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NJ Justices Nix \$6.3M Jury Award In Kia Brake Defect Suit

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Law360 (June 25, 2020, 6:54 PM EDT) -- The New Jersey Supreme Court on Thursday erased a \$6.3 million jury award issued to a class of Kia car owners who said their brakes were defective, finding that damages simply weren't well-supported across the entire class.

It's the latest flip in a case in which a jury in 2008 found in favor of an 8,500-strong class of Kia drivers who said their cars had premature brake and rotor wear and squeakiness. Lead plaintiff Regina Little, who drove a Kia Sephia, brought the suit in 2001.

By the end of 2008, the trial judge had reversed the verdict, finding that the jury's award of \$750 per owner or lessee wasn't supported on a classwide basis, nor supported by an expert witness' damages estimates. In 2018, an intermediate appeals court disagreed and reinstated the award.

Now, the state's highest court says the trial judge had it right.

"The central question in this appeal is whether the trial court properly permitted plaintiff's brake-repair claim to be asserted classwide," it said. "Plaintiff presented no basis for a presumption — much less for a conclusion — that all members of the class suffered damages for out-of-pocket brake repairs necessitated by the Kia Sephia's brake defect."

"Plaintiff's class included an undetermined number of members who stood to gain a windfall by virtue of the jury's award of \$750 per class member for brake repairs," it said.

The trial judge's post-trial 2008 order left class certification in place for purposes of liability, but erased it for purposes of damages. A special master then undertook a process for individual claims, and adjudicated just over 1,200 of them, according to the high court.

The trial judge then entered a final judgment in September 2015. That judgment was fully reinstated on Thursday by the high court.

Little's lawyer, Michael D. Donovan, said on Thursday that the decision "harms all New Jersey consumers."

"Every purchaser of the car received a defective product that could not be repaired to a non-defective condition, but the court said only people who had receipts 10 years afterwards could recover. Unfortunately, the decision is another sign of the times," Donovan said.

Little's 2001 complaint said her Kia Sephia had premature brake pad and rotor wear. She represented 8,455 owners and lessees of Kia Sephias for model years 1997 through 2000.

During a monthlong trial in June 2008, the class' mechanical engineering and repair expert testified that the high warranty claim rate "screamed" that there was a problem with the brake system.

At trial, expert witness Raymond King testified he had phoned up a handful of Kia dealers in the state and found that \$250 was an average cost for a Kia brake repair. He then said a driver with problem brakes would have to do roughly five of those, and estimated each driver's outlay was \$1,250.

The high court said that wasn't good enough. Classwide proof of damages can be done, but it has to include "a basis for a presumption that all members of the class have sustained damage," the high court said.

Without that, aggregate proof can be a recipe for an unfair windfall and individualized proof should be required, it said.

The Korean car maker had made that assertion at oral arguments in October, saying the revived verdict would lead to a windfall for those who hadn't proved they'd laid out any money to get their brakes fixed.

The Appellate Division reinstated the jury verdict in favor of the class in July 2018, ruling that the expert witness' use of aggregate data to estimate classwide repair damages had been permitted in other jurisdictions.

Kia's lawyer, Roberto Rivera-Soto, said on Thursday, "We are pleased with the court's opinion validating Kia's warranty program, and reinstating the trial court's holding that very few Kia customers suffered any out-of-pocket loss due to the coverage provided by Kia Motors America. We look forward to concluding the matter."

The class is represented by Michael D. Donovan of Donovan Axler LLC.

Kia is represented by **Roberto Rivera-Soto** of Ballard Spahr LLP.

The case is Little v. Kia Motors America Inc., case number 08169, in the New Jersey Supreme Court.

--Additional reporting by Jeannie O'Sullivan. Editing by Nicole Bleier.