



Ankin Law Office LLC

Protecting the Rights of Injured Workers

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Illinois Court Upholds \$3.9 Million Verdict in Favor of Train Injury Victim

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In a recent case, the Appellate Court of Illinois, First District, was asked to overturn a jury trial verdict in favor of a teenager who was severely injured when attempting to jump onto a freight train that was traveling 9-10 miles per hour. The train ran over his foot, injuring it so badly that it was later amputated below his left knee.

His parents brought a personal injury lawsuit on his behalf, seeking to recover damages for his injuries. The case was tried before a jury and the jury returned a verdict in his favor in the amount of \$6.5 million, which was reduced to \$3.9 million based on a finding that he was 40% comparatively negligent.

The defendants appealed on a number of grounds, in part alleging that jumping aboard a moving train presented an open and obvious danger that the defendants owed no duty to prevent and that the plaintiff failed to prove what measures the defendant could have taken to prevent the accident from occurring.

In *Choate v. Indiana Harbor Belt Railway Company*, No. 1–10–0209, the Court disagreed. After analyzing relevant case law, the Court held that it was foreseeable that a child might attempt to jump onto a moving car and that the evidence established that there were reasonably affordable remedial measures that could have been taken by the defendants which could have prevented the accident from occurring:

Our holding...affirms a jury verdict finding the railroads 60% liable to a trespassing child who foreseeably did not appreciate the dangers and full risk of harm from jumping aboard the slow-moving freight train and to whom a duty was owed...(and) affirms a jury verdict based in part on Dr. Berg's testimony that defendants were required to take remedial measures only along the 6,000-foot corridor between Central Avenue and Ridgeland Avenue. The total cost of the remedial measures (i.e., chain-link fence plus overpass), as testified to by Dr. Berg, was approximately \$175,000, which would not unduly hamper railroad operations having a high utility to the general public.

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All in all, a favorable verdict for Illinois personal injury litigants, since it sends the message that when it is foreseeable that a child might be attracted to and injured while on property owned by a business, steps should be taken to reduce the likelihood of unfortunate and preventable accidents.

Howard Ankin of Ankin Law Office LLC (www.ankinlaw.com) handles workers' compensation and personal injury cases. Mr. Ankin can be reached at (312) 346-8780 and howard@ankinlaw.com.

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