

*Sanchez v. Strickland*  
(2011) 200 Cal.App.4th 758

Modifications of the original judgment that materially affect the rights of the parties and, therefore, is a substantial modification will restart the 60-day period for filing a notice of appeal.

**FACTS/PROCEDURE**

In October 2005, Pedro Hueso was driving his 1990 Lincoln Town Car on State Route 120 when it collided with an International truck hauling two semitrailers.

In October 2007, seven plaintiffs sued defendants. Plaintiffs included Pedro Hueso's two daughters, for themselves and in their capacity as representatives of his estate, and the deceased passenger's brother and sister. Plaintiffs sought to recover the economic damages, which included medical expenses, of Pedro Hueso, among other claims.

The trial began in September 2009, the completed verdict form included the jury's findings that (1) defendants were negligent, (2) the negligence was a substantial factor in causing harm to plaintiffs, and (3) the negligence was a substantial factor in causing Pedro Hueso's death. The jury awarded damages totaling \$3,115,569, of which \$1,339,569 represented the past medical expenses of Pedro Hueso.

The trial court granted a post-trial motion reducing the jury's award of past medical expenses from the amount billed by the medical providers to the amount actually paid to the providers under Medicare and Medi-Cal. The past medical expenses were reduced to \$169,862.55.

Three of the plaintiffs appealed, contending the trial court misapplied California's collateral source rule when it reduced the damages to reflect the difference between the amount billed by medical providers and the amount they accepted as payment under Medicare.

Defendants' contended that the notice of appeal was untimely is based on the theory that the \$72,798.23 reduction did not substantially modify the April 7th judgment and, therefore, the amended judgment did not restart the 60-day period for filing a notice of appeal.

**HOLDING/DISCUSSION**

The amended judgment is modified so that the award of \$169,862.55 to Pedro Hueso is increased to \$174,776.55. **As modified the judgment is affirmed.**

The Court looked to *Dakota Payphone, LLC v. Alcaraz* (2011) 192 Cal.App.4th 493, for the rule that that the appropriate test was whether the amended judgment resulted in a substantial modification of the original judgment. (*Id.* 504.) The Dakota court looked at two lines of cases.

**(1) Separately Appealable Order Rule:** “that post judgment awards of attorney fees, costs and

interest are separately appealable matters collateral to the actual judgment if they are not included therein” (*Dakota Payphone, LLC*, 192 Cal.App.4) and **(2) Modification Materially Affecting Rights of the Parties:** “involved modifications to the judgment that were not the result of a separately appealable order. Those cases defined the term ‘substantial modification’ to mean ‘one materially affecting the rights of the parties’.” (*Id.* at 765).

The Court then based their decision under either option. Under the Separate Appealable Order Rule, the case did not apply as it was not the result of a separately appealable order. However, the case did apply under the Modification Materially Affecting the Rights of the Party avenue as the trial court’s conclusion was that the award to Pedro Hueso should be reduced to reflect his comparative fault. Comparative fault reflected new legal ground which was not used to calculate the award, this materially altered Pedro Heuso’s rights of recovery. Furthermore, a reduction of an award by 30 percent is, in absolute terms, material. (*Id.* at 767.)

Discussions regarding the collateral source rule and Medicare benefits were not certified for publication and therefore not noted here.