

Jury finds mom at fault in crash

Fort Worth Star-Telegram (TX)

October 10, 2003

Section: Metro

Edition: FINAL

Page: 1B

Jury finds mom at fault in crash

MARTHA DELLER

Star-Telegram Staff Writer

CLEBURNE--Because jurors decided Thursday that Patricia Lowery was mostly to blame for the **train**-van crash that killed her son and left her paralyzed, her family won't get most of the \$22.7 million that jurors said their injuries warrant.

But attorneys said smaller amounts may be awarded to the boy's estate, Lowery's surviving 13-year-old daughter and possibly the grandparents who pulled the children from the crash.

In addition, the Lowery family is expected to receive an undisclosed settlement negotiated last week and sealed by the court. Attorneys said the settlement cannot be discussed until presiding Judge John Neill lifts a gag order.

An 11-member Johnson County jury deliberated 16 hours over two days before returning the verdict Thursday that found Lowery 72 percent negligent for the collision on Dec. 4, 2001, between her van and a 102-car Union Pacific **train** at the County Road 404 crossing near her Alvarado home.

Lowery's spinal cord was severed, paralyzing her from the shoulders down. Her 9-year-old son, Conner, was killed.

The nine-woman, two-man jury -- whose 12th member was excused last week because of family problems -- unanimously found Union Pacific 23 percent to blame for the accident. Jurors said Trinity Materials, which leased an industry track near the main rail where the crash occurred, shared 5 percent of the blame. The jury found that engineer Jackie Joe Gregor was not at fault at all.

The jury also answered six questions to decide that \$22.7 million would fairly compensate the Lowery family and Patricia Lowery's parents, Angelina and Epifanio Maldonado, for past and future damages stemming from the crash.

But the Lowerys will not receive those damages because Texas law prohibits plaintiffs who are found to be more than 50 percent responsible for their own injuries to recover damages from other parties.

The jury also found no evidence that either Union Pacific or Trinity intentionally or maliciously harmed the Lowerys. An affirmative answer to that question would have set the stage for punitive damages.

The Lowery family was clearly devastated by the verdict. James Lowery quickly pushed his teary-eyed wife's wheelchair from the courtroom into the grand jury room where the family had watched movies during deliberations. Minutes before the verdict was announced, the family celebrated Patricia Lowery's 42nd birthday a day early with a cake.

Patricia Lowery met briefly with the presiding juror, who left the room wiping away tears. After meeting privately with their attorneys, family members declined to comment publicly.

"You've got to understand how Mrs. Lowery feels," said Arlington attorney Jim Ross. "She's a wife and mother, and the jury has just said she's responsible for the accident that killed her son. They're just not up to talking right now.

"Ross said several jurors, including the presiding juror, struggled for hours before assigning percentages of blame.

During the 2 1/2-week **trial**, Ross and co-counsel Robert Greenberg and Chris Cooke contended that rail cars parked on the Trinity track blocked Lowery's view of the **train**, causing the fatal collision. They said Gregor compounded the problem by not slowing his **train** or blowing the horn to warn motorists of the approaching **train**.

The jurors disagreed. Although assigning some blame to Union Pacific and Trinity, they apparently agreed that Lowery could have avoided the accident if she had stopped her van at the Trinity track and watched for the **train** on the main rail 22 to 24 feet away.

Gregor said he was grateful the jury cleared him, but he is still haunted by the memory of the accident.

"It was a tragic accident," he said. "I'm sorry for the Lowerys. Just like them, I have to live with it every time I go over that railroad crossing.

"Union Pacific attorney John Proctor and Trinity attorney Dotty Vidal praised the jury for wading through weeks of testimony and evidence to reach a verdict.

"In the face of a sympathetic case, they showed a lot of patience and rendered a fair verdict. I'm gratified they did," Proctor said.

Vidal said, "We don't think anything should have been put on Trinity, but we appreciate it being limited to 5 percent.

"Burluson attorney Jeff Cochran, appointed to represent Bianca Lowery, said the 13-year-old may be entitled to recover the \$1.2 million that the jury awarded her. In addition, the family may be able to collect \$5,800 that the jury awarded Conner's estate for his funeral expenses. And it's possible that the Maldonados can collect their \$600,000 award for the mental anguish of watching their grandson die, attorneys said.

But the Lowerys will not be able to collect the bulk of the jury award -- \$10.8 million to Patricia Lowery, \$5.8 million to James Lowery and \$4.2 million to the couple for

their loss of Conner -- because Patricia Lowery was found mostly to blame for the accident, Ross said.

Ross said the court order prohibits him from discussing any settlement that the family might receive. He said it is premature to discuss appeals.

Martha Deller, (817) 390-7857 mdeller@star-telegram.com

Copyright 2003 Star-Telegram, Inc.