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BEACH, J., concurring. I concur in the well reasoned opinion of the majority and agree that the judgment of the trial court setting aside the jury's verdict should be reversed and the case remanded to the trial court with direction to reinstate the jury's verdict. I write separately to discuss the standard of review used in appeals from decisions granting or denying motions to set aside verdicts that are claimed to be excessive.

Our black letter law teaches us that the trial court is to accord great deference to the jury's verdict. The court should set aside a verdict, and perhaps suggest a remittitur, only when the jury could not reasonably have reached its verdict.¹ Stated alternatively, a verdict should be set aside only when the amount so shocks the conscience as to compel the conclusion that the verdict was due to partiality, prejudice or mistake.² See *Mahon v. B.V. Unifon Mfg., Inc.*, 284 Conn. 645, 661–62, 935 A.2d 1004 (2007). If the verdict finds some basis in the evidence, as viewed in the light most favorable to sustaining the verdict, the trial court is not to set aside the verdict. See, e.g., *Campbell v. Gould*, 194 Conn. 35, 39–41, 478 A.2d 596 (1984); *Johnson v. Chaves*, 78 Conn. App. 342, 346–47, 826 A.2d 1286, cert. denied, 266 Conn. 911, 832 A.2d 70 (2003). Parties, after all, do have constitutionally protected rights, in these circumstances, to have damages decided by a jury rather than by the court.³

Appellate courts do not review the decision of the jury but rather review the action of the trial court in setting aside the verdict. See *Campbell v. Gould*, supra, 194 Conn. 39 (“Where . . . the trial judge disagrees with the verdict of the jury, a vexing question often arises. . . . When this occurs, we review the action of the judge in setting the verdict aside rather than that of the jury in rendering it.” [Citation omitted; internal quotation marks omitted.]); but see *Johnson v. Chaves*, supra, 78 Conn. App. 347. The reviewing court is to defer to the discretion of the trial court because the trial court has viewed the witnesses and has assessed credibility. The trial court's exercise of discretion is not to be disturbed in the absence of clear abuse. See, e.g., *Wichers v. Hatch*, 252 Conn. 174, 187–89, 745 A.2d 789 (2000); *Childs v. Bainer*, 235 Conn. 107, 113, 663 A.2d 398 (1995); *Glada v. Sousa*, 52 Conn. App. 796, 799, 727 A.2d 1286 (1999), appeal dismissed, 252 Conn. 190, 745 A.2d 798 (2000).

The appellate review of whether the trial court has abused its discretion in its action on a motion to set aside a verdict typically includes an analysis of the evidence and the jury's verdict, with an eye toward determining whether the jury's verdict could have been based on the evidence. See, e.g., *Campbell v. Gould*,

supra, 194 Conn. 35. The purpose of the appellate exercise has been to determine whether the jury's verdict was within the necessarily broad range of "fair and reasonable compensation;" id., 39; or whether the verdict was so excessive⁴ as to compel the conclusion that it was reached impermissibly. See, e.g., id., 41–42; *Glady v. Sousa*, supra, 52 Conn. App. 799–800.

It is not clear from the case law whether appellate review of excessiveness is plenary or rather whether the trial court's determination is entitled to deference. The reviewing court clearly ought to engage in an evidentiary analysis to determine whether the trial court abused its discretion in its action on the motion. It would appear reasonable to suggest that unless excessiveness or inadequacy, or lack of excessiveness or inadequacy, is crystal clear on the basis of an independent appellate review, then the action of the trial court should be affirmed if the trial court applied the appropriate standards.

In the case at hand, the majority of this court finds that the trial court did not appear to have reviewed all of the evidence with an eye toward sustaining the verdict. I agree with that assessment: the application of improper standards constitutes an abuse of discretion,⁵ and this court need not defer to the trial court ruling. An independent analysis of the evidence does not yield the crystal clear conclusion that the jury found damages without a sufficient evidentiary basis. As stated by the majority, the jury presumably could have found that the plaintiff's life was wracked with pain, lack of sleep and the inability to perform many of the usual activities of daily living. Reversion to the jury's verdict, then, is not prohibited by our independent review of the evidence.⁶ We do not have before us a situation in which the trial court has applied proper standards in setting aside a verdict, in which case any significant doubt regarding excessiveness would presumably be resolved by deferring to the trial court.

I respectfully concur in the majority opinion.

¹ See *Mahon v. B.V. Unitron Mfg., Inc.*, 284 Conn. 645, 661–62, 935 A.2d 1004 (2007) ("First, the amount of an award [of damages] is a matter peculiarly within the province of the trier of facts. . . . Second, the court should not interfere with the jury's determination except when the verdict is plainly excessive or exorbitant." [Internal quotation marks omitted.]).

² The "shocks the conscience" test is particularly appropriate in considering amounts awarded for noneconomic damages in personal injury cases. In situations in which damages may be found with more precision, a more narrow test may be appropriate.

³ Article first, § 19, of the Connecticut constitution, as amended by article four of the amendments, provides in relevant part: "The right of trial by jury shall remain inviolate . . ." "[T]he right to a trial by jury encompasses the right to have the jury pass upon the factual issue of damages . . ." (Citations omitted; internal quotation marks omitted.) *Bartholomew v. Schweitzer*, 217 Conn. 671, 683, 587 A.2d 1014 (1991).

⁴ Some of the authority cited arises from cases in which it was claimed that the verdict should have been set aside on the ground of inadequacy rather than excessiveness. The analysis as to the standards to be applied by the trial court and the appellate court seems to be the same.

⁵ For the purpose of this concurrence, I am considering only the trial

court's action in setting aside the verdict. I am not considering the action setting the amount of the remittitur.

⁶ There may be situations in which a trial court uses improper standards in setting aside a verdict, but the verdict is still clearly excessive. Suppose, for example, that in this case the jury had awarded \$10 million. Even without deference to the trial court, this court presumably could, were the issue properly presented, uphold the trial court's judgment setting aside the verdict.
