



Administrative Office of the Courts

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Supreme Court upholds \$165 million verdict in fatal crash case

SANTA FE – The state Supreme Court today affirmed a \$165 million jury verdict against FedEx for a highway crash in southern New Mexico that killed a mother and daughter and critically injured a toddler.

In a unanimous opinion written by Justice Julie J. Vargas, the state's highest court concluded that "substantial evidence supported the verdict and that the jury's award was not the result of passion or prejudice." The Court declined to order a new trial in the case, affirming a decision of the Court of Appeals.

The crash occurred in the predawn hours of June 22, 2011, on Interstate 10 between Las Cruces and Deming. A commercial truck with double trailers hit the back of a small pickup truck driven by Marialy Morga. The tractor-trailer was operated by FedEx Ground Package System, Inc., (FedEx) and driven by a contractor for the company.

Ms. Morga and her 4-year-old daughter, Ylairam, were killed and her 19-month-old son, Yahir, was injured. They were on the way to visit her husband and the children's father, Alfredo Morga, who was working in Deming. The tractor-trailer driver, Elizabeth Quintana, also died in the accident.

The pickup had its flashers on and was traveling slowly or stopped in the westbound right-hand lane. The semi-truck struck the pickup at 65 mph without braking before the crash.

Lawsuits were brought by Mr. Morga and his father-in-law, Rene Venegas Lopez. A jury in Santa Fe awarded compensatory damages of \$61 million to the estate of Ylairam Morga, \$32 million to the estate of Marialy Morga, \$32 million to Yahir Morga, and \$40.125 million to Alfredo Morga. No punitive damages were awarded.

On appeal, FedEx argued that the damages were excessive and a new trial should have been granted by a district court judge who took over the case when the original judge recused herself

after the initial trial and verdict. The successor judge denied a new trial after a more than 5-month review of the pleadings, testimony and record of the case.

FedEx has asserted that the cumulative \$165 million compensatory damages award is the largest in New Mexico history for such a case type. The Court noted that "Defendants do not attempt to explain why the award for each of the individual Plaintiffs is excessive, but instead argue that the cumulative verdict is excessive."

Under existing law from prior court rulings, a new trial is appropriate if damages are so disproportionate to the injuries "as to shock the conscience."

The Court concluded, "Considering all of the evidence in the light most favorable to the verdict, our deference to juries, and our hesitancy to make comparisons between verdicts and between economic and noneconomic damages, this Court cannot say that the weight of the evidence is clearly and palpably against the verdict and that it would be an injustice to let the verdict stand."

The Court rejected FedEx's arguments that the verdict was the product of "passion or prejudice" in the jury because of emotional testimony of Alfredo Morga, an accident scene photo that showed a portion of Ms. Morga's arm, and statements by the plaintiffs' lawyer during closing arguments.

"Alfredo Morga's testimony was the result of genuine emotional response, and nothing in the record indicates any prejudicial reaction from the jury," the Court stated. "The testimony appears to fall squarely within the general rule that such genuine emotion is not grounds for a new trial."

The section of the photo with the arm was supposed to be redacted, but the masking apparently fell off before the photo was seen by jurors. According to the Supreme Court, the photo focused mostly on the damaged vehicle and there was "nothing gruesome" about the small part of the photo that showed the arm with bruises and scrapes but no blood.

During closing arguments, the lawyer for the victims' family members told the jury that FedEx sought to blame its contractors and "took no responsibility, just like they haven't this entire trial." However, FedEx agreed during the trial to be responsible for all damages awarded against any defendants.

The justices concluded "the statements here were not inflammatory and that any potential prejudicial effect the closing argument here may have had on the jury was offset by the district court's instruction to the jury that closing arguments of counsel are not evidence."

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To read the decision in *Morga v. FedEx*, No. S-1-SC-36918, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/521114/index.do>