Medical Malpractice Pain and Suffering Verdict Reduced from $1,750,000 to $425,000; Appeals Court Gives No Explanation

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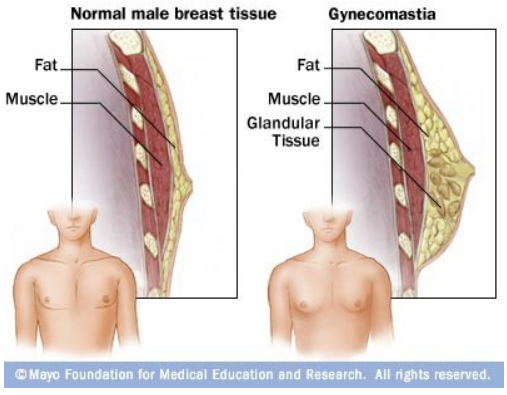
In yet another significant New York personal injury lawsuit, **an appeals court has modified downward a jury's pain and suffering verdict with no explanation why,** leaving the public clueless, judges and attorneys without guidance as to how to evaluate future cases **and the plaintiff with $1,325,000 less** than the jury awarded him. And the decision has forced me to dig out, gather and present here the missing information.

In **Dehaarte v. Ramenovsky**, the judges of the **Appellate Division, Second Department** last week issued a decision on the plaintiff's appeal of an August 3, 2007 jury verdict in his case against doctors accusing them of **medical malpractice**. After a Kings County jury found in his favor , Kern Dehaarte, then 22 years old, was awarded pain and suffering damages in the sum of $1,750,000 ($250,000 past, $1,500,000 future) but the appellate court has now held that the award was unreasonably excessive.

Instead, **the appeals court held the proper award should have been only $425,000** ($225,000 past, $250,000 future). And that's all the court said. No mention at all of what the case was about – either how the plaintiff was injured or what the doctors did wrong. And no discussion at all as to why $1,325,000 should be lopped off the award. As we've repeatedly discussed (for example, **here** and **here**), New York law requires the appellate courts to state their reasons when they find a jury award should be decreased (or increased).

So once again it has fallen to our research team here at New York Injury Cases Blog to dig into the court files and the attorneys' records to discover and report the missing information. We learned that in February 1997 Kern Dehaarte was a 12 year old boy suffering with **gynecomastia**, a condition in which male breasts are enlarged and resemble female breasts.



Kern's mother took him to a pediatric surgeon who recommended and performed a **subcutaneous mastectomy that ended up leaving the boy without a nipple on his breast.**

The jury must have loved him or else hated the doctor because **the jury award of $1,500,000 for 54 years of future pain and suffering was clearly excessive**, in view of these facts:

- the main injury was a scar on the breast
- there was no evidence of any continuing physical pain from the scar;
- plaintiff claimed anxiety and depression but underwent no psychological treatment
- an analysis of similar injury prior cases (almost all of which involved women as that's to whom nearly all breast injuries occur) showed that none could justify the large verdict because there was no evidence that plaintiff's sexual identity or interpersonal relationships with women was impacted by his injuries

Appellate counsel for the parties submitted briefs on appeal that cited and discussed in detail several prior appellate cases in each one of which awards were made in mastectomy injury cases (e.g., **Sutch v. Yarnisky**, **Motichka v. Cody** and **Ditingo v. Dreyfus**). The judges in Dehaarte v. Ramenovsky, however, mentioned **none** of them.

Even more startling, the only case the judges did cite in discussing damages was **Evans v. St. Mary's Hospital of Brooklyn** and that case was cited merely for the proposition that Kern Dehaarte's $250,000 past pain and suffering jury award (10 years) should be reduced to $225,000. Evans v. St. Mary's Hospital of Brooklyn, though, dealt with a **$100,000,000 jury award** ($30,000,000 past – 13 years, $70,000,000 future – 31 years) in a tragic medical malpractice case that was **reduced to $1,800,000** ($800,000 past, $1,000,000 future).

In Evans, a 28 year old woman presented to a hospital emergency room with breathing difficulties and when doctors there improperly removed her breathing tube she suffered extensive and permanent **brain damage**. Upon learning the facts in the Evans case (they were not reported in the decision), one wonders why the judges in Dehaarte (a mastectomy case) cited Evans (a brain damage case) as support for their findings as to damages.

Final Note**:** Some have said I'm on a mission to make the appellate judges explain more in their decisions. Perhaps that's true to some extent; however, I want to make it clear that I have great respect for these judges. Most have deservedly risen through the ranks, are exceedingly intelligent and are extremely hard working public servants. They read through records on appeal and attorneys' briefs that are, together, often more than 1,000 pages for a single case. And they typically issue several hundred decisions each month.

So I don't at all question the integrity, acumen, or commitment of our appellate court judges. What I do question, though, is why they can't make it part of their procedure in personal injury lawsuit appeals to explain their reasons for an increase or decrease of a jury award and to cite prior cases with meaningful and helpful explanations of why they are relevant or controlling. In that way, practicing lawyers will be better able to evaluate and settle cases with the result that fewer cases will clog our court system and more realistic positions will be taken by plaintiff and defense lawyers on the cases that remain.

In the end, this extra effort I'm urging upon our appellate judges will result in less work for them because there will be fewer cases brought and fewer still appealed. That's a **win-win situation** for all of us.