleton woman rendered incapacitated when she was struck by a van as she was arranging roadside cones for a construction site.

Teresa McManamon, a 41-year-old single mother of three teen-aged children at the time of the accident, suffered numerous broken bones and neurological damage extensive enough to preclude her working and to require her to live in an assisted-living facility, the complaint alleged.

Defendant Edward Washko, a courier for local hospital operator Greater Hazleton Health Alliance - also named as a defendant in the matter - was driving a van in the course of company duties when he struck McManamon, court documents stated.

With delay damages, the verdict totaled more than $20.25 million. Ten million dollars of the original award were for non-economic damages; less than $7 million were for future medical costs.

On appeal, the defense had cited to language in the Medical Care Availability and Reduction of Error (MCARE) Act, stating that "in any case in which a defendant health care provider challenges a verdict" as being excessive, the court must consider the impact on local access to health care an upholding of the verdict would bring about.

But the members of the panel repeatedly cited to other language in the act suggesting that MCARE pertains to medical-related cases only.

"The instant case is one involving ordinary negligence arising out of a motor vehicle accident," wrote Judge Susan Peikes Gantman. "This case does not even tangentially implicate a contractual relationship between [McManamon] and [Greater Hazleton] for medical services. [McManamon] was not [Greater Hazleton's] patient at the time of the accident. Although [Greater Hazleton] might meet the definition of a health care provider

under the MCARE Act, that does not mean any and all claims against it necessarily fall under the provisions of the MCARE Act."

Gantman was joined by Judge Correale F. Stevens and Senior Judge John T.J. Kelly Jr.

Greater Hazleton's appellate attorneys are Daniel Segal, Mark Aronchick and Matthew Hamermesh of Hangley Aronchick Segal & Pudlin in Philadelphia.

Segal said his clients plan to appeal the decision.

"If we get socked with X million dollars because of an auto accident, as opposed to a medical malpractice situation, that has the same impact on availability or access to health care in the community as if it were a malpractice case," Segal said.

McManamon's attorney, Shanin Specter of Kline & Specter in Philadelphia, said that his client's workers' compensation is currently paying for her residential care in a Chester County facility, but that she is presently unable to afford regular visits back to Luzerne County to visit her family.

"I just hope that this will put this case to bed," Specter said of the decision. "It's been a long time since this case was tried."

The bulk of Gantman's 53-page opinion was devoted to a string of evidentiary issues raised by Greater Hazleton, none of which struck a chord with the members of the panel.

Toward the end of the opinion, Gantman addressed the defense's argument that the verdict slip in McManamon had featured an improper separation of categories.

In 2004, as Gantman noted in her opinion, a split Superior Court panel ruled in Carpinet v. Mitchell that trial judges may not shape their jury charges in a way that allows jurors to categorize awards for various forms of pain and suffering. (The state Supreme Court later declined to hear an appeal in that case.)

Agreeing with Luzerne County Common Pleas Judge Hugh Mundy, who presided at trial, the members of the panel concluded that it had been appropriate to include on the McManamon verdict form a single line item for "past, present and future pain and suffering, embarrassment and humiliation, and loss of enjoyment of life" and a separate line item for "disfigurement" (for which the jury awarded McManamon $1 million).

The appellate judges also sided with Mundy with respect to Greater Hazleton's MCARE argument.

"This case is what it is, a tragic auto accident appropriately compensated, based upon the evidence presented," Gantman wrote.