

Supplemental Opinion on Denial of Rehearing
March 28, 1988

748 S.W.2d 332

PER CURIAM. The petition for rehearing is denied.

HICKMAN, J., concurs.

DARRELL HICKMAN, Justice, concurring. I also would deny rehearing, but I write for two reasons. First, I should have noted that I did not agree with Chief Justice Holt's remarks about a jury instruction. I expect it is best not to tell the jury the consequences of an award for compensatory damages.

The other reason is the appellee has pointed out that our decision seems entirely inconsistent with our decision in January, *Bell v. McManus*, 294 Ark. 275, 742 S.W.2d 559 (1988). I think the appellee deserves an explanation. The legal test in both *Bell*

and this case is one of measuring the trial court's decision, which necessarily is based on a weighing of the evidence. That means we also have to weigh the evidence as a matter of law. In *Bell* we could not say the trial judge abused his discretion. In this case the verdict on compensatory damages was clearly contrary to the preponderance of the evidence, and in our judgment the trial judge should have ordered a new trial. Just like trial judges, we sometimes look at a case and conclude the evidence is simply not there or it is overwhelming. In this case there was no doubt in our mind that the jury should have awarded compensatory damages.