

SUPERIOR COURT
STAMFORD-NORWALK
JUDICIAL DISTRICT

DOCKET NO: FST-CV-20-6049129-8

: SUPERIOR COURT

2022 DEC -1 A II: 50

: JUDICIAL DISTRICT OF

SONIA ZABALETA TOBAR

V.

: AT STAMFORD

WLADYSLAWA KULIS

: December 1, 2022

MEMORANDUM OF DECISION

I. INTRODUCTION

This case arises out of an automobile accident in which the car driven by the defendant struck the plaintiff, a pedestrian, while the plaintiff was in or about a crosswalk pursuant to a pedestrian traffic signal authorizing her to walk across the street. The plaintiff's complaint is set forth in three counts alleging common law negligence, common law recklessness, and statutory recklessness. The case was tried to the court on November 29, 2022. At the conclusion of the trial the plaintiff's counsel acknowledged that he was not pursuing the two recklessness claims embodied in the second and third count. That determination was consistent with the evidence offered at trial which failed to prove by a preponderance of the evidence that the defendant had the requisite mental state necessary to establish a finding of either common law or statutory recklessness.

The plaintiff established at trial that the defendant made a left hand turn on to the street that the plaintiff was walking across and did strike the plaintiff whose head struck the defendant's windshield before she landed on the ground. It was daylight hours and there was nothing in the roadway to obstruct the defendant's view of the plaintiff crossing the street. The plaintiff, before crossing had utilized an electronic walk signal by pushing the button and waiting for the signal to indicate that she could walk across the street. The defendant also had a green light on the intersecting street allowing a left turn, but as she made the left turn, she failed to see the plaintiff

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in or about the crosswalk. The defendant then struck the plaintiff and did not even realize she had struck a person until after the fact.

The court finds that the defendant was negligent in failing to observe the plaintiff who, at the time of the collision, was properly crossing the street, consistent with the traffic control signal. The defendant failed to use reasonable care to avoid hitting the plaintiff/pedestrian. The Court also finds by a preponderance of the evidence that the plaintiff/pedestrian was injured as a result of the collision in which her head struck the defendant's windshield with enough force to cause damage to that windshield before she landed on the street.

As in many cases, the most significant issue before the Court is not whether the plaintiff's injuries were proximately cause by the negligence of the defendant, but rather the nature of those injuries, the extent of those injuries, and the extent of the permanency of those injuries. The Court must determine the extent of the pain and the suffering caused to the plaintiff by the defendant's negligence and quantify this in order to award a just and fair monetary sum to compensate the plaintiff for her damages.

II. ECONOMIC DAMAGES

The plaintiff incurred total medical bills in the amount of \$72,888.44. The Court finds by a preponderance of evidence that those bills are reasonable and awards damages for those medical bills in the amount of \$72,888.44. The court observes however, that of that amount \$57,469.83 is associated with the Stamford Hospital for the day of and the day after the accident, and that over \$60,000.00 of the total medical bills were incurred on the day of or the day after the accident. The balance of the medical bills are associated with four visits to her orthopedic doctor, approximately two months of physical therapy and multiple diagnostic procedures, including x-rays and MRI's.

The Court also finds by a preponderance of evidence that the plaintiff during her most significant period of recuperation was out of work for three months. She was earning approximately \$100.00 per week working in a travel agency. The Court finds she lost earnings of \$1,200.00 during that period. The Court awards \$1,200.00 in lost income.

The total economic damages awarded by the Court is \$74,088.44. There is insufficient evidence for the Court to find that the plaintiff will incur future medical bills or future lost wages.

III. NON-ECONOMIC DAMAGES

The plaintiff suffered two significant injuries as a result of the automobile accident. She suffered an injury as a result of her head striking the windshield of the defendant's car. The trauma to her head caused a significant hematoma around her right eye; the plaintiff testified that she had a resulting headache. This is consistent with the hospital records. The headaches subsided over the course of two months. There does not appear to be any long-term impact from the trauma to her head.

She was diagnosed at the hospital with a left tibial plateau fracture; the hospital provided her with a knee immobilizer and a walker. She used both devices for about a month. The fracture is noticeable on the X-Rays but did not require surgery. Her next medical treatment was a little less than two months later when she saw Dr. Daniel Zelazny an orthopedic surgeon on April 23, 2019. By the time of that visit she had experienced overall symptomatic improvement, but still experienced pain after prolonged activity and some residual discomfort worsening at night. She also exhibited a slight limp favoring her left lower extremity. Examination revealed her ability to perform a straight leg raise, her knee range of motion was full extension to 120 degrees of flexion but there was minor tenderness to palpation laterally as well as medially. She was seen again by Dr. Zelazny on September 3, 2019, approximately six

months after the accident. By that time she had returned to work for about three months. She was still experiencing pain with squatting and kneeling activities and pain while negotiating stairs. Her limp, however had disappeared and the fracture had healed. She returned to Dr. Zelazny on February 18, 2020. At that time she was still experiencing most of the residual symptoms that she was experiencing during the September 3, 2019 visit. Those symptoms were all consistent with post traumatic arthrosis. The arthrosis was the result of cartilage damage common with this type of trauma and fracture. While the fracture itself has healed the cartilage damage is permanent. Dr. Zelazny opined that the plaintiff had suffered a a permanent partial disability of 10 to 15 percent of the left leg. In his testimony, the doctor did not recall whether his calculation of permanency was based on AMA guidelines and the court makes no finding in that regard, but the court does find that the plaintiff has suffered a permanent injury as a result of the cartilage damage and will have a permanent disability to some degree which permanency is best understood by her recitation of her symptoms to the court and her doctor.

The plaintiff testified credibly that she had significant limitations during the first couple of months after the accident, but since that time her limitations have decreased substantially. She went back to work; she stopped using the walker and the knee immobilization device only one month after the accident. She still does experience some pain and discomfort, particularly with prolonged physical activity such as running. Prior to the accident the plaintiff enjoyed running, usually about 3 kilometers, about 3 times a week. She also enjoyed long walks, particularly in Manhattan. As a result of the accident both of these activities have been substantially curtailed though not completely eliminated. When she runs, she runs much shorter distances. Her walking has also been limited.

She is able to work without interruption and she is able to go about most of her daily activities without significant interruption, though there is some discomfort on occasions. Her

course of treatment indicates that she is able to go about her daily life without significant interruption. While she engaged in physical therapy it was for a limited period of time and her overall treatment has been conservative.

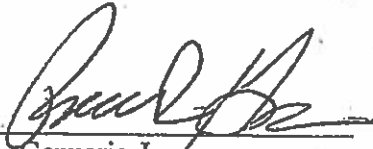
The Court finds that the plaintiff currently continues to have some discomfort and some pain resulting from more prolonged or strenuous activities. The pain is intermittent; the pain and discomfort is manageable but it is also permanent. Some of the activities she used to enjoy; she now must enjoy on a significantly limited basis.

It is always difficult to quantify in monetary terms what is fair, just, and reasonable given the plaintiff's condition. While the Court finds that the injuries to the plaintiff are permanent in nature particularly, with regard post traumatic arthrosis and damage to the cartilage, the Court also finds that these injuries while causing some discomfort are not debilitating and have not been so since a couple of months after the accident. Nonetheless, the impact is real and, while intermittent, permanent. The injury will cause the plaintiff to have to limit some of the activities she previously enjoyed. The Court also finds the limitation will continue in the future. The plaintiff is currently 45 years old and has a life expectancy of 40.7 years at the time of trial. There is no evidence that the plaintiff had any pre-existing conditions which contributed to her leg pain or headaches. She had never received any medical treatment to the areas of her body that cause her the pain and discomfort she now experiences. Prior to the accident she had no limitations to her daily activity. Since the accident, she has noticeable limitations, pain and discomfort as described above. There is no evidence from which the Court can find that she will need future medical treatment.

Taking all these factors into consideration, the Court awards noneconomic damages for both past and future pain, suffering, and impact on the plaintiff's quality of life in the amount \$105,000 dollars.

IV. CONCLUSION

The Court enters judgement for the plaintiff on the first count of the complaint in the amount \$179,888.44. The Court enters judgment for the defendant on count two and count three.


Genuario J.

DECISION ENTERED IN
ACCORDANCE WITH THE
FORFEITURE 12/1/22.
JONES SENT 12/1/22.
